TITLE X

OFFENSES INVOLVING THEFT

ARTICLE I.

LARCENY AND RELATED OFFENSES

§ 1. Larceny; definitions of terms

Property. "Property" means any money, personal property, real property, domestic animal, thing in action, evidence of debt or contract, or article of value of any kind.

Commodities of a public utility nature such as gas, electricity, steam and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

Obtain. The term "obtain," as used in this article, includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

Deprive. To "deprive" another of property means (1) to withhold it or cause it to be withheld from him permanently or for so extended a period that the major portion of its economic value, or of the use and benefit thereof, is lost to him, or (2) to dispose of the property so as to make it unlikely that the owner will recover it.

Appropriate. To "appropriate" property of another to oneself or a third person means (1) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period as to acquire the major portion of its economic value, or of the use and benefit thereof, or (2) to dispose of the property for the benefit of oneself or a third person.

Owner. An "owner" of property, as used in this article, means a person who has a right to possession thereof which is superior to that of a person who takes, obtains or withholds it

from him and which the latter is not privileged to infringe.

One who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

No joint or common owner of property shall be deemed to have a right of possession thereto superior to that of any other joint or common owner or possessor thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sales contract or other security agreement.

§ 2. Definition of larceny

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from the possession of the owner or of any other person.

2. Larceny includes all acts of wrongful taking, obtaining and withholding of property committed with the above-specified intent which have previously been denominated common law larceny by asportation, common law larceny by trick and device, obtaining property by false pretenses or embezzlement. Whether or not previously classified as such, the following acts also constitute larceny when committed with the above-specified intent:

(a) The acquiring and exercise of control over property of another which one knows to have been lost, mislaid or delivered under a mistake involving the identity of the recipient or the nature or amount of the property, without taking reasonable means to return it to the person entitled to its possession;

(b) The obtaining of property through commission of the crime of issuing a fraudulent order for money as defined in section of this chapter;

(c) The acquiring of property by means of any other act of taking, obtaining, or withholding of property committed with the above-specified intent when such act is expressly designated larceny by any other provision of this chapter or of any other chapter.

3. It is immaterial in, and no defense to, a prosecution for larceny that:

(a) The accused obtained possession of, or title to, such property with the consent of the person from whom he obtained it, provided that he induced such consent by a false or fraudulent representation, pretense, token, or writing; or

(b) The accused in the first instance obtained possession of, or title to, such property lawfully, provided he subsequently wrongfully withheld or appropriated such property to his own use or the use of any person not entitled to the use and benefit of such property; or

(c) The person from whom the accused obtained such property intended to part with title to, as well as possession of, such property, or with possession as well as title; or

(d) The purpose for which the owner was induced to part with possession of such property was immoral or unworthy.

§ 3. Larceny; pleading and proof

Regardless of whether a particular larcenous act may be of a kind previously denominated or known as common law larceny by asportation, common law larceny by trick and device, obtaining property by false presenses, embezzlement, appropriating lost property, or by any other name or title, it shall be sufficient in any prosecution for larceny that:

1. The indictment or information charges that the accused, with intent to deprive another of property or to appro-

priate it to himself or to a third person, stole such property from the possession of the owner or of another person; and

2. The indictment or information is supported by proof of the commission by the accused of any act constituting larceny as defined in this article.

§ 4. Larceny; value of stolen property, how ascertained

The value of stolen property shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time of the larceny, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the larceny.

2. Certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(b) The value of a deed, conveyance or other instrument constituting a transfer or evidence of title to or interest in property, shall be deemed the value of the property or interest transferred, represented or affected.

(c) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions one and two of this section, its value shall be deemed to be an

amount less than one hundred dollars.

§ 5. Petit Larceny

A person who steals property is guilty of petit larceny.

§ 6. Grand larceny in the second degree

A person who steals property is guilty of grand larceny in the second degree when:

1. The value of the property exceeds one hundred dollars; or

2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or officer; or

3. The property, regardless of its nature and value, is taken from the person of another.

§ 7. Grand larceny in the first degree

A person who steals property is guilty of grand larceny in the first degree when the value of the property exceeds one thousand dollars.

§ 8. Misapplication of property

A person is guilty of misapplication of property when, having tangible personal property of another in his possession pursuant to an agreement that the same will be returned to the owner at a future time or will be applied to a specific use or purpose, he sells, pledges or otherwise disposes of such property without the consent of the owner thereof in such fashion as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

It is a defense to a prosecution under this section that:

1. At the time the prosecution was formally instituted,

(a) the actor had recovered possession of the property, unencumbered as a result of the unlawful disposition; and

(b) that the owner has suffered no material economic loss as a result of the unlawful disposition; or

2. The actor, having been entrusted by the owner to

apply the property or its financial equivalent to a specific use for the benefit of the owner, and having applied, invested or disposed of it in a different manner, so acted solely because of an intention to benefit the owner and in an honest belief that such would be the case.

§ 9. Joy riding. Definition of "propelled vehicle"

A "propelled vehicle" means any motor propelled vehicle or aircraft, or any boat or vessel equipped for propulsion by mechanical means or by a sail.

§ 10. Joy riding

A person is guilty of joy riding when:

1. Without the consent of the owner thereof, he takes a propelled vehicle; or

2. Knowing that he does not have the consent of the owner or of anyone authorized to give such consent, he operates, exercises control over, rides in or otherwise uses a propelled vehicle which has been unlawfully taken in violation of subdivision one of this section. A person who without valid authorization operates or otherwise exercises control over a vehicle so taken is presumed to know that he does not have the consent of anyone authorized to give it; or

3. Having custody of a propelled vehicle pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

4. Having custody of a propelled vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such

retention or possession a gross deviation from the agreement.

§ 11. Theft of services; definition of terms

Service. "Service" includes, but is not limited to, labor, professional service, public utility or transportation service, the supplying of hotel and restaurant accomodations, entertainment, and the supplying of equipment for use.

Immediately compensable service. An "Immediately compensable service" is one which is ordinarily available to the public generally and the compensation for which is, by uniformly recognized custom and practice, clearly understood to be payable at the latest immediately after rendition thereof in the absence of some special agreement, arrangement or circumstances to the contrary. Immediately compensable services include, but are not limited to, railroad, subway, bus, air, taxi and other transportation services, hotel and restaurant services, entertainment which is open to the public, telephone service from a public coin operated telephone, and certain other services traditionally requiring immediate compensation, such as barbering, boot blacking, portering, baggage checking, and temporary vehicular parking accomodations.

§ 12. Theft of services

A person is guilty of theft of services when:

1. By means of deception, stealth, force, intimidation or mechanical tampering, he obtains without compensation an immediately compensable service ordinarily rendered only upon payment in advance; or

2. Having obtained an immediately compensable service the compensation for which is payable immediately after the rendition thereof, and intending to avoid payment therefor, he fails or refuses to make immediate payment. In the absence of a special agreement or arrangement providing for payment on a credit basis or otherwise dispensing with immediate payment by the actor, a failure or refusal to make immediate payment raises

a presumption of intent to avoid payment; or

3. Intending to avoid payment for a prospective or already rendered immediately compensable service, he induces the supplier of such service to render it or to agree to payment therefor on a credit basis or upon some other basis not involving immediate pyament by the actor, by means of a credit card or similar token or instrument which is in any way invalid for such purpose, or by means of any other false representation of fact; or

4. With intent to avoid payment by himself or another for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device provided by the supplier of the service, he tampers with such device or with other equipment related thereto, or in any manner attempts to create a situation which prevents the meter or device from performing its measuring function. Any tempering with such a device or equipment without the consent of the supplier of the service raises a presumption of intent to avoid, or to enable another to avoid, payment for the service involved; or

5. Intending to obtain without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment of the supplier thereof designed to supply or to prevent the supply of such service either to the community in general or to particular premises. The connecting of any tube, pipe, wire or other instrument or contrivance to any tube, pipe, wire or other equipment installed by the supplier for the purpose of conducting the particular commodity, raises a presumption of intent to obtain the service without the consent of the supplier; or

6. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not

entitled to the use thereof either personally or in an agency capacity, and intending to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

§ 13. Fraudulently obtaining a signature

A person is guilty of fraudulently obtaining a signature when, with intent to defraud or injure another or to acquire a substantial benefit for himself or a third person, he obtains the signature of a person to a written instrument by means of any misrepresentation of fact which he knows to be false.

§ 14. Criminal possession of stolen property; definitions of terms

Possess. To "possess" property means to have physical possession or otherwise to exercise dominion and control.

Dealer. A "dealer" means a person in the business of buying, selling or otherwise dealing in goods, or a pawnbroker.

§ 15. Criminal possession of stolen property in the second degree

A person is guilty of criminal possession of stolen property in the second degree when, with intent to benefit himself or another, he possesses any property which has been stolen, either within or without the state, and which he knows to have been stolen.

§ 16. Criminal possession of stolen property in the first degree

A person is guilty of criminal possession of stolen property in the first degree when, with intent to benefit himself or another, he possesses any property which has been stolen, either within or without the state, and which he knows to have been stolen, and when:

1. The value of the property exceeds one hundred dollars; or

2. The property consists of a firearm, automobile or other motor propelled vehicle; or

3. The person is a dealer.

§ 17. Criminal possession of stolen property: presumptions

1. A person who possesses stolen property which he knows to have been stolen is presumed to possess it with intent to benefit himself or another.

2. A dealer who possesses stolen property is presumed to know that such property was stolen if:

(a) he possesses it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it; or

(b) being a dealer in property of the type possessed, he acquired it for a consideration far below its reasonable value.

§ 18. Criminal possession of stolen property: liability and proof

1. It is no defense to a prosecution for criminal possession of stolen property that the person who stole the property has not been convicted, apprehended or identified.

2. A person may be convicted of possession of stolen property whether or not he participated in the larceny of such property; except that one who participates in a larceny as the actual taker of the property or as a person present during the commission of the larceny and aiding in the taking may not be convicted of both larceny of and criminal possession of such property.

3. A person charged with criminal possession of stolen property who participated in the larceny of such property as the actual taker thereof or as one present during the commission of the larceny and aiding in the taking, may not be convicted of criminal possession of such stolen property solely upon the testimony of an accomplice in the larceny without corroborating evidence of the kind prescribed in section three hundred ninety-nine of the Code of Criminal Procedure.

4. Unless inconsistent with the provisions of subdivision

three of this section, a person charged with criminal possession of stolen property may be convicted thereof solely upon the testimony of one from whom he obtained such property or solely upon the testimony of one to whom he disposed of such property.

§ 19. Unlawfully recovering stolen property

A person is guilty of unlawfully recovering stolen property when, knowing that the property has been stolen and that the theft has been reported to a law enforcement agency, he returns said property to its owner or to one acting in behalf of the owner, or directly or indirectly accepts the return of such property, or pays a reward therefor, without first notifying such law enforcement agency and obtaining its permission to do so.

ARTICLE 2

ROBBERY

§ 20. Definition of robbery or forcible stealing

Robbery is forcible larceny or stealing.

One robs, or forcibly steals when, with intent to deprive another of property or to appropriate the same to himself or a third person, he takes such property from the person or immediate possession of another by means of employing physical force against him or against a person in his presence, or by means of placing the owner of the property or a person in his presence in fear of immediate physical injury to himself or to any person present. The force or fear must be employed to accomplish the taking of the property, to prevent or overcome resistance to the taking, or to retain possession after the taking while the crime is still in progress at the scene thereof. Force or fear employed thereafter solely for the purpose of escape does not render the larceny a robbery or forcible stealing.

§ 21. Robbery in the second degree

A person who forcibly steals property is guilty of robbery in the second degree.

§ 22. Robbery in the first degree

A person who forcibly steals property is guilty of robbery in the first degree when:

1. In the course of and in furtherance of the commission of the crime, he causes serious physical injury to any person present who is not a participant in the crime; or

2. He is armed with a deadly weapon during the commission of the crime; or

3. He is aided by an accomplice actually present.

ARTICLE 3

EXTORTION

§ 23. Extortion

A person is guilty of extortion when, with intent to deprive another of property or to appropriate the same to himself or a third person, he compels or induces the owner thereof to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

1. Cause physical injury to some person in the future; or

2. Cause damage to the property of some person; or

3. Accuse some person of a crime or cause criminal charges to be instituted against him; or

4. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

5. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortionate when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

6. Testify, provide information, or withhold testimony

or information with respect to another's legal claim or defense; or

7. Use or abuse his position as a public official by performing some act within or related to his official duties, or by refusing or omitting to perform an official duty, in such fashion as to affect some person adversely; or

8. Do any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

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