**THEFT OF SERVICES**

**(Use of Stolen Credit or Debit Card) Penal Law § 165.15(1)**

**(Committed on or after Nov. 1, 1995)**

The (*specify*) count is Theft of Services.

Under our law, a person is guilty of Theft of Services when that person

*[NOTE: Select appropriate alternative:*obtains or attempts to obtain a service

*or* induces or attempts to induce the supplier of a rendered

service to agree to payment therefor on a credit basis]

by the use of a credit card [*or* debit card] which he or she knows to be stolen.

The following terms used in that definition have a special meaning:

[OBTAIN includes, but is not limited to, the bringing about of a transfer, or purported transfer, of a service or of a legal interest therein, whether to the obtainer or another person.1]

A person ATTEMPTS to obtain a service [*or* to induce the supplier of a rendered service to agree to payment therefor on a credit basis] by the use of a credit card [*or* debit card] which he or she knows to be stolen when he or she intends to do so and engages in conduct which tends to effect that objective.2

1*See*, Penal Law § 155.00(2).

2*See* Penal Law § 110.00.

The term SERVICE includes  *(specify)*  .3

[A CREDIT CARD includes any credit card, credit plate, charge plate, courtesy card or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder.4]

[A DEBIT CARD includes a card, plate or other similar device issued by a person to another person which may be used, without a personal identification number or code (*or* similar identification number or code) (*or* similar identification), to purchase or lease property or services. The term does not include a credit card or a check, draft or similar instrument.5]

A person KNOWS that a credit card [*or* debit card] is stolen when that person is aware that such card is stolen.6

A credit card [*or* debit card] is STOLEN when it has been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive the owner of such card or to appropriate such card to himself or herself or a third person.7

An OWNER of a card means a person who has a right to

3Penal Law § 155.00(8) defines service as follows: "Service includes, but is not limited to, labor, professional service, a computer service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas,

electricity, steam and water."

4*See* Penal Law § 155.00(7) and General Business Law § 511(1).

5*See* Penal Law § 155.00(7-a) and General Business Law § 511(9).

6*See* Penal Law § 15.05(2).

7*See* Penal Law § 155.05(1).

2

possess it which is superior to that of the person who takes it.8

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about  *(date)*  , in the county of  *(county)*  , the defendant,  *(defendant's name)*  ,

*[Select appropriate alternative:*

obtained or attempted to obtain a service

*or* induced or attempted to induce the supplier of a rendered service to agree to payment for such service on a credit basis]

by the use of a stolen credit card [*or* debit card]; and

1. That the defendant knew that such card was stolen.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

8*See* Penal Law § 155.00(5). Also see that section for special definitions of "owner" to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

3