

THEFT OF SERVICES
(A Misdemeanor)
(Obtaining Transportation Without
Required Advance Payment)¹
PENAL LAW 165.15(3)
(Committed on or after Sept. 1, 1967)

The _____ count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with intent to obtain railroad [or subway] [or bus] [or air] [or taxi] [or (any other) public transportation] service without payment of the lawful charge for such service, that person obtains or attempts to obtain such service by force [or intimidation] [or stealth] [or deception] [or mechanical tampering] [or by unjustifiable failure or refusal to pay].

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," "attempt," and "obtain".

INTENT means conscious objective or purpose.² Thus, a person acts with intent to obtain railroad [or subway] [or bus] [or air] [or taxi] [or public transportation] service without payment of the lawful charge for such service when that person's conscious objective or purpose is to do so.

A person ATTEMPTS to obtain a service by force [or intimidation] [or stealth] [or deception] [or mechanical

¹This statute envisions two different methods of committing the crime: one in which the defendant rides or attempts to ride without paying a fare required to be paid in advance, for example by jumping a subway turnstile; and one in which the defendant rides and then avoids or attempts to avoid paying a fare due at the end of the ride, for example by refusing to pay a taxi fare. This charge deals with the former situation; the charge at 165-1062, post, deals with the latter.

²See Penal Law § 15.05(1).

tampering] [or by unjustifiable failure or refusal to pay] when he or she intends to do so and engages in conduct which tends to effect that objective.³

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.⁴

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), obtained or attempted to obtain railroad [or subway] [or bus] [or air] [or taxi] [or public transportation] service, without payment of the lawful charge for such service, by force [or intimidation] [or stealth] [or deception] [or mechanical tampering] [or unjustifiable failure or refusal to pay]; and
2. That the defendant did so with the intent to obtain such service without payment of the lawful charge.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Theft of Services as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Theft of Services as charged in the _____ count.

³See Penal Law § 110.00.

⁴See Penal Law § 155.00(2).