

**THEFT OF SERVICES
(A Misdemeanor)
(Accepting Diverted
Metered Service)
PENAL LAW 165.15(7)
(Committed on or after Nov. 1, 1992)**

The _____ count is Theft of Services.

Under our law, a person is guilty of Theft of Services when that person knowingly accepts or receives the use and benefit of service, including gas [*or steam*] [*or electricity*] service,

[NOTE: Select appropriate alternative:

which should pass through a meter but has been diverted therefrom

or which has been prevented from being correctly registered by a meter provided therefor

or which has been diverted from the pipes (*or wires*) (*or conductors*) of the supplier thereof].

The term “knowingly” used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

A person KNOWINGLY accepts or receives the use and benefit of a service which has been diverted from a meter [*or which has been prevented from being correctly registered by a meter provided therefor*] [*or which has been diverted from the pipes (or wires) (or conductors) of the supplier thereof*] when that person is aware that he or she is accepting or receiving the use and benefit of a service which has been so diverted [*or so prevented from being correctly registered*].¹

¹See Penal Law § 15.05(2).

Under our law, proof that service has been intentionally diverted from passing through a meter [or has been intentionally prevented from being correctly registered by a meter provided therefor] [or has been intentionally diverted from the pipes (or wires) (or conductors) of the supplier thereof], is presumptive evidence that the person who accepts or receives the use and benefit of such service has done so with knowledge of the condition so existing.² This means that, if the People have proven beyond a reasonable doubt that service was intentionally diverted from passing through a meter [or intentionally prevented from being correctly registered by a meter provided therefor] [or intentionally diverted from the pipes (or wires) (or conductors) of the supplier thereof], and that the defendant accepted or received the use and benefit of such service, you may, but you are not required to, infer from those facts that the defendant did so with knowledge of the condition so existing.

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), accepted or received the use and benefit of a service which

[Select appropriate alternative:

should have passed through a meter, but was diverted from passing through such meter;

or which had been prevented from being correctly registered by a meter provided for such purpose;

or which had been diverted from the pipes (or wires) (or conductors) of the supplier;] and

2. That the defendant did so knowingly.

²See Penal Law § 165.15(7).

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.