**THEFT OF SERVICES1**

**(Avoiding Admission Charges)

PENAL LAW 165.15(9)

(Committed on or after Nov. 1, 1992)**

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

Under our law, a person is guilty of Theft of Services when, with intent to avoid payment of the lawful charge for admission to any theater [*or* concert hall] [*or* for admission to (*or* use of) a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure], that person obtains or attempts to obtain such admission without payment of the lawful charge therefor.2

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

INTENT means conscious objective or purpose.3 Thus, a person acts with intent to avoid payment of a lawful charge when that person's conscious objective or purpose is to avoid payment of such lawful charge.

OBTAIN includes, but is not limited to, the bringing about of

1This offense is elevated from a violation to a class A misdemeanor if the defendant has been previously convicted of theft of services under this subsection.

2This offense is elevated from a violation to a class A misdemeanor if the defendant has

"been previously convicted of theft of services under [Penal Law § 165.15(9)]."

If the defendant has been charged with this crime as a Class A Misdemeanor, this element must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the element, the court **must not make any reference to it in the definition of the offense or in listing the elements of the offense.** But if the defendant has denied the previous conviction or

remained mute, the court must add this element to the definition of the crime and the list of elements. *See, People v. Cooper,* 78 NY2d 476 (1991).

3*See* Penal Law § 15.05(1).

a transfer or purported transfer of a service or of a legal interest therein, whether to the obtainer or another.4

A person ATTEMPTS to obtain admission without payment of the lawful charge when he or she intends to do so and engages in conduct which tends to effect that objective.5

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 admission to a theater [*or* concert hall] [*or* admission to (*or* use of) a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure], without payment of the lawful admission charge; and
2. That the defendant did so with the intent to avoid payment of the lawful admission charge.6

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

4*See* Penal Law § 155.00(2).

5*See* Penal Law § 110.00.

6If the defendant is charged with this crime as a Class A Misdemeanor, and has admitted the aggravating element of a prior conviction, then list *only* the first two elements for the jury.

If the defendant is charged with this crime as a Class A Misdemeanor, and has denied the aggravating element or remained mute, then add the following:

"**and 3. That the defendant had previously been convicted of theft of services in violation of Penal Law § 165.15(9).**"

doubt either one or both of those elements, you must find the defendant not guilty of this crime.