

**UNAUTHORIZED SALE OF CERTAIN
TRANSPORTATION SERVICES
Penal Law § 165.16(1)
(Committed on or after July 11, 2005)**

The (*specify*) count is Unauthorized Sale of Certain Transportation Services.

Under our law, a person is guilty of Unauthorized Sale of Certain Transportation Services when, with intent to avoid payment by another person to the metropolitan transportation authority, New York city transit authority or a subsidiary or affiliate of either such authority of the lawful charge for transportation services on a

Select appropriate alternative:

railroad, subway, bus, or mass transit service

operated by either such authority or a subsidiary or affiliate thereof, he or she, in exchange for value, sells access to such transportation services to such person, without authorization, through the use of an unlimited farecard or doctored farecard.

(That sale of access to transportation services must)¹ occur in a transportation facility² operated by such metropolitan transportation authority, New York city transit authority [or subsidiary or affiliate of such authority], when public notice of the prohibitions of (the law)³ and the exemptions thereto appears on the face of the farecard or is conspicuously posted in

¹ The words in parenthesis substitute for the statutory language which reads: "This section shall apply only to such sales that...."

² At this point the statute continues: "as such term is defined in subdivision two of section 240.00 of this chapter." The meaning of "transportation facility" is set forth in this charge in the section on definitions.

³ The words in parenthesis substitute for the statutory words: "its section".

transportation facilities operated by such metropolitan transportation authority, New York city transit authority or such subsidiary or affiliate of such authority.

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

FARECARD means a value-based, magnetically encoded card containing stored monetary value from which a specified amount of value is deducted as payment of a fare;⁴

UNLIMITED FARECARD means a farecard that is time-based, magnetically encoded and which permits entrance an unlimited number of times into facilities and conveyances for a specified period of time;⁵ and

DOCTORED FARECARD means a farecard that has been bent or manipulated or altered so as to facilitate a person's access to transportation services without paying the lawful charge.⁶

TRANSPORTATION FACILITY means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, school buses,⁷ and air, boat, railroad and bus terminals and stations and all appurtenances thereto.⁸

⁴ Penal Law § 165.16(3)(a).

⁵Penal Law § 165.16(3)(b).

⁶ Penal Law § 165.16(3)(c).

⁷ At this point, the statute continues: “as defined in section one hundred forty-two of the vehicle and traffic law.” If in issue, add that definition in this section of the charge.

⁸ Penal Law § 240.00(2).

It shall be a defense to (this crime)⁹ that a person, firm, partnership, corporation, or association: (a) selling a farecard containing value, other than a doctored farecard, relinquished all rights and privileges thereto upon consummation of the sale; or (b) sold access to transportation services through the use of a farecard, other than a doctored farecard, when such sale was made at the request of the purchaser as an accommodation to the purchaser at a time when a farecard was not immediately available to the purchaser, provided, however, that the seller lawfully acquired the farecard and did not, by means of an unlawful act, contribute to the circumstances that caused the purchaser to make such request.¹⁰

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, each of the following [four/five] elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name),¹¹ in exchange for value, sold access to transportation services of a

Select appropriate alternative:

railroad, subway, bus or mass transit services

of the metropolitan transportation authority, New York city transit authority [or subsidiary or affiliate of either authority] to a person, without authorization, through the use of an unlimited farecard or doctored farecard;

⁹ The words in parenthesis substitute for the statutory words: “a prosecution under this section.”

¹⁰ Penal Law § 165.16(2).

¹¹ When the defendant is charged in whole or in part as an accomplice, Court will add: “personally, or by acting in concert with another person.” See Accomplice charge.

2. That the defendant did so with the intent to avoid payment by that person of the lawful charge for such transportation services;
3. That the sale of access to transportation services occurred in a transportation facility operated by such metropolitan transportation authority, New York city transit authority [or subsidiary or affiliate of such authority]; and
4. That public notice of the prohibitions of the law and the exemptions thereto appeared on the face of the farecard or was conspicuously posted in transportation facility operated by such metropolitan transportation authority, New York city transit authority or such subsidiary or affiliate of such authority.

Add if appropriate:

and 5. That the person, [firm, partnership, corporation, or association]:

selling a farecard containing value, other than a doctored farecard, DID NOT relinquish all rights and privileges thereto upon consummation of the sale; or

sold access to transportation services through the use of a farecard, other than a doctored farecard, when such sale was NOT made at the request of the purchaser as an accommodation to the purchaser at a time when a farecard was not immediately available to the purchaser,

or the sale was made at the request of the purchaser as an accommodation to the purchaser at time when a farecard was not immediately available to the purchaser, but the seller had not lawfully acquired the farecard or had by means of an unlawful act, contributed to the circumstances that cause the

purchaser to make the request.

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

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