

**THEFT OF SERVICES
(A Misdemeanor)
(Diverting Use of Labor,
Equipment or Facilities)
PENAL LAW 165.15(10)
(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, obtaining [*or* having] control over labor in the employ of another person [*or* of business (*or* commercial) (*or* industrial) equipment (*or* facilities) of another person], knowing that he or she is not entitled to the use thereof, and with intent to derive a commercial [*or* substantial] benefit for himself or herself [*or* a third person], that person uses [*or* diverts to the use of himself or herself (*or* a third person)] such labor [*or* equipment] [*or* facilities].

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: ["obtain"], "knowing" and "intent."

[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.¹]

KNOWING one is not entitled to the use of labor [*or* equipment] [*or* facilities] means being aware that one is not entitled to the use of such labor [*or* equipment] [*or* facilities].²

INTENT means conscious objective or purpose.³ Thus, a person acts with intent to derive a commercial [*or* substantial] benefit for himself or herself [*or* a third person] when that

¹See Penal Law § 155.00(2).

²See Penal Law § 15.05(2).

³See Penal Law § 15.05(1).

person's conscious objective or purpose is to derive a commercial [or substantial] benefit for himself or herself [or a third person].

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 three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), obtained [or had] control over labor in the employ of another person [or of business (or commercial) (or industrial) equipment (or facilities) of another person] and used [or diverted to the use of himself/herself (or a third person)] such labor [or equipment] [or facilities];
2. That the defendant did so with the intent to derive a commercial [or substantial] benefit for himself/herself [or a third person]; and
3. That the defendant knew that he/she was not entitled to the use of such labor [or equipment] [or facilities].

Therefore, if you find that the People have proven beyond a reasonable doubt each 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 any one or more of those elements, you must find the defendant not guilty of the crime of Theft of Services as charged in the _____ count.