SB

592

"An Act relating to theft of telecommunication service."

COMMITTEE REPORT

3/17/76

HOUSE

Mr. Speaker: Date May 6, 1976

The Committee on JUDICIARY has had 2 3 5 9 2 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Hardman DePass _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Hardman Chairman

Alaska State Legislature

House

JUNEAU ALASKA

March 17, 1976

MEMORANDUM

TO: Representative Terry Gardiner
Chairman, House Judiciary Committee

FROM: Representative Bob Bradley
Chairman, House Commerce Committee

SUBJECT: Senate Bill No. 592

Attached is some backup material on Senate Bill No. 592, relating to the theft of telecommunications which was passed out of the Commerce Committee and referred to Judiciary.

Practice Commentaries

by Arnold D. Hechtman

This section is supplementary to a prior provision rendering one who steals tangible property consisting of "secret scientific material" (defined in § 155.00[6]) guilty of grand larceny in the third degree (§ 155.30[3]). The latter crime applies to one who, for example, steals a document reciting a secret scientific formula. It does not, however, embrace one who with the same larcenous intent photographs or copies such a document, since such conduct does not constitute a *taking* of properties so as to constitute larceny (§ 155.05[1]). The instant section plugs the indicated gap with the crime of "unlawful *use* of secret scientific material," which, like the larceny offense (§ 155.30), is graded a class E felony.

§ 165.10 Repealed. L.1969, c. 115, § 4, eff. on 120th day after Mar. 25, 1969

Historical Note

Section, which related to theft of services and definitions of terms, was added L.1965, c. 1030; amended L. 1967, c. 791, § 24.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen.

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has

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been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

5. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

6. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

7. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

Theft of services is a class A misdemeanor.

L.1965, c. 1030; amended L.1967, c. 791, § 25; L.1969, c. 115, § 6.

Historical Note

1969 Amendment. Subd. 1. L.1969, c. 115, § 5, eff. on 120th day after Mar. 25, 1969, added subd. 1. It derived from former subd. 1, repealed L.1969, c. 115, § 5.

1967 Amendment. Subd. 2. L.1967, c. 791, § 25, eff. Sept. 1, 1967, added sentence beginning "A person who fails."

Subd. 5. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "provided by the supplier of the service" following "mechanical device."

Subd. 6. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "of the supplier thereof" following "equipment."

Derivation. Subd. 1. New.

Subd. 2. Penal Law 1909, § 925, added L.1923, c. 503, amended L.1939, c. 579; L.1955, c. 460.

Subd. 3. Penal Law 1909, §§ 1990, 1990-b. Section 1990, amended L. 1917, c. 350; L.1957, c. 823, was from Penal Code 1881, § 426, amended L. 1890, c. 438, § 1. Section 1990-b, added L.1957, c. 884, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1961, c. 548. Section 1293-c, added L.1916, c. 367, amended L.1941, c. 883; L.1955, c. 477.

Subd. 5. Penal Law 1909, §§ 1431, 1431-a, 1432, 1432-a. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L. 1892, c. 692, § 1; L.1900, c. 589, § 1; L.1906, c. 453, § 1. Section 1431-a added L.1926, c. 849. Section 1432 was from Penal Code 1881, § 651-a, added L.1902, c. 333, § 1. Section 1432-a added L.1933, c. 414.

Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

Subd. 7. New.

Practice Commentaries

by Arnold D. Hechtman

In relation to the former Penal Law, this section is entirely new in form and substantially new in substance.

Since "services" are not "property," "theft" of a service does not constitute larceny; and, if any such conduct is to be proscribed, it must be by special statute. The former Penal Law defines few offenses of that nature (see §§ 927, 967, 1431, 1432, 1432-a). It is not necessary, however, to go to the other extreme of equating services with property and of predicating, wherever possible (mainly in the area of deception), "theft of service" offenses equivalent to those involving thefts of property, or larcenies. Legislation of that character would doubtless lead to hosts of "criminal" charges of a basically civil nature. The instant section steers a middle course by defining seven specific offenses, most involving theft or attempted theft of certain kinds of services.

Subdivision 1, dealing with credit card offenses, was amended in 1969, as one phase of an extensive bill enacted for

torical Note

Penal Code 1881, § 526, amended L. 1890, c. 438, § 1. Section 1293-b, added L.1957, c. 884, amended L.1965, c. 198.

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the purpose of strengthening the Penal Law in its application to conduct involving theft and misuse of credit cards (L.1969, c. 115; see practice commentary upon § 155.00).

Prior to 1969, the general subject of fraudulently obtaining property or services by means of stolen, false or improperly used credit cards was covered by (1) the crime of larceny (by false pretenses) in cases where property was obtained; (2) the "theft of services" offense at hand (§ 165.15 [1]) in cases where a service was obtained; and (3) a misdemeanor entitled "unauthorized use of credit cards," which appeared not in the Penal Law but in the General Business Law (§ 513). The General Business Law statute, defining in rather complex fashion a very broad offense or offenses embracing acquisition of both property and services, covered approximately the same ground as the appropriate Penal Law statutes.

The 1969 credit card bill (L.1969, c. 115) did not work any truly significant change of substance in this area but established a new structural format. The rather redundant General Business Law section (§ 513) was repealed. The Penal Law "theft of services" provision (§ 165.15[1]) was narrowed to apply to the acquisition of services by means of "stolen" credit cards only (rather than acquisition by means of almost any kind of defective card, as was formerly the case). And, finally, a new Penal Law section was added (§ 165.17), defining the crime of "unlawful use of credit card," which does not deal with the use of *stolen* or *forged* cards but renders guilty of a misdemeanor one who "in the course of obtaining or attempting to obtain" either "property or a service displays a credit card which he knows to be *revoked* or *cancelled*".

These offenses together with various others in the larceny and forgery areas have the following overall scope with respect to a person who purchases or attempts to purchase property or a service by means of a credit card which he knows to be in some way defective for the purpose:

(1) Regardless of whether property or a service is the subject of the purchase, and regardless of whether the credit card is stolen or counterfeit, or whether it has merely been canceled or revoked, the culprit is guilty, at the very least, of a class A misdemeanor (§§ 155.25, 165.15[1], 165.17).

(2) If property is the subject of the purchase or attempted purchase, the culprit has committed larceny and, depending upon the value of the property, may or may not also be guilty of a felony (§ 155.30).

(3) If the credit card is a stolen one, the culprit is, undoubtedly, also guilty of criminal possession of stolen property in the second degree, a class E felony (§ 165.45 [2]). In addition, if in making or attempting to make the purchase he signs a voucher, receipt or other paper in the name of the card owner—as he usually would have to do—he is also guilty of forgery in the second degree, a class D felony (§ 170.10[1]).

(4) If the credit card is a forged or counterfeit one, the culprit is, undoubtedly, also guilty of criminal possession of a forged instrument in the second degree, a class D felony (§ 170.25).

Subdivision 2 restates the proscriptions of former Penal L[illegible] § 925 but expands the offense to include thefts and payment-avoidance of restaurant services as well as of those provided by hotels, inns and the like.

Subdivision 3 includes certain former Penal Law offenses (§§ 1[illegible], 1[illegible], 1[illegible]) but broadens the overall crime to encompass improper acquisition or fee-avoidance of all forms of "public transportation service" rather than of the limited kinds specified in the former statutes.

Subdivision 4 substantially restates former Penal Law § 967 (see, also, § 1293-c).

Subdivision 5 substantially restates certain phases of three former sections dealing in part with fraudulent tampering with gas, electric, steam and water meters (§§ 1431, 1431-a, 1432). The offense is broadened, however, to include meter tampering and similar fraud by relating to any sort of public or private service measured by a meter, whether [illegible] the indicated public utility kinds or otherwise.

Subdivision 6 embodies other phases of former Penal Law §§ 1431 and 1432, addressed to the acquisition of gas, electric, steam and water service without the supplier's consent. This offense does not necessarily require intent to avoid payment for the service improperly obtained. It would apply, for example, to one who, having had his gas turned off, succeeds in regaining the service by unauthorized tampering, regardless of whether he intends to pay for the gas thus obtained.

Subdivision 7 is new. This offense is included for the purpose of plugging an apparent gap in the present law pointed up by the decision in People v. Ashworth, 1927, 220 App.Div. 498, 222 N.Y.S. 24. The defendants therein, a mill superintendant and his brother, were convicted of grand

larceny as a result of having m[illegible] ally profitable use of the mill's m[illegible] to spin a substantial quantity of [illegible] The judgment was reversed on t[illegible] use of the mill's facilities and la[illegible] of "property" and, hence, could n[illegible] Subdivision 7 herein renders such [illegible] ices."

Theft of Services is a one-deg[illegible] demeanor. Obviously, all the wa[illegible] can be committed are not of eq[illegible] would be reasonable to expect the [illegible] number of degrees, prescribing [illegible] with the gravity of the prohib[illegible] above, this section represents a [illegible] in New York law with [illegible] Penal Law [illegible] [illegible] catalog devised [illegible] subclassify it; the expectation b[illegible] with the impact of the section d[illegible] would impose reasonable subclassif[illegible] legislative session since about [illegible] introduced, for example, to extend [illegible] services and make it a violation [illegible] demeanor. Such attempts have [illegible] not because they lacked merit b[illegible] illogical and unfair distinction be[illegible] way" or "taxi" services. Hopefully, [illegible] cation will soon be forthcoming.

Cross Refere[illegible]

Buildings may be entered for examination of [illegible] Works, see Transportation Corporations Law [illegible]
Hotels and boarding houses generally, see [illegible]
Larceny, see section 155.[illegible]

Notes of Deci[illegible]

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

1. Historical

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Note 1

larceny as a result of having made unauthorized and personally profitable use of the mill's machinery, facilities and labor to spin a substantial quantity of wool for a certain company. The judgment was reversed on the ground that the corrupt use of the mill's facilities and labor did not constitute a theft of "property" and, hence, could not be the subject of larceny. Subdivision 7 herein renders such conduct a "theft of services."

Theft of Services is a one-degree crime; a class A misdemeanor. Obviously, all the ways in which this offense can be committed are not of equal seriousness so that it would be reasonable to expect the offense to be defined in a number of degrees, prescribing punishment commensurate with the gravity of the prohibited conduct. As indicated above, this section represented a substantially new concept in New York law when it was incorporated into the revised Penal Law in 1967. Because of its basic novelty as a separately defined crime, no attempt was then made to further subclassify it; the expectation being that, as experience with the impact of the section developed, the Legislature would impose reasonable subclassifications. In almost every legislative session since about 1970, bills have, in fact, been introduced, for example, to extract only the theft of railroad services and make it a violation rather than a class A misdemeanor. Such attempts have thus far been unsuccessful not because they lacked merit but because they created an illogical and unfair distinction between "railroad" and "subway" or "taxi" services. Hopefully, appropriate subclassification will soon be forthcoming.

Cross References

Buildings may be entered for examination of meters, pipes, fittings, wires and works, see Transportation Corporations Law § 14.

Hotels and boarding houses, generally, see General Business Law § 200 et seq.

Larceny, see section 155.00 et seq.

Notes of Decisions

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

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1. Historical

The first enactment by the legislature upon the general subject is to be found in L.1878, c. 261. That statute made it a misdemeanor for any person to get on or off a freight car or engine while in motion, or to ride on any wood or freight car, unless employed by or with permission from the proper officers of such railroad or the person in charge of such car or engine. Subdivision 1 of section 426 of the Penal Code was plainly a codification of that enactment. By

Note 1

L.1879, c. 474, it was made a misdemeanor for a minor or other person, hinder, or delay the passage or running of any car lawfully running upon any horse or street railroad. Subdivision 3 of section 426 of the Penal Code was, quite as plainly, a codification of that statute. By L. 1880, c. 370, it was made a misdemeanor for a minor or other person, not a passenger, to climb, stand upon, or in any way to attach himself to, a locomotive or car, unless it is done in compliance with law, or by permission, under the lawful rules and regulations of the railroad. The same chapter also made it a misdemeanor to invite or solicit any such minor or other person to come, or to be, or to consent to his remaining upon, any engine, or any freight or baggage car, unless rightfully there by law, or with permission under the rules and regulations of the corporation. Thus, these three statutes had for their object the prevention of the unauthorized riding, or being, upon cars or engines, and of the obstruction, or delaying, of cars upon surface railroads. In the following year, when the Penal Code was established (L.1881, c. 676), section 426 was enacted as it stands at present with the exception that, by an amendment in 1890 (L.1890, c. 458), subdivision 3 was made to apply to steam railways, as well as to horse and street railways, and the caption "Riding on freight trains" was added. It is reasonable to infer that the Penal Code, in the respect which we are now considering, was intended as a codification of, and to retain within its provisions, existing laws. East v. Brooklyn Heights R. Co., 1909, 195 N.Y. 463, 88 N.E. 751.

2. Hotel service

Evidence that guest left hotel with her baggage, leaving an unpaid balance for room rent and telephone charges, did not sustain conviction of obtaining credit or accommodation at hotel with intent to defraud, in absence of proof that when she registered she did so with intent to defraud, and where, aside from indebtedness involved, she had paid all other charges for over 6 months. People v. Astor, 1945, 269 App.Div. 250, 55 N.Y.S.2d 283.

Presumption under this section [Penal Law 1909, § 925] of intent to defraud by obtaining credit or accommodation at hotel arising from guest's leaving hotel with baggage and charges unpaid was overcome, where the leaving was not surreptitious but was requested by hotel proprietor. Id.

An apartment hotel comprising kitchenette apartments and accommodating transients only very infrequently did not constitute a "hotel" with respect to plaintiff who occupied a small furnished apartment with his family under a six months' lease within this section [Penal Law 1909, § 925]. Cooper v. Schirrmeister, 1941, 176 Misc. 474, 26 N.Y.S.2d 668.

The omission of the term "apartment hotel" in this section [Penal Law 1909, § 925] was deliberate in absence of any expression or action by the Legislature which might be deemed a sufficient basis for ascribing a different intent, and the term "hotel" in this section does not include an "apartment hotel." Id.

"A hotelkeeper can require a guest to pay his board in advance. The law gives him a lien upon the guest's baggage and" this section [Penal Law 1909, § 925] "gives him a drastic remedy in all cases * * * actual fraud either in obtaining credit or in any effort to deprive the landlord of his lien upon a guest's baggage. But the mere fact of a guest not being able to pay a hotel bill is not a crime." People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212. See, also, People v. Nicholson, 1898, 25 Misc. 266, 55 N.Y.S. 447.

Where a landlord keeps a board bill and bar bill together and makes no specific application of payments, he cannot claim that the balance due is for board and proceed under this section [Penal Law 1909, § 925]. People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212.

Where a board bill is contracted by a regular boarder at a hotel without misrepresentation and he leaves the hotel openly and takes his baggage openly, he is not guilty of a violation of this section [Penal Law 1909, § 925]. Id.

Where there is no evidence that defendant intended to defraud hotelkeeper by making false pretenses, or surreptitiously removed baggage, but left merely to obtain money to pay bill, he cannot be convicted under this section [Penal Law 1909, § 925]. People v. Nicholson, 1898, 25 Misc. 266, 55 N.Y.S. 447.

3. Meters or attachments, tampering with

This section [Penal Law 1909, § 1431—a relating to meters or attachments] was applicable to civil actions or proceedings. Eff-Ess, Inc. v. New York Edison Co., Inc., 1932, 237 App.Div. 315, 261 N.Y.S. 126. See, also, Esposito v. Consolidated Edison Co. of N. Y., 1947, 68 N.Y.S.2d 868; Rocha v. Consolidated Edison Co. of New York, 1940, 22 N.Y.S.2d 157; Parsons Const. Corporation v. City of New York, 1937, 163 Misc. 902, 296 N.Y.S. 276.

4. Refusal to pay fare

Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, so that it was a private as opposed to common carrier, service provided by corporation did not fall within scope of subd. 3 of this section [Penal Law 1909, § 925] providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful

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Defendant railroad passenger's refusal to show his ticket to trainman on request constituted violation of this section [Penal Law 1909, § 1930] proscribing riding on railway car without authority or permission of proper officers or with intention of not paying therefor. People v. Gins, 1966, 49 Misc.2d 883, 268 N.Y.S.2d 644.

Refusal by passenger on railroad train to pay amount of fare demanded of him is prima facie evidence of his intention not to pay for the ride in violation of this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. People v. Paysmith, 1958, 11 Misc.2d 300, 174 N.Y.S.2d 860.

This section [Penal Law 1909, § 1930] providing that person who rides on passenger car with intention of not paying therefor is guilty of an offense does not apply only to persons who surreptitiously attempt to obtain transportation without paying therefor, but was applicable to passenger who refused to pay to conductor three cents which conductor believed was applicable to fare as federal transportation tax. Id.

Once a passenger on railroad train decides to refuse to pay fare demanded, he acts at his own peril, but if passenger tenders an amount equal to correct fare, he does not violate this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. Id.

Under section 4263 of 26 U.S.C.A. (I.R.C.1954) of Internal Revenue Code providing that 10 per cent excise tax on amount paid for transportation of persons by rail shall not apply to amounts which do not exceed 50

Notes of

cents or to amounts paid for commutation tickets for one month or less, no tax was due on 29-cent fare for transportation of passenger, who had monthly commutation ticket, to destination not included within ticket, and passenger, who offered to pay the 29 cents, but refused to pay 3 cents which conductor stated was due as transportation tax, did not violate this section [Penal Law 1909, § 1990] providing that a person who rides on passenger car with intention of not paying therefor is guilty of an offense. Id.

5. Stealing rides

The prohibition against stealing rides does not extend to cases where permission to ride on an engine is given by the person in charge thereof, as the conductor. Grimshaw v. Lake Shore, etc., R. Co., 1912, 205 N.Y. 371, 98 N.E. 702.

A violation of this section [Penal Law 1909, § 1990] in riding on a freight train was adverted to in reversing a judgment for the plaintiff in a negligence action. Barrett v. New York Cent., etc., R. Co., 1899, 157 N.Y. 663, 52 N.E. 659.

This section [Penal Law 1909, § 1990] rendered one stealing a ride on a freight train guilty of a misdemeanor. Sharp v. Erie R. Co., 1904, 90 App.Div. 502, 85 N.Y.S. 553, reversed on other grounds 184 N.Y. 100, 76 N.E. 923. See, also, People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

Where an officer sees a person stealing a ride on a freight train and directs another officer to arrest him, who does so and at the station house charges him with vagrancy, he may be convicted of a violation of this section [Penal Law 1909, § 1990], where, on being taken before a magistrate, the first officer charges him with such violation. People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

§ 165.17 Unlawful use of credit card

A person is guilty of unlawful use of credit card, when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card which he knows to be revoked or cancelled.

Unlawful use of credit card is a class A misdemeanor.

Added L.1969, c. 115, § 6.

Practice Commentaries

by Arnold D. Hechtman

This section was added by one of a series of amendments contained in a 1969 bill designed to strengthen New York's criminal laws in their application to frauds and misconduct committed by the use of stolen, forged or otherwise defective credit cards (L.1969, c. 115, section 6). An explanation of this section is contained in the practice commentary upon § 165.15.

§ 165.20 Fraudulently obta

A person is guilty of fraudul with intent to defraud or injure tial benefit for himself or a thi ture of a person to a written in representation of fact which he kn

Fraudulently obtaining a signa L.1965, c. 1030.

Historica

Derivation. Penal Law 1909, §§ 932, 934, 935, 937-a. Section 932 was from Penal Code 1881, § 596. Section 934, amended L.1939, c. 303, was

Practice Com

by Arnold D.

This section replaces a variety sions directed at those who fr ture of another to a written 937, 937-a, 938).

Cross Ref

Larceny, see section 155.05 et seq.
Signature defined, see General Constr

Notes of

Audit and payment of claims 3
Church collections and contributions 4
Credit statement 5
Elements of crime 1
Legal papers and documents 6
Spurious documents 7
Written instrument, generally 2

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1. Elements of crime

To be actionable the pretenses used in obtaining property by false token or writing must be calculated to deceive or be capable of defrauding. People v. Court of Oyer, etc., 1881, 83 N.Y. 436.

The reliance on the pretense by the prosecutor is an essential element of

by fraudulent statement or device. People v. Prim, 1975, 47 A.D.2d 409, 366 N.Y.S.2d 726.

to first degree

and proof

fendant which were dismissed at close of the People's case was legally sufficient to support such counts under a theory of larceny by false pretenses or larceny by false promises. People v. Consolazio, 1975, 47 A.D.2d 863, 366 N.Y.S.2d 199.

55. —— Second degree larceny

Evidence showing, inter alia, that welfare assistance recipient fraudulently received public welfare funds of over $5,000 supported conviction of second-degree grand larceny. People v. Prim, 1975, 47 A.D.2d 409, 366 N.Y.S.2d 726.

57. —— Petit larceny

Evidence that defendant took art works from dealer by giving false promises to sell the works and return the proceeds, minus a commission, to the dealer, that defendant failed to respond to various correspondence from art dealer requesting payment or return of the works and defendant's admissions that sales had been completed, and that he had engaged in similar transactions demonstrated beyond a reasonable doubt and to a moral certainty that defendant had a fraudulent intent and was guilty of petit larceny. People v. Newman, 1975, 80 Misc.2d 975, 365 N.Y.S.2d 400.

160—ROBBERY

degree

and demanded money from cash register, that defendant took money from her wallet, that an accomplice of defendant took money from cash register, and that defendant participated in harassment and threats to her following the robbery was sufficient to sustain defendant's convictions for first-degree robbery, second-degree robbery, two counts of third-degree grand larceny, and harassment. People v. Plummer, 1975, 36 N.Y.2d 161, 365 N.Y.S.2d 842, 325 N.E.2d 161.

ARTICLE 165—OTHER OFFENSES RELATING TO THEFT

§ 165.05 Unauthorized use of a vehicle

Practice Commentary Cited

People v. Alamo, 1974, 34 N.Y.2d 453, 358 N.Y.S.2d 375, 315 N.E.2d 446.

Supplementary Index to Notes

9. Evidence

Evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of possession of weapons and dangerous instruments and appliances or unauthorized use of a vehicle. People v. Roberts, 1975, 47 A.D.2d 909, 366 N.Y.S.2d 227.

10. Failure of lessee to return vehicle

A failure by a lessee of a commercially rented vehicle to return it to lessor at time stipulated is not a violation of subd. 3 of this section and, at least in absence of a demand by owner and refusal by lessee to deliver, original renting and retention does not become a crime by lapse of time, but is merely a breach of contract. Banner Cas. Co. v. Lazar, 1975, 81 Misc.2d 360, 366 N.Y.S.2d 314.

§ 165.15 Theft of services

A person is guilty of theft of services when:

[See main volume for text of 1 to 3]

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

[See main volume for text of 5 to 7]

Theft of services is a class A misdemeanor.

As amended L.1975, c. 530, § 2.

1975 Amendment. Subd. 4. L.1975, c. 530, § 2, eff. on the 90th day after July 29, 1975, included cable television service theft for himself or another person.

Supplementary Practice Commentaries

by Arnold D. Hechtman

1975

Subdivision 4 was amended to add "cable television service" (L.1975, c. 530); a phrase which is now defined in subdivision 9 of § 155.00. The amendment was sponsored by the Cable Television Commission which, apparently, considered that the development of cable television use in this State has been inhibited by widespread theft of cable television services. One estimate is that as many as 100,000 people in New York State may be getting cable services without paying for it. Obviously, a serious theft problem exists but that does not mean that the instant amendment is necessary. It assumes—or at least implies—that the theft of cable television services was not heretofore proscribed so that the specific inclusion thereof was necessary.

Subdivision 4, since its initial enactment, has spoken in terms of the theft of "telecommunications services." This phrase, not found in the former Penal Law, was introduced in the 1967 revision as a generic term to encompass just such technical advances as cable television. The former law specifically addressed "telephone" or "telegraph" services (former Penal Law §§ 967, 1293-c) and, if such terms had been

continued in the revised law, the instant amendment would be appropriate. But the word "telecommunication" was adopted precisely for the purpose of obviating periodic amendment of this subdivision whenever a new device, such as cable television, is introduced into our culture. As defined, "telecommunications" means: "communication at a distance (as by cable, radio, telegraph, telephone or television)" (Webster's Third New International Dictionary, unabridged). Thus, without further elaboration, the statute clearly included the subject of the instant amendment.

The objection to this amendment is not that it is incorrect but that it is inappropriate. One of the major deficiencies of the former Penal Law was that, by accretion over the years, it became a cumbersome and confusing repository of prohibited conduct directed at very narrow circumstances. The revised Penal Law sought to avoid this undesirable condition by the use of generic or other broadly descriptive terms to encompass the many forms—existing and prospective—that criminal conduct can take. Unfortunately, the instant amendment serves to lead this well laid plan agley.

§ 165.30 Fraudulent accosting

Practice Commentary Cited

People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

Elements of crime 3

1. Constitutionality

This section making it an offense to accost persons in public place with intent to defraud him of money or property by means of trick, swindle, or confidence game was not void for vagueness. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

3. Elements of crime

Essence of offense of fraudulent accosting is the swindling and defrauding of victim after gaining his confidence. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

§ 165.50 Criminal possession of stolen property in the first degree

Supplementary Index to Notes

Free goods or gifts 6
Market value 5
Purpose ½

½. Purpose

Purpose of this section and section 155.20 fixing higher degrees of crime of larceny or criminal possession is not related to regulating economic market but to assessing scale of criminal operations by persons charged with offenses under this section and section 155.20. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

3. Evidence

Evidence, including evidence that defendant was observed by police officers running from a house in whose adjacent garage a stolen automobile was parked, sustained defendant's conviction for criminally possessing property in the first degree. People v. Hoffman, 1975, 47 A.D.2d 618, 363 N.Y.S.2d 22.

5. Market value

Defendant's request of $19,500 for stolen experimental librium pills was a significant admission of value and a confirmation of a market value for purposes of prosecution for criminal possession of stolen property in first degree, even if that market was an illegitimate market. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

Where at time experimental librium pills were possessed as stolen property the experimental pills had been recalled by manufacturers and substitute pills of substantially same chemical composition were being manufactured and marketed, market value of substitute pills was relevant to establish current value of the recalled pills in prosecution for criminal possession of stolen property in first degree, and it was immaterial whether the value of recalled pills was that in legitimate or illegitimate market. Id.

6. Free goods or gifts

The uninvited taker of free goods or gifts is just as much a thief as if the goods were distributed for a price. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

§ 165.60 Criminal possession of stolen property; no defense

Practice Commentary Cited

People v. Fuller, 1974, 77 Misc.2d 717, 354 N.Y.S.2d 586.

MIDNIGHT SUN BROADCASTERS, INC.

KENI - KENI TV ANCHORAGE | KFAR - KFAR TV FAIRBANKS | KINY - KINY TV JUNEAU | KTKN KETCHIKAN

Radio: NBC - ABC Television: NBC

Reply to:
KINY AM & TV
231 S. FRANKLIN
JUNEAU, ALASKA
99801

January 14

Dear Bob,

Here are the copies of the N.Y. law that I was talking to you about on the phone the other nite. It is pretty simple and has just been inserted into to section on "Theft of Services".. This incidentally would give some additional protection to telephone services also and I am sure would be upported by every telephone co in the state.

Anything you could do to get this into the books would be greatly appreciated. At the moment it is supported by Ketchikan Alaska Television and Sitka Alaska Television but will be brought up at the Alaska cable convention to be held here in Juneau March 4-5-6.

Wally

Copy of letter for your information.

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

May 13, 1976

Wally Christiansen
Midnight Sun Broadcasters Inc.
Box 1852
Ketchikan, Alaska

Dear Wally,

For your information the House Judiciary Committee has had SB 592, theft of telecommunication services, under consideration and has passed a House Committee Substitute. The House Committee Substitute was a bill that was introduced originally by Rep. Brown's telecommunication interim committee. The Judiciary Committee felt that the HCS better met the legal requirements that would be needed to prosecute persons guilty of stealing various telecommunication services. Senator Ziegler said that he had no problem with the HCS. I hope the changes we have made are in accordance with your ideas concerning the problem.

I will make certain that the House Rules Committee does schedule SB 592 for action before the legislature adjourns.

Sincerely,

Terry Gardiner

SB 592

MIDNIGHT SUN BROADCASTERS, INC.

KENI - KENI TV ANCHORAGE | KFAR - KFAR TV FAIRBANKS | KINY - KINY TV JUNEAU | KTKN KETCHIKAN

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Walt

Copy of letter for your information.

(907)225-3875 BOX 1852 345 MAIN

R.D. "CHUCK" JENSEN
President - General Mgr.

E.W. "WALLY" CHRISTIANSEN
Vice-President - Chief Engineer

KETCHIKAN ALASKA TELEVISION, INC.

K-A-T-V CABLE
CHANNELS 4-5-6 & 2
KETCHIKAN, ALASKA 99901

January 6, 1976

Mr. Robert Merritt
University of Alaska
Fairbanks, Alaska 99701

Dear Mr. Merritt:

I want to thank you for inviting me to the meeting held December 15 in Anchorage on the subject of television in the villages. Since that meeting I have spent some time thinking about the discussions held and also about the economics of the program.

It appears that certain political groups within the state of Alaska are dedicated to the program of eventually furnishing three channels of entertainment television and one channel of educational television to every village of over 25 inhabitants. It is obvious that the technology to provide this service is available and the only limiting factor is the economics. As the number of channels and the number of hours per day as well as methods of transmission and distribution within the village are the large factors in this cost figure I have taken a single channel four hour per day program as a base for a "start soon" project.

During the discussions in Anchorage a great deal of time was spent on the necessity of taping and delaying certain programs to conform to "time zone" specifications. With all due respect it was clear that these speakers had never spent any time in the villages as there is only one time zone and that is "Sun" time. In the summer time there is so much daylight that it is not a factor and in the wintertime there is so little it again loses its importance. In the village whether the news comes on at 4:00 P.M. or at 6:00 P.M. is of very little or no importance. In the initial program I believe the concept of a huge tape recording and delay center can be eliminated.

At the meeting a good deal of time was spent talking about the huge cost of transmission of the programing the some 175 villages by satellite and that a program of taping and distribution of the material by cassette would be more economical. As an eleven year veteran of recording and bicycling of television programing by use of video tape I have come to the conclusion that my cost is very close to $25 per hour not including copyright fees. This would lead me to believe that if done by the State of Alaska the cost

would approach $30 per hour. On a four hour per day and serving 175 villages this would amount to $21,000 per day. Some savings on this figure would result if tapes were bicycled but I can see political problems that would be hard to resolve. I can also see all kinds of hardware problems that would be difficult to solve in remote areas.

At present RCA Alasom is serving the commercial television users of satellite transmission facilities in Anchorage, Fairbanks and Juneau and has a tariff filing for Nome. At present the charge is $1000 per hour for a combination of Anchorage and Fairbanks and an additional $200 per hour if Juneau takes the program also. It is a known fact that the RCA cost is $800 per hour. It is assumed that this charge is based on the fact that the stations can only afford certain number of hours of satellite use per year and if they were able to use more hours that the hourly cost could be reduced.

It would appear to me as an outside viewer that a use of the satellite on a four hour per day seven day per week basis would earn a substancial reduction in hourly rate. Or even if we talk about an hourly rate of $1200 to furnish service to the 175 stations in the bush that is a radical reduction in cost from the figures projected above for video cassette tape. Even double this $1200 figure would be a bargain and at three times the figure it is still well below projected tape costs with an immeasurable reduction in problems.

My conclusion therefore is that even though I am strongly opposed to any state financed program to provide the outlying areas with entertainment that if it is to be done it should be done in the most economical and efficient manner.

As for distribution within the villages themselves I believe that each in an individual case. As was pointed out a mini-transmitter can be installed for $10,000. This is a single channel device. I believe in many cases cable can be installed for much less than this figure and provide spectrum space for multiple channels.

Very truly yours,

Wally Christiansen

Wally Christiansen

Practice Commentaries

by Arnold D. Hechtman

This section is supplementary to a prior provision rendering one who steals tangible property consisting of "secret scientific material" (defined in § 155.00[6]) guilty of grand larceny in the third degree (§ 155.30[3]). The latter crime applies to one who, for example, steals a document reciting a secret scientific formula. It does not, however, embrace one who with the same larcenous intent photographs or copies such a document, since such conduct does not constitute a *taking* of properties so as to constitute larceny (§ 155.05[1]). The instant section plugs the indicated gap with the crime of "unlawful *use* of secret scientific material," which, like the larceny offense (§ 155.30), is graded a class E felony.

§ 165.10 Repealed. L.1969, c. 115, § 4, eff. on 120th day after Mar. 25, 1969

Historical Note

Section, which related to theft of services and definitions of terms, was added L.1965, c. 1030; amended L. 1967, c. 791, § 24.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen.

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has

been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

5. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

6. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

7. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

Theft of services is a class A misdemeanor.

L.1965, c. 1030; amended L.1967, c. 791, § 25; L.1969, c. 115, § 5.

Historical Note

1969 Amendment. Subd. 1. L.1969, c. 115, § 5, eff. on 120th day after Mar. 25, 1969, added subd. 1. It derived from former subd. 1, repealed L.1969, c. 115, § 5.

1967 Amendment. Subd. 2. L.1967, c. 791, § 25, eff. Sept. 1, 1967, added sentence beginning "A person who fails."

Subd. 5. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "provided by the supplier of the service" following "mechanical device."

Subd. 6. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "of the supplier thereof" following "equipment."

Derivation. Subd. 1. New.

Subd. 2. Penal Law 1909, § 925, added L.1923, c. 503, amended L.1939, c. 579; L.1955, c. 460.

Subd. 3. Penal Law 1909, §§ 1990, 1999-b. Section 1990, amended L. 1917, c. 350; L.1957, c. 823, was from Penal Code 1881, § 426, amended L. 1890, c. 458, § 1. Section 1999-b, added L.1957, c. 884, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1961, c. 548. Section 1293-c, added L.1916, c. 367, amended L.1941, c. 883; L.1955, c. 477.

Subd. 5. Penal Law 1909, §§ 1431, 1431-a, 1432, 1432-a. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L. 1893, c. 692, § 1; L.1900, c. 589, § 1; L.1906, c. 453, § 1. Section 1431-a added L.1926, c. 849. Section 1432 was from Penal Code 1881, § 651-a, added L.1902, c. 333, § 1. Section 1432-a added L.1933, c. 414.

Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

Subd. 7. New.

Practice Commentaries

by Arnold D. Hechtman

In relation to the former Penal Law, this section is entirely new in form and substantially new in substance.

Since "services" are not "property," "theft" of a service does not constitute larceny; and, if any such conduct is to be proscribed, it must be by special statute. The former Penal Law defines few offenses of that nature (see §§ 927, 967, 1431, 1432, 1432-a). It is not necessary, however, to go to the other extreme of equating services with property and of predicating, wherever possible (mainly in the area of deception), "theft of service" offenses equivalent to those involving thefts of property, or larcenies. Legislation of that character would doubtless lead to hosts of "criminal" charges of a basically civil nature. The instant section steers a middle course by defining seven specific offenses, most involving theft or attempted theft of certain kinds of services.

Subdivision 1, dealing with credit card offenses, was amended in 1969, as one phase of an extensive bill enacted for

torical Note

-60. Penal Code 1881, § 528, amended L. 1890, c. 438, § 1; § 528-b, added L.1907, c. 384, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1907, c. 548. Section 1293-c. added L.1916, c. 367, amended L.1941, c. 883; L.1955, c. 477.

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Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

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Commentaries

Ed D. Hollister

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with credit card offenses, was se of an extensive bill enacted for

the purpose of strengthening the Penal Law in its application to conduct involving theft and misuse of credit cards (L.1969, c. 115; see practice commentary upon § 155.00).

Prior to 1969, the general subject of fraudulently obtaining property or services by means of stolen, false or improperly used credit cards was covered by (1) the crime of larceny (by false pretenses) in cases where property was obtained; (2) the "theft of services" offense at hand (§ 165.15 [1]) in cases where a service was obtained; and (3) a misdemeanor entitled "unauthorized use of credit cards," which appeared not in the Penal Law but in the General Business Law (§ 513). The General Business Law statute, defining in rather complex fashion a very broad offense or offenses embracing acquisition of both property and services, covered approximately the same ground as the appropriate Penal Law statutes.

The 1969 credit card bill (L.1969, c. 115) did not work any truly significant change of substance in this area but established a new structural format. The rather redundant General Business Law section (§ 513) was repealed. The Penal Law "theft of services" provision (§ 165.15[1]) was narrowed to apply to the acquisition of services by means of "stolen" credit cards only (rather than acquisition by means of almost any kind of defective card, as was formerly the case). And, finally, a new Penal Law section was added (§ 165.17), defining the crime of "unlawful use of credit card," which does not deal with the use of *stolen* or *forged* cards but renders guilty of a misdemeanor one who "in the course of obtaining or attempting to obtain" either "property or a service displays a credit card which he knows to be *revoked* or *cancelled*".

These offenses together with various others in the larceny and forgery areas have the following overall scope with respect to a person who purchases or attempts to purchase property or a service by means of a credit card which he knows to be in some way defective for the purpose:

(1) Regardless of whether property or a service is the subject of the purchase, and regardless of whether the credit card is stolen or counterfeit, or whether it has merely been canceled or revoked, the culprit is guilty, at the very least, of a class A misdemeanor (§§ 155.25, 165.15[1], 165.17).

(2) If property is the subject of the purchase or attempted purchase, the culprit has committed larceny and, depending upon the value of the property, may or may not also be guilty of a felony (§ 155.30).

(3) If the credit card is a stolen one, the culprit is, undoubtedly, also guilty of criminal possession of stolen property in the second degree, a class E felony (§ 165.45 [2]). In addition, if in making or attempting to make the purchase he signs a voucher, receipt or other paper in the name of the card owner—as he usually would have to do—he is also guilty of forgery in the second degree, a class D felony (§ 170.10[1]).

(4) If the credit card is a forged or counterfeit one, the culprit is, undoubtedly, also guilty of criminal possession of a forged instrument in the second degree, a class D felony (§ 170.25).

Subdivision 2 restates the proscriptions of former Penal Law § 925 but expands the offense to include thefts and payment-avoidance of restaurant services as well as of those provided by hotels, inns and the like.

Subdivision 3 includes certain former Penal Law offenses (§§ 1990[1, 2], 1990-b) but broadens the overall crime to encompass improper acquisition or fee-avoidance of all forms of "public transportation service" rather than of the limited kinds specified in the former statutes.

Subdivision 4 substantially restates former Penal Law § 967 (see, also, § 1293-c).

Subdivision 5 substantially restates certain phases of three former sections dealing in part with fraudulent tampering with gas, electric, steam and water meters (§§ 1431, 1431-a, 1432). The offense is broadened, however, to include meter tampering and similar chicanery relating to any sort of public or private service measured by a meter, whether of the indicated public utility kinds or otherwise.

Subdivision 6 embodies other phases of former Penal Law §§ 1431 and 1432, addressed to the acquisition of gas, electric, steam and water service without the supplier's consent. This offense does not necessarily require intent to avoid payment for the service improperly obtained. It would apply, for example, to one who, having had his gas turned off, succeeds in regaining the service by unauthorized tampering, regardless of whether he intends to pay for the gas thus obtained.

Subdivision 7 is new. This offense is included for the purpose of plugging an apparent gap in the present law pointed up by the decision in People v. Ashworth, 1927, 220 App.Div. 498, 222 N.Y.S. 24. The defendants therein, a mill superintendant and his brother, were convicted of grand

larceny as a result of having mis... ally profitable use of the mill's m... to spin a substantial quantity of ... The judgment was reversed on t... use of the mill's facilities and lab... of "property" and, hence, could no... Subdivision 7 herein renders such ... ices."

Theft of Services is a one-deg... demeanor. Obviously, all the wa... can be committed are not of eq... would be reasonable to expect the ... number of degrees, prescribing p... with the gravity of the prohibit... above, this section represented a ... in New York law when it was in... Penal Law in 1967. Because of ... arately defined crimes, no attempt ... subclassify it; the expectation be... with the impact of the section d... would impose reasonable subclassifi... legislative session since about 19... introduced, for example, to extend ... services and make it a violation ... demeanor. Such attempts have fa... not because they lacked merit but ... illogical and unfair distinction betw... way" or "taxi" services. Hopefully ... cation will soon be forthcoming.

Cross Referen...

Buildings may be entered for examination of ... works, see Transportation Corporations.
Hotels and boarding houses, generally, see To...
Larceny, see section 155.00 et seq.

Notes of Decisi...

1. Historical

The first enactment by the legislature upon the general subject is to be found ... [illegible] ... of ... 426 of ... codifi...

a stolen one, the culprit is, criminal possession of stolen ree, a class E felony (§ 165.45 making or attempting to make acher, receipt or other paper in er—as he usually would have forgery in the second degree, 1]).

a forged or counterfeit one, , also guilty of criminal posument in the second degree.

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offense is included for the rent gap in the present law People v. Ashworth, 1927, 220 The defendants therein, a other, were convicted of grand

larceny as a result of having made unauthorized and personally profitable use of the mill's machinery, facilities and labor to spin a substantial quantity of wool for a certain company. The judgment was reversed on the ground that the corrupt use of the mill's facilities and labor did not constitute a theft of "property" and, hence, could not be the subject of larceny. Subdivision 7 herein renders such conduct a "theft of services."

Theft of Services is a one-degree crime: a class A misdemeanor. Obviously, all the ways in which this offense can be committed are not of equal seriousness so that it would be reasonable to expect the offense to be defined in a number of degrees, prescribing punishment commensurate with the gravity of the prohibited conduct. As indicated above, this section represented a substantially new concept in New York law when it was incorporated into the revised Penal Law in 1967. Because of its basic novelty as a separately defined crime, no attempt was then made to further subclassify it; the expectation being that, as experience with the impact of the section developed, the Legislature would impose reasonable subclassifications. In almost every legislative session since about 1970, bills have, in fact, been introduced, for example, to extract only the theft of railroad services and make it a violation rather than a class A misdemeanor. Such attempts have thus far been unsuccessful not because they lacked merit but because they created an illogical and unfair distinction between "railroad" and "subway" or "taxi" services. Hopefully, appropriate subclassification will soon be forthcoming.

Cross References

Buildings may be entered for examination of meters, pipes, fittings, wires and works, see Transportation Corporations Law § 11.
Hotels and boarding houses, generally, see General Business Law § 200 et seq.
Larceny, see section 155.00 et seq.

Notes of Decisions

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

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1. Historical

The first enactment by the legislature upon the general subject is to be found in L.1878, c. 261. That statute made it a misdemeanor for any person to get on or off a freight car or engine while in motion, or to ride on any wood or freight car, unless employed by or with permission from the proper officers of such railroad or the person in charge of such car or engine. Subdivision 1 of section 426 of the Penal Code was plainly a codification of that enactment. By

Note 1

L.1879, c. 474, it was made a misdemeanor for a minor or other person, hinder, or delay the passage or running of any car lawfully running upon any horse or street railroad. Subdivision 3 of section 426 of the Penal Code was, quite as plainly, a codification of that statute. By L. 1880, c. 370, it was made a misdemeanor for a minor or other person, not a passenger, to climb, stand upon, or in any way to attach himself to, a locomotive or car, unless it is done in compliance with law, or by permission, under the lawful rules and regulations of the railroad. The same chapter also made it a misdemeanor to invite or solicit any such minor or other person to come, or to be, or to consent to his remaining upon, any engine, or any freight or baggage car, unless rightfully there by law, or with permission under the rules and regulations of the corporation. Thus, these three statutes had for their object the prevention of the unauthorized riding, or being upon cars or engines, and of the obstruction, or delaying, of cars upon surface railroads. In the following year, when the Penal Code was established (L.1881, c. 676), section 426 was enacted as it stands at present with the exception that, by an amendment in 1890 (L.1890, c. 458), subdivision 3 was made to apply to steam railways, as well as to horse and street railways, and the caption "Riding on freight trains" was added. It is reasonable to infer that the Penal Code, in the respect which we are now considering, was intended as a codification of, and to retain within its provisions, existing laws. East v. Brooklyn Heights R. Co., 1909, 195 N.Y. 466, 88 N.E. 751.

2. Hotel service

Evidence that guest left hotel with her baggage, leaving an unpaid balance for room rent and telephone charges, did not sustain conviction of obtaining credit or accommodation at hotel with intent to defraud, in absence of proof that when she registered she did so with intent to defraud, and where, aside from indebtedness involved, she had paid all other charges for over 6 months. People v. Astor, 1945, 269 App.Div. 250, 55 N.Y.S.2d 283.

Presumption under this section [Penal Law 1909, § 925] of intent to defraud by obtaining credit or accommodation at hotel arising from guest's leaving hotel with baggage and charges unpaid was overcome, where the leaving was not surreptitious but was requested by hotel proprietor. Id.

An apartment hotel comprising kitchenette apartments and accommodating transients only very infrequently did not constitute a "hotel" with respect to plaintiff who occupied a small furnished apartment with his family under a six months' lease within this section [Penal Law 1909, § 925]. Cooper v. Schirmeister, 1941, 176 Misc. 474, 26 N.Y.S.2d 668.

The omission of the term "apartment hotel" in this section [Penal Law 1909, § 925] was deliberate in absence of any expression or action by the Legislature which might be deemed a sufficient basis for ascribing a different intent, and the term "hotel" in this section does not include an "apartment hotel." Id.

"A hotelkeeper can require a guest to pay his board in advance. The law gives him a lien upon the guest's baggage and" this section [Penal Law 1909, § 925] "gives him a drastic remedy in all cases of actual fraud either in obtaining credit or in any effort to deprive the landlord of his lien upon a guest's baggage. But the mere fact of a guest not being able to pay a hotel bill is not a crime." People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212. See, also, People v. Nicholson, 1898, 2 Misc. 266, 53 N.Y.S. 447.

Where a landlord keeps a board bill and bar bill together and makes no specific application of payments, he cannot claim that the balance due is for board and proceed under this section [Penal Law 1909, § 925] People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212.

Where a board bill is contracted by a regular boarder at a hotel without misrepresentation and he leaves the hotel openly and takes his baggage openly, he is not guilty of a violation of this section [Penal Law 1909, § 925]. Id.

Where there is no evidence that defendant intended to defraud hotel keeper by making false pretenses, or surreptitiously removed baggage, in left merely to obtain money to pay bill, he cannot be convicted under this section [Penal Law 1909, § 925] People v. Nicholson, 1898, 25 Misc. 266, 53 N.Y.S. 447.

3. Meters [illegible] interference therewith

This section [Penal Law 1909, § 1431-a relating to meters or attachments] was applicable to civil actions or proceedings. Effress, Inc. v. New York Edison Co., Inc., 1932, 237 App.Div. 315, 261 N.Y.S. 126. See, also, Esposito v. Consolidated Edison Co. of N. Y., 1947, 68 N.Y.S.2d 863; Rocha v. Consolidated Edison Co. of New York, 1940, 22 N.Y.S.2d 157; Parsons Const. Corporation v. City of New York, 1937, 167 Misc. 902, 2 N.Y.S. 276.

4. Refusal to pay fare

Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, and that it was a private as opposed to common carrier, service provided by corporation did not fall within scope of subd. 3 of this section [providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful

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Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, so that it was a private as opposed to a common carrier, service provided by corporation did not fall within scope of subd. 3 of this section providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful charge therefor, he obtains or attempts to obtain such service by unjustifiable failure or refusal to pay. People v. Lee, 1972, 71 Misc.2d 239, 336 N.Y.S.2d 18.

Defendant railroad passenger's refusal to show his ticket to trainman on request constituted violation of this section [Penal Law 1909, § 1930] proscribing riding on railway car without authority or permission of proper officers or with intention of not paying therefor. People v. Gins, 1966, 49 Misc.2d 883, 268 N.Y.S.2d 644.

Refusal by passenger on railroad train to pay amount of fare demanded of him is prima facie evidence of his intention not to pay for the ride in violation of this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. People v. Passmith, 1958, 14 Misc.2d 300, 174 N.Y.S.2d 860.

This section [Penal Law 1909, § 1930] providing that person who rides on passenger car with intention of not paying therefor is guilty of an offense does not apply only to persons who surreptitiously attempt to obtain transportation without paying therefor, but was applicable to passenger who refused to pay to conductor three cents which conductor believed was applicable to fare as federal transportation tax. Id.

Once a passenger on railroad train decides to refuse to pay fare demanded, he acts at his own peril, but if passenger tenders an amount equal to correct fare, he does not violate this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor [illegible]uilty of an offense. Id.

Under section 4293 of 26 U.S.C.A. (I.R.C.1954) of Internal Revenue Code providing that 10 per cent excise tax on amount paid for transportation of persons by rail shall not apply to amounts which do not exceed 60

to amounts paid for commutation tickets for one month or less, tax was due on 29-cent fare for transportation of passenger, who had monthly commutation ticket, to destination not included within ticket, and passenger, who offered to pay the 29 cents, but refused to pay 3 cents which conductor stated was due as transportation tax, did not violate this section [Penal Law 1909, § 1990] providing that a person who rides on passenger car with intention of not paying therefor is guilty of an offense. Id.

5. Stealing rides

The prohibition against stealing rides does not extend to cases where permission to ride on an engine is given by the person in charge thereof, as the conductor. Grieshaw v. Lake Shore, etc., R. Co., 1912, 205 N.Y. 371, 98 N.E. 762.

A violation of this section [Penal Law 1909, § 1990] in riding on a freight train was adverted to in reversing a judgment for the plaintiff in a negligence action. Barrett v. New York Cent., etc., R. Co., 1899, 157 N.Y. 663, 52 N.E. 659.

This section [Penal Law 1909, § 1990] rendered one stealing a ride on a freight train guilty of a misdemeanor. Sharp v. Erie R. Co., 1904, 90 App.Div. 502, 85 N.Y.S. 553, reversed on other grounds 184 N.Y. 100, 76 N.E. 923. See, also, People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

Where an officer sees a person stealing a ride on a freight train and directs another officer to arrest him, who does so and at the station house charges him with vagrancy, he may be convicted of a violation of this section [Penal Law 1909, § 1990], where, on being taken before a magistrate, the first officer charges him with such violation. People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

§ 165.17 Unlawful use of credit card

A person is guilty of unlawful use of credit card, when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card which he knows to be revoked or cancelled.

Unlawful use of credit card is a class A misdemeanor.

Added L.1969, c. 115, § 6.

Practice Commentaries

by Arnold D. Hechtman

This section was added by one of a series of amendments contained in a 1969 bill designed to strengthen New York's criminal laws in their application to frauds and misconduct committed by the use of stolen, forged or otherwise defective credit cards (L.1969, c. 115, section 6). An explanation of this section is contained in the practice commentary upon § 165.15.

§ 165.20 Fraudulently obta

A perso is guilty of fraudul with intent to defraud or injure tial benefit for himself or a thi ture of a person to a written in representation of fact which he kn

Fraudulently obtaining a signa

L.1965, c. 1030.

Historica

Derivation. Penal Law 1909, §§ 932, 934, 935, 937-a. Section 932 was from Penal Code 1881, § 528. Section 934, amended L.1939, c. 363, was

Practice C

by Arnold D

This section replaces a variety sions directed at those who fr ture of another to a written 937, 937-a, 938).

Cross Re

Larceny, see section 155.05 et seq.
Signature defined, see General Constr

Notes of D

Audit and payment of claims 3
Church collections and contributions 4
Credit statement 5
Elements of crime 1
Legal papers and documents 6
Spurious documents 7
Written instrument, generally 2

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1. Elements of crime

To be actionable the pretenses used in obtaining property by false token or writing must be calculated to deceive or be capable of defrauding. People v. Court of Oyer, etc., 1881, 83 N.Y. 436.

The reliance on the pretense by the prosecutor is an essential element of

al by fraudulent statement or device. e- People v. Price, 1975, 47 A.D.2d 409, ee 366 N.Y.S.2d 726.

e first degree

2d 2d

nd proof

ally, fendant which were dismissed at close ing of the People's case was legally suf- ub- ficient to support such counts under es- a theory of larceny by false pretenses nif- or larceny by false promises. People ree v. Consolazio, 1975, 47 A.D.2d 863, v. 366 N.Y.S.2d 196. .Y.

55. —— Second degree larceny

ally Evidence showing, inter alia, that n's welfare assistance recipient fraudu- ess- lently received public welfare funds de- of over $2,000 supported conviction ion- of second-degree grand larceny. Peo- ple v. Price, 1975, 47 A.D.2d 409, 366 N.Y.S.2d 726.

57. —— Petit larceny

Evidence that defendant took art works from dealer by giving false promises to sell the works and return the proceeds, minus a commission, to the dealer, that defendant failed to respond to various correspondence from art dealer requesting payment or return of the works and defend- ant's admissions that sales had been completed, and that he had engaged in similar transactions demonstrated beyond a reasonable doubt and to a moral certainty that defendant had a fraudulent intent and was guilty of petit larceny. People v. Newman, 1975, 80 Misc.2d 975, 365 N.Y.S.2d 409.

the

160—ROBBERY

degree

and demanded money from cash regis- 73, ter, that defendant took money from her wallet, that an accomplice of de- fendant took money from cash regis- ter, and that defendant participated in harassment and threats to her fol- lowing the robbery was sufficient to sustain defendant's convictions for first-degree robbery, second-degree robbery, two counts of third-degree grand larceny, and harassment. Peo- ple v. Plummer, 1975, 36 N.Y.2d 161, 365 N.Y.S.2d 812, 325 N.E.2d 161.

ARTICLE 165—OTHER OFFENSES RELATING TO THEFT

§ 165.05 Unauthorized use of a vehicle

Practice Commentary Cited

People v. Alamo, 1974, 34 N.Y.2d 453, 358 N.Y.S.2d 375, 315 N.E.2d 466.

Supplementary Index to Notes

Failure of lessee to return vehicle 10

9. Evidence

Evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of possession of weapons and dangerous instruments and appliances or unauthorized use of a vehicle. People v. Roberts, 1975, 47 A.D.2d 909, 366 N.Y.S.2d 227.

10. Failure of lessee to return vehicle

A failure by a lessee of a commercially rented vehicle to return it to lessor at time stipulated is not a violation of subd. 3 of this section and, at least in absence of a demand by owner and refusal by lessee to deliver, original renting and retention does not become a crime by lapse of time, but is merely a breach of contract. Banner Cas. Co. v. Lazar, 1975, 81 Misc.2d 360, 366 N.Y.S.2d 314.

§ 165.15 Theft of services

A person is guilty of theft of services when:

[*See main volume for text of 1 to 3*]

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

[*See main volume for text of 5 to 7*]

Theft of services is a class A misdemeanor.

As amended L.1975, c. 530, § 2.

1975 Amendment. Subd. 4. L.1975, c. 530, § 2, eff. on the 90th day after July 29, 1975, included cable television service theft for himself or another person.

Supplementary Practice Commentaries

by Arnold D. Hechtman

1975

Subdivision 4 was amended to add "cable television service" (L.1975, c. 530); a phrase which is now defined in subdivision 9 of § 155.00. The amendment was sponsored by the Cable Television Commission which, apparently, considered that the development of cable television was in this State has been inhibited by widespread theft of cable television services. One estimate is that as many as 100,000 people in New York State may be getting cable services without paying for it. Obviously, a serious theft problem exists but that does not mean that the instant amendment is necessary. It assumes—or at least implies—that the theft of cable television services was not heretofore proscribed so that the specific inclusion thereof was necessary.

Subdivision 4, since its initial enactment, has spoken in terms of the theft of "telecommunications services." This phrase, not found in the former Penal Law, was introduced in the 1967 revision as a generic term to encompass just such technical advances as cable television. The former law specifically addressed "telephone" or "telegraph" services (former Penal Law §§ 1937, 1293-c) and, if such terms had been

continued in the revised law, the instant amendment would be appropriate. But the word "telecommunication" was adopted precisely for the purpose of obviating periodic amendment of this subdivision whenever a new device, such as cable television, is introduced into our culture. As defined, "telecommunications" means: "communication at a distance (as by cable, radio, telegraph, telephone or television)" (Webster's Third New International Dictionary, unabridged). Thus, without further elaboration, the statute clearly included the subject of the instant amendment.

The objection to this amendment is not that it is incorrect but that it is inappropriate. One of the major deficiencies of the former Penal Law was that, by accretion over the years, it became a cumbersome and confusing repository of prohibited conduct directed at very narrow circumstances. The revised Penal Law sought to avoid this undesirable condition by the use of generic or other broadly descriptive terms to encompass the many forms—existing and prospective—that criminal conduct can take. Unfortunately, the instant amendment serves to lead this well labl plan agley.

§ 165.30 Fraudulent accosting

Practice Commentary Cited

People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

Elements of crime 3

1. Constitutionality

This section making it an offense to accost person in public place with intent to defraud him of money or property by means of trick, swindle, or confidence game was not void for vagueness. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

3. Elements of crime

Essence of offense of fraudulent accosting is the swindling and defrauding of victim after gaining his confidence. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

§ 165.50 Criminal possession of stolen property in the first degree

Supplementary Index to Notes

Free goods or gifts 6
Market value 5
Purpose ½

½. Purpose

Purpose of this section and section 155.20 fixing higher degrees of crime of larceny or criminal possession is not related to regulating economic market but to assessing scale of criminal operations by persons charged with offenses under this section and section 155.20. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

3. Evidence

Evidence, including evidence that defendant was observed by police officers running from a house in whose adjacent garage a stolen automobile was parked, sustained defendant's conviction for criminally possessing property in the first degree. People v. Hoffman, 1975, 47 A.D.2d 618, 361 N.Y.S.2d 99.

5. Market value

Defendant's request of $19,500 for stolen experimental Riomne pills was a significant admission of value and a confirmation of a market value for purposes of prosecution for criminal possession of stolen property in first degree, even if that market was an illegitimate market. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

Where at time experimental librium pills were possessed as stolen property the experimental pills had been recalled by manufacturers and substitute pills of substantially same chemical composition were being manufactured and marketed, market value of substitute pills was relevant to establish current value of the recalled pills in prosecution for criminal possession of stolen property in first degree, and it was immaterial whether the value of recalled pills was that in legitimate or illegitimate market. Id.

6. Free goods or gifts

The uninvited taker of free goods or gifts is just as much a thief as if the goods were distributed for a price. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

§ 165.60 Criminal possession of stolen property; no defense

Practice Commentary Cited

People v. Parks, 1971, 37 [illegible] 2d 7, 331 N.Y.S.2d 586.