

PROPOSED AMENDMENTS BY  
GRADING AND SENTENCING SUBCOMMITTEE  
TO  
ARTICLE 14. THEFT AND RELATED OFFENSES  
Tentative Draft No. 1

On page 3, section 2 is amended to read:

Section 2. Consolidation of theft offenses; pleading and proof.

(1) Except for the crime of theft by extortion, conduct denominated theft under section 3 of this Article constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in section 3 of this Article is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion.

COMMENTARY - CONSOLIDATION OF THEFT OFFENSES;

PLEADING AND PROOF

The purpose of this section is to spell out the procedural consequences of the consolidation of theft offenses. A charge of theft is sufficient without designating the particular theory of the crime, except

for theft by extortion which is classified as a Class B felony.

The section serves to underscore one of the chief aims of the Theft Article, elimination of the confusing distinctions between larceny, larceny by trick, embezzlement, obtaining under false pretenses, etc.

The section is based on Model Penal Code s. 223.1 and New York Revised Penal Law s. 155.45.

Section 3 is amended to read:

Section 3. Theft; definition. A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in section 6 of this Article; or

(3) Commits theft by extortion as provided in section 7 of this Article; or

(4) Commits theft by deception as provided in section 8 of this Article; or

(5) Commits theft by receiving as provided in section 9 of this Article.

Section 4 is amended to read:

Section 4. Theft in the second degree. (1) A person commits the crime of theft in the second degree if, by other than extortion, he:

- (a) Commits theft as defined in section 3 of this Article; and
  - (b) The property is less than \$250 in value.
- (2) Theft in the second degree is a Class A misdemeanor.

Section 5 is amended to read:

Section 5. Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by other than extortion, he:

- (a) Commits theft as defined in section 3 of this Article; and
  - (b) The property is \$250 or more in value.
- (2) Theft in the first degree is a Class C felony.

On page 5, section 3 is renumbered as section 6.

On page 8, section 4 is amended to read:

Section 7. Theft by extortion. (1) A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will in the future:

- (a) Cause physical injury to some person; or
- (b) Cause damage to property; or
- (c) Engage in other conduct constituting a crime; or
- (d) Accuse some person of a crime or cause criminal charges to be instituted against him; or
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (f) Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (h) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

- (i) Inflict any other harm which would not benefit the actor.
- (2) Theft by extortion is a Class B felony.

On page 11, section 5 is renumbered as section 8.

On page 14, section 6 is renumbered as section 9.

On page 15, section 7 is renumbered as section 10.

On page 17, section 8 is amended to read:

Section 11. Value of stolen property. For the purposes of this Code, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or

obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than \$250.

On page 18, section 9 is renumbered as section 12.

After section 12, add:

Section 13. Theft of services. (1) A person commits the crime of theft of services if:

(a) With intent to avoid payment therefor, he obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or

(b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.

(2) As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainment, the

supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

(3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(4) Theft of services is a Class A misdemeanor.

Section 14. Unauthorized use of a vehicle. (1) A person commits the crime of unauthorized use of a vehicle when:

(a) He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner; or

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.