

CRIMINAL LAW REVISION COMMISSION  
309 Capitol Building  
Salem, Oregon

ARTICLE 14.

THEFT - RELATED OFFENSES

Preliminary Draft No. 1

Section \_\_\_\_\_. Theft of services. (1) A person commits theft if:

(a) He obtains services which are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or

(b) 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.

(2) As used in \_\_\_\_\_, "services" includes, but is not limited to, labor, professional services, transportation, telephone service, the supplying of accommodations in hotels, restaurants or elsewhere, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

(3) Where compensation for services is ordinarily paid upon the rendering of them, as in the case of hotels, restaurants and the like, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.

[Note: Second section of this draft "Criminal tampering" transferred to Article 16, Arson and Criminal Mischief.]

COMMENTARY - THEFT OF SERVICES

A. Summary

"Services" are not "property" as it is defined in the theft draft; therefore, "theft" of services must be covered by specific statute. The main purpose of this section is to protect commercial enterprises from wilful deprecations now only partially covered by existing Oregon legislation.

A person commits the crime of theft of services if he obtains services, as defined in subsection (2), by any of the means defined in subsection (1) (a) or by diverting services under his control, to which he is not entitled, to his own gain, as proscribed by subsection (1) (b).

Subsection (3), to aid in enforceability, provides that absconding without payment or an offer to pay is prima facie evidence of deception if immediate payment is usually expected for the services obtained. Without such a provision the person who "skips" without paying for his accommodations would be often miles away from the scene before the law could act. This is similar to, but not as broad as, the provisions contained in ORS 165.230; however, it is submitted that the instances in which an act needs to be considered as prima facie fraudulent are those wherein the actor has absconded and it is necessary for law enforcement officials to act quickly.

B. Derivation

Subsection (1) (a) is based on Model Penal Code section 223.7. The enumeration of the various methods by which services could be obtained has been modified to add the term "force" and to delete "false token" which seems redundant with the term "deception."

Subsection (1) (b) is taken from New York Penal Law section 165.15 and seems preferable to Model Penal Code provision because it specifically covers the use of labor, equipment and facilities rather than merely "services," and should provide a better safeguard against the diversion of industrial tools, machinery and labor force to the benefit of unauthorized persons.

Subsection (2), which defines "services," is a combination of the definitions employed in Model Penal Code section 223.7 and New York Penal Law section 165.10.

C. Relationship to Existing Law

Oregon statutes presently provide protection against fraud or illegal interference for some utilities and a limited number of enterprises:

- ORS
- 164.540 - Unlawfully riding on train
  - 164.610 - Interference with water rights and appliances
  - 164.620 - Interference with gas and electric appliances
  - 164.630 - Interference with telegraph equipment and service
  - 164.635 - Interference with coin telephone
  - 164.650 - Manipulating or starting motor vehicle without consent of owner
  - 164.660 - Interference with motor vehicles
  - 165.230 - Defrauding an innkeeper
  - 165.270 - Obtaining taxicab transportation by fraud
  - 165.280 - Crossing toll bridge without paying
  - 165.445 - Defrauding a stablekeeper
  - 165.530 - Possessing device to obtain, or obtaining service from coin telephone or machine without depositing coin
  - 165.532 - Obtaining communications services by fraud
  - 165.615 - Making false financial statement
  - 165.620 - Benefitting from false financial statement
  - 166.640 - Tampering with railroad property

The draft, combined with the section covering "criminal tampering," will continue to afford protection for the above enterprises, plus any other persons or businesses furnishing a service, including labor or professional services.

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TEXT OF REVISIONS OF OTHER STATES

Theft of Services

Text of Model Penal Code

Section 223.7. Theft of Services.

(1) A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" includes labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

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Text of New York Penal Law

Section 165.15. Theft of services

A person is guilty of theft of services when:

1. With intent to defraud, 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, forged, revoked, cancelled, unauthorized or in any way invalid for the purpose; or

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

Text of New York Penal Law (Cont'd)

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.

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Text of Michigan Revised Criminal Code - Final Draft

Section 3220. Theft of Services

(1) A person commits the crime of theft of services if:

(a) He intentionally obtains services known by him to be available only for compensation by deception, threat, false token or other means to avoid payment for the services; or

Text of Michigan Revised Criminal Code - Final Draft (Cont'd)

(b) Having control over the disposition of services of others to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

(2) "Services" includes but is not necessarily limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

(3) Where compensation for services is ordinarily paid immediately upon the rendering of them, as in the case of hotels, restaurants and the like, absconding without payment or offer to pay is prima facie evidence under subparagraph (1) that the services were obtained by deception.

(4) If services are obtained under subparagraph (1) (a) from a hotel, motel, inn, restaurant or cafe, no prosecution can be maintained unless a complaint is made within 60 days from the time of the offense.

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Minutes 5/17/68

[Note: The following section was subsequently transferred to Article 16, Arson and Criminal Mischief.]

Section \_\_\_\_\_. Criminal tampering. (1) A person commits criminal tampering if, having no right to do so or any reasonable ground to believe that he has such a right, he:

(a) Tamper with property of another with intent to cause substantial inconvenience to the owner or to another person; or

(b) Tamper or makes connection with property of a utility.

(2) As used in this section:

(a) "Tamper" means improper interference with something, meddling with it or making unwarranted alterations in its existing condition.

(b) "Utility" means a publicly or privately owned or operated enterprise which provides gas, electricity, steam, water, or communications services, or any common carrier.

#### COMMENTARY - CRIMINAL TAMPERING

##### A. Summary

This section is designed to complement the "theft of services" section, covering the type of conduct that is not theftuous, but amounts to unlawful interference with the property of another. Subsection (1) states the elements of the crime, and subsection (2) sets out necessary definitions.

##### B. Derivation

Michigan Revised Criminal Code (Final Draft, 1967), sections 2710, 2712, is the source of the section. It is also similar to New York Revised Penal Law section 145.15. Both Michigan and New York, however, provide for two degrees of the offense, with the more serious charge of criminal tampering in the first degree being reserved for one who, with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, damages or tampers with the property of same, and causes interruption of such services.

C. Relationship to Existing Law

As noted in the commentary to the preceding section, there are Oregon statutes that prohibit "interference" with certain types of property, such as public utilities and motor vehicles. "Malicious destruction of personal property" is an indictable misdemeanor under ORS 164.900, but unless the conduct results in physical damage or destruction, it probably would not be covered by that statute. Other statutes pertaining to wilful injury or destruction of property are ORS 164.810, 164.830, 164.840, 164.850, 164.860, 164.871, 164.880 and 164.890, but they likewise require some physical damage before they apply.

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Text of New York Penal Law

Section 145.15. Criminal tampering in the second degree

A person is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Tamper with property of another person with intent to cause substantial inconvenience to such person or to a third person; or
2. Tamper or makes connection with property of a gas, electric, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality; except that in any prosecution under this subdivision, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Section 145.20. Criminal tampering in the first degree

A person is guilty of criminal tampering in the first degree when, with intent to cause a substantial interruption or impairment of a service rendered to the public, and having no right to do so nor any reasonable ground to believe that he has such right, he damages or tampers with property of a gas, electric, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality, and thereby causes such substantial interruption or impairment of service.

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Text of Michigan Revised Criminal Code - Final Draft (1967)

Criminal Tampering: Definition of Terms

Sec. 2710. The following definitions apply to sections 2711 and 2712.

(a) To "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations in its existing condition.

(b) "Utility" means an enterprise which provides gas, electric, steam, water, or communications services, and any common carrier; it may be either publicly or privately owned or operated.

Text of Michigan Revised Criminal Code - Final Draft (1967) (Cont'd)

Criminal Tampering in the First Degree

Sec. 2711. (1) A person commits the crime of criminal tampering in the first degree if, having no right to do so or any reasonable ground to believe that he has such a right, and with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he damages or tampers with property or facilities of such a utility or institution, and thereby causes substantial interruption or impairment of service.

Criminal Tampering in the Second Degree

Sec. 2712. (1) A person commits the crime of criminal tampering in the second degree, if having no right to do so or any reasonable ground to believe that he has such a right, he:

- (a) Tampers with property of another person with intent to cause substantial inconvenience to that person or to another; or
- (b) Tampers or makes connection with property of a utility.

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*Minutes 5/17/68*

Section \_\_\_\_\_. Misapplication of property. (1) A person commits misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner in such manner as to create a risk either that the owner will not be able to recover the property or that the owner will suffer pecuniary loss.

(2) In a prosecution under this section, it is a defense that, at the time the prosecution was commenced:

(a) The defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition; and

(b) The owner had suffered no material pecuniary loss as a result of the unlawful disposition.

COMMENTARY - MISAPPLICATION OF PROPERTY

The specific acts of loaning, leasing and encumbering do not necessarily include an intent to "deprive" or "appropriate;" consequently, they would not ordinarily reach the stature of theft.

Subsection (2) provides a defense for the person who remedies any possible damage by regaining possession of the property and restoring the situation to its prior status without loss to the owner.

It is anticipated that misapplication of property will belong to the misdemeanor class of crimes.

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TEXT OF REVISIONS OF OTHER STATES

Misapplication of Property

Text of New York Penal Law

Section 165.00. Misapplication of property

1. A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

2. In any prosecution under this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

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