

See: Commission Minutes  
7/19/68, p. 3, Vol. VIII, Tape #9

CRIMINAL LAW REVISION COMMISSION  
309 Capitol Building  
Salem, Oregon

ARTICLE 14 . THEFT - RELATED OFFENSES

Theft of Services

Preliminary Draft No. 3; June 1968

Reporter: Donald L. Paillette

Subcommittee No. 1

CRIMINAL LAW REVISION COMMISSION  
309 Capitol Building  
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THEFT OF SERVICES

Preliminary Draft No. 3; June 1968

Section \_\_\_\_\_. Theft of services. (1) As used in \_\_\_\_\_, "services" includes, but is not limited to, labor, professional service, 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.

(2) A person commits theft if:

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

(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.

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COMMENTARY - THEFT OF SERVICES

A. Summary

"Services" are not "property" as it is defined in the theft draft (T.D. #1); therefore, "theft" of services must be covered by specific statute. The purpose of this section is to protect commercial enterprises that supply services to the public from the thievish type of conduct now only partially covered by existing statutes.

The draft provides that a person commits theft if he obtains "services," as defined in subsection (1), by any of the means defined in subsection (2).

Subsection (3), to aid in enforceability, provides that absconding without payment or offer to pay for hotel, restaurant, or other services for which compensation is customarily paid immediately is prima facie evidence that the services were obtained by deception.

B. Derivation

The definition of "services" is similar to the definitions employed in Model Penal Code section 223.7 and Michigan Revised Criminal Code section 3220.

Subsection (2) (a) is based on MPC section 223.7; however, the draft spells out the mens rea element of "intent to avoid payment." The enumeration of the various methods by which services can be obtained illegally has been modified to add the term "force" and to delete "false token" which seems redundant as obtaining services by means of a false token would amount to "deception."

Subsection (2) (b) is a modified version of New York Revised Penal Law section 165.15 and seems preferable to the Model Penal Code provision because it specifically covers the use of labor, equipment and facilities, instead of merely "services" and fixes more precisely the sort of acts that are prohibited.

Subsection (3) is a simplified form of ORS 165.230. MPC section 223.7 has a similar provision, as does New York Penal Law section 165.15.

C. Relationship to Existing Law

As observed by the ALI, "There is widespread legislation imposing minor penalties for particular instances of cheating in obtaining service, e.g., obtaining service from hotels and

restaurants without intent to pay, dropping slugs in coin machines. But in general it is no crime to induce a doctor, engineer or lawyer by false representations to render services, since no 'property' is obtained." (MPC, Tent. Draft No. 2, p. 91). As the Oregon court held in State v. Miller, 192 Or 188 (1951), "Property" under false pretenses statute must be something capable of being possessed and the title to which can be transferred.

In Oregon statutory prohibitions have been enacted to protect some enterprises:

- ORS
- 164.540 - Unlawfully riding on trains
- 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
- 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 or using device to obtain service from coin telephone or machine without depositing coin
- 165.532 - Obtaining communications service by fraud

This section of the draft will strengthen the protection for the above service-vending enterprises, and, in addition, will include within its reach any other persons or businesses that furnish "services," including labor or professional services. The draft Article on Criminal Mischief will encompass "interfering or tampering" with property of another and will replace those parts of the present statutes dealing with such activity.

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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

Text of New York Penal Law (Cont'd)

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.

8. Theft of services is a Class A misdemeanor.  
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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:

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

(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

(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.

(5) Theft of services is a Class B misdemeanor.

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