

Proposed Changes to Better Address Energy Theft

CRIMES AND OFFENSES (TITLE 18)

Chapter 39. THEFT AND RELATED OFFENSES

18 Pa.C.S.A. §3926. Theft of services

(a) Acquisition of services.-

(1) A person is guilty of theft if he intentionally obtains services for himself or for another which he knows are available only for compensation, by deception or threat, by altering or tampering with the public utility meter or measuring device by which such services are delivered or by causing or permitting such altering or tampering, by making or maintaining any unauthorized connection, whether physically, electrically, [or] inductively or otherwise, to a distribution or transmission line, by attaching or maintaining the attachment of any unauthorized object or device to any cable, wire or other component of an electric, natural gas, propane, telephone or cable television system or to a television receiving set connected to a cable television system, by making or maintaining any unauthorized modification or alteration to any device installed by a cable television system, or by false token or other trick or artifice to avoid payment for the service.

(1.1) A person is guilty of theft if he intentionally obtains or attempts to obtain telecommunication service by the use of an unlawful telecommunication device or without the consent of the telecommunication service provider.

(1.2) A person is guilty of theft if he intentionally obtains or attempts to obtain natural gas or electric service by the use of a means to divert electricity or natural gas away from measurement by a natural gas or electric meter or without the consent of the natural gas, propane or electric service provider.

(2) Deleted.

(3) A person is not guilty of theft of cable television service under this section who subscribes to and receives service through an authorized connection of a television receiving set at his dwelling and, within his dwelling, makes an unauthorized connection of an additional television receiving set or sets or audio system which receives only basic cable television service obtained through such authorized connection.

(4) 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.

(b) Diversion of services.-A person is guilty of 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.

(c) Grading.-

(1) An offense under this section constitutes a summary offense when the value of the services obtained or diverted is less than \$50.

(2) When the value of the services obtained or diverted is \$50 or more, the grading of the offense shall be [\[as established in section 3903 \(relating to grading of theft offenses\)\] a misdemeanor of the first degree.](#)

(3) Amounts involved in theft of services committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(d) Inferences.-

(1) Any person having possession of or access to the location of a public utility meter or service measuring device which has been avoided or tampered with so as to inhibit or prevent the accurate measurement of utility service and who enjoys the use of or receives the benefit from the public utility service intended to be metered or measured by the public utility meter or measuring device so avoided or tampered with may be reasonably inferred to have acted to avoid or tamper with the public utility meter or measuring device with the intent to obtain the public utility service without making full compensation therefor.

(2) Any person having possession of or access to the location of the distribution or transmission lines or other facilities of a cable television system which have been tapped, altered or tampered with or to which any unauthorized connection has been made or to which any unauthorized [object or](#) device has been attached or any person having possession of or access to any device installed by a cable television system to which an unauthorized modification or alteration has been made, the result of which tapping, altering, tampering, connection, attachment or modification is to avoid payment for all or any part of the cable television service for which payment is normally required, and who enjoys the use of or receives the benefit from the cable television service, may be reasonably inferred to have acted to have tapped, altered, tampered with, connected or attached to or modified cable television facilities with the intent to obtain cable television service without making full compensation therefor. This inference shall not apply to the act of a subscriber to cable television service, who receives service through an authorized connection of a television receiving set at his dwelling, in making, within his dwelling, an unauthorized connection of an additional television receiving set or sets or audio system which receives only basic cable television service obtained through such authorized connection.

(e) Sale or transfer of device or plan intended for acquisition or diversion.- A person is guilty of a misdemeanor of the [\[third\] first](#) degree if he sells, gives or otherwise transfers to others or offers, advertises or exposes for sale to others, any device, kit, plan or other instructional procedure for the making of such device or a printed circuit, under circumstances indicating his having knowledge or reason to believe that such device, kit, plan or instructional procedure is intended for use by such others for the acquisition or diversion of services as set forth in subsections (a) and (b). [A person is presumed to have the intent to defraud the energy or telecommunication provider if the person creates, transfers and/or sells the device, kit, plan or instructional procedure for the making of such device or printed circuit as well as purchasing or installing such device.](#)

(f) **Restitution.**-The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under section 1106 (relating to restitution for injuries to person or property) or 42 Pa.C.S. § 9721(c) (relating to sentencing generally). In addition to any restitution, the court shall impose a fine on the person convicted of violating this section in the amount of not less than \$1,000. When emergency personnel are called to the scene of theft of service, the responding volunteer fire department is entitled to receive as restitution the full cost of their response from the person convicted of violating this section.

(g) **Civil action.**-A telecommunication service provider, an electric service provider or a natural gas service provider, or propane service provider aggrieved by a violation of this section may in a civil action in any court of competent jurisdiction obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expense, costs of suit and attorney fees.

(g.1) **Statement of purpose.**- The General Assembly believes that it is important to protect the innocent citizens of this Commonwealth from the personal and public dangers caused by energy theft. Energy diversion is a public safety issue that cuts across classes, individuals, and businesses. Safety hazards include public exposure to serious injury or death and destruction of public or personal property - affecting individuals, neighborhoods, homes, apartments and other facilities. The General Assembly seeks to provide additional tools that support legal and punitive measures to combat the dangerous aspects of this crime. Further, the General Assembly recognizes another aspect of energy theft - the adverse impact on energy rates and the increased cost placed on paying customers.

(h) **Definitions.**- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Service.” Includes, but is not limited to, labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, cable television service, the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water, and telephone or telecommunication service. The term “unauthorized” means that payment of full compensation for service has been avoided, or has been sought to be avoided, without the consent of the supplier of the service.

“Telecommunication service provider.” A person or entity providing telecommunication service, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

“Electric service provider.” A person or entity providing, for compensation, electric distribution, transmission or generation service.

“Natural Gas service provider.” A person or entity providing, for compensation, natural gas distribution or supply service.

“Propane service provider.” A person or entity providing, for compensation, propane or propane distribution service.

“Telephone service” or “telecommunication service”. Includes, but is not limited to, any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

“Unlawful telecommunication device.” Any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. The term includes, but is not limited to, phones altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identify or location or of gaining access to a communication system operated by a telecommunication service provider.