

**9 GCA CRIMES AND CORRECTIONS
CH. 43 THEFT AND RELATED OFFENSES**

**CHAPTER 43
THEFT AND RELATED OFFENSES**

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DEFINITIONS**

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COMMENT: §§ 43.10 through 43.65, as originally enacted, are based upon §§ 2900 through 2909 found in the California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project 69-88 (tent. draft No. 3, July 1969). Portions of the staff comments prepared in conjunction with the latter provisions are incorporated into these comments where appropriate.

§ 43.10. Definitions.

As used in this Chapter, unless a different meaning plainly is required:

(a) *Deprive* means:

(1) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its

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economic value, or with intent to restore only upon payment of reward or other compensation; or

(2) to abandon the property under circumstances amounting to a reckless exposure to loss.

(b) *Movable Property* means property the location of which can be changed, including things growing on, or affixed to, or found in land, and documents although the rights represented thereby have no physical location. Immovable Property is all other property.

(c) *Obtain* means:

(1) in relation to property, to bring about a transfer or purported transfer of legal interest in the property, whether to the obtainer or another; or

(2) in relation to labor or service, to secure performance thereof.

(d) *Property* means anything of value, including real estate, tangible and intangible personal property, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, trade secrets.

(e) *Property of Another* includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(f) *Trade Secret* means the whole or any portion of phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and is not generally available to the public, and which gives one who uses it an advantage over actual or potential competitors who do not know of or use the trade secret, or the contents of private and unpublished records used in the business of examining, certifying or insuring titles to real property. Proof that the

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owner takes measures to prevent information from becoming available to persons other than those selected by the owner to have access thereto for limited purposes gives rise to an inference that the information is secret.

SOURCE: G.P.C. §§ 7(10), (12), 491, 494-495, 510; M.P.C. 223.0; *Cal. § 2900 (T.D.3 1969); Cal. § 1000 (1971); Mass. ch. 266, § 1; N.J. 2C:20-1.

CROSS-REFERENCES: § 34.60 - Criminal Mischief; § 46.55 - Secured Creditors; § 43.30 - Public Officials.

COMMENT: Most of the definitions are substantially those of Model Code, § 223.0. *Trade Secret* is an amalgam of California Penal Code §§ 496c and 499c. "Trade Secret" has been added to the list of property subject to theft.

§ 43.15. Theft a Single Offense.

Conduct denominated theft in this Chapter constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Chapter, notwithstanding the specification of a different manner in the accusatory pleading, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice of by surprise.

SOURCE: G.P.C. § 490a; M.P.C. § 223.1(1); *Cal. § 2901(1) (T.D.3 1969); Cal. § 1010 (1971); Mass. ch. 266, § 17(d); N.J. § 2C:20-2(a).

COMMENT: Former Guam Penal Code § 490a effected only a substitution of the term "theft" for larceny, embezzlement, etc. The local courts have not completely consolidated the offenses and an indictment, or information, which charges one method of theft which was at variance with the proof could prove fatal to the case. § 43.15 corrects this deficiency in favor of the prosecution as specifically stating that, where the accusation varies from the proof, the case is not to be dismissed but is only to be delayed, or other relief granted, so that the defendant is not prejudiced. This Section makes very clear that there is only one offense of theft, no matter how it is committed.

§ 43.20. Theft; Defined & Punishment Classified.

(a) *Theft* constitutes a felony of the second degree if the amount involved exceeds One Thousand Five Hundred Dollars (\$1,500) or if the property stolen is a bus, truck, automobile, aircraft, motorcycle, or motor boat, or in the case of theft by receiving stolen property, if the defendant is in the business of buying and selling stolen property. In the case of theft as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not

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be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment provided, however, that in the case of an offender not previously convicted of a felony or of an offense constituting theft, the court may sentence the offender to not more than five (5) years imprisonment and the provisions of this subsection prohibiting probation, suspension, parole, or work release shall not be applicable to such offender.

(b) Theft constitutes a felony of the third degree if the amount involved is less than One Thousand Five Hundred Dollars (\$1,500.00) but exceeds Five Hundred Dollars (\$500.00) or if the property stolen is a firearm or motorized vehicle other than those set forth in Subsection (a) of this Section, or if the theft is through an unauthorized electrical connection

(c) Theft not constituting a felony of the second or third degree is a misdemeanor if the amount involved exceeds Fifty Dollars (\$50) or if the property stolen is a credit card or if the property was taken from the person or by extortion.

(d) Theft not constituting a felony of the second or third degree or a misdemeanor is a petty misdemeanor.

(e) The amount involved in a theft shall be the fair market value of the property or services which the defendant stole or attempted to steal. Whether or not they have been issued or delivered, written instruments not having a readily ascertained market value shall be evaluated as follows:

(1) The value of an instrument constituting an evidence of a debt, such as a check, draft or promissory note, shall be the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(2) The value of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(f) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons or amount [sic] involved in thefts by a servant, agent or employee from his

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principal or employer in any period of twelve (12) consecutive months, may be aggregated in determining the grade of the offense.

SOURCE: Enacted 1977; repealed and reenacted by P.L. 14-143, eff. 10/01/78. Subsection (b) repealed by P.L. 24-31;3.

COURT DECISIONS: D.C.GUAM:APP.DIV. 1983 It is permissible, in determining the value of items stolen, to use an expert in (this case) pipe dealings to determine the value of the pipe stolen based upon photographs and a description of the stolen pipe given by another witness. *People v. Dela Cruz*, D.C. Cr. #82-008A.

§ 43.21. Definition of Unauthorized Electrical Connections or Illegal Power Hook-Ups.

An illegal power hook-up is any connection to power lines which belong to the government of Guam, that is made without the prior written permission of the Guam Power Authority, or any power hook-up from a direct power line which bypasses or hinders meter registration. The conditions include, but are not limited to:

- (a) External jumpers;
- (b) Bypass on meter;
- (c) Tap ahead of electric meter;
- (d) Inverted (electric) or reversed substitution meter;
- (e) Manipulation of meter dials;
- (f) Foreign materials inside electric meter;
- (g) Open potential line;
- (h) Unmetered theft of service;
- (i) Metered theft of service; or
- (j) Any other unauthorized or illegal hook-up.

SOURCE: Added by P.L. 24-31;2.

§ 43.25. Defenses; Conditions Upon Same.

(a) It is an affirmative defense to prosecution for theft that the defendant:

- (1) was unaware that the property or service was that of another;
- or

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(2) acted in good faith under a claim of right to the property or service involved or that he had a claim of right to acquire or dispose of it as he did.

(b) It is no defense that theft was from the defendant's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

SOURCE: G.P.C. § 511; M.P.C. § 223.1(3), (4); *Cal. § 2901(3), (4) (T.D.3 1969); Cal. § 1012 (1971); Mass. ch. 266, § 17(8); N.J. § 2C:20-2(c), (d).

CROSS-REFERENCES: California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project 76-77 (tent. draft No. 3, July 1969).

COMMENT: § 43.25 substantially restates existing Guam law. The provision of Guam Penal Code § 511 that the claim of right defense is unavailable in embezzlement cases where the defendant had retained property "to off-set or pay demands held against him," has not been retained. There is no similar restriction on the claim of right defense under present law if the defendant is charged with common-law larceny or theft by fault pretenses. Of course, as in common law, the claim of right defense would be available only where the defendant honestly believes that he had the legal right to retain the property as a set-off. Thus, where a defendant took property of another and no right of set-off existed, even if the defendant may have been owed money by the other, no defense would arise under this Section.

As with existing law, § 43.25 rejects the common-law rule that unity between husband and wife precludes possibility of theft from a spouse. However, there is no theft of commonly owned property unless the spouses are living apart. This provision will, it is hoped, substantially reduced the risk of theft prosecution following a family quarrel or domestic dispute.

§ 43.30. Theft of Property; Defined.

(a) A person is guilty of *theft* if he unlawfully takes or obtains or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with intent to deprive him thereof.

SOURCE: G.P.C. §§ 74a, 484, 496, 496a, 499a, 503-510, 545, 653a; See also § 356 (Attempt; 384b); M.P.C. § 223.2; *Cal. § 2902 (T.D.3 1969); Cal. § 1002 (1971); Mass. ch. 266 § 17; N.J. 2C:20-3.

CROSS-REFERENCES: § 13.60 - Attempt; § 43.10, Comment.

COMMENT: § 43.30 deals with the former offenses of larceny embezzlement and fraudulent conversion. The concept of "unlawful control" in the case of movable property marks the distinction between attempt and the completed crime and provides

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a flexible standard for the wide variety of takings constituting theft. The distinction between an attempt and the completed crime is not crucial since the identical range of penalties are provided for attempt by § 13.60.

In the case of immovable property, unauthorized occupation of land is not made, but the transfer of an interest by a trustee or other persons is theft if the transfer deprives the real owner of the property, or an interest (such as creating an encumbrance) in ways that are beyond effective relief by civil remedies.

§ 43.31. Crime Against the Community; Defined and Punishment.

(a) A person is guilty of a Crime Against the Community if that person knowingly takes, obtains or exercises unlawful control over government-owned, leased or borrowed property, or interferes with, obstructs, or takes action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety; or (2) doing so results in a deprivation of public services, such as utility services, the education of public or private school students, or any government service intended to benefit the public; or (3) does so for a purpose other than the original purpose for which the property or services were to be provided.

(b) A person is guilty of a Crime Against the Community if that person knowingly destroys, defaces, alters, tampers with or damages government-owned, leased or borrowed property.

(c) A Crime Against the Community shall be alleged, in an information, complaint or indictment, as a Special Allegation which enhances punishment when the defendant is convicted of another offense. A Crime Against the Community shall be tried to a jury if the underlying crime is tried to a jury.

(d) A person convicted of a Crime Against the Community shall be sentenced to:

(1) Insofar as is practicable, make restitution to the victim of the crime, including the government of Guam or the Federal government;

(2) Insofar as is practicable, perform community service intended to raise community awareness that a crime against the public interest has been committed and is being punished, including, *but not limited to*, repair, painting and cleaning of items which are stolen, damaged or defaced; or

(3) Serve one (1) year of incarceration and pay an additional fine of up to Five Thousand Dollars (\$5,000.00) in addition to the sentence imposed for the underlying crime, if the underlying crime is a

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misdemeanor or felony. The court may suspend said term of incarceration and impose a term of probation instead.

SOURCE: Added by P.L. 28-39:2.

§ 43.35. Theft by Deception; Defined.

(a) A person is guilty of *theft* if he intentionally obtains property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(2) prevents another from acquiring information which would affect his judgment of a transaction;

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is not a matter of official record.

(b) The term deceive does not include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive typical members of the group addressed.

SOURCE: See G.P.C. §§ 72, 156, 381, 382, 383, 483a, 484, 526, 530-532a, 533-536, 538, 541, 549; M.P.C. § 223.3; *Cal. § 2903 (T.D.3 1969); Cal. § 1002 (1971); Mass. ch. 266, § 17; N.J. § 2C:20-4.

CROSS-REFERENCES: *People v. Ashley*, 42 Cal. 2d 246 (1954).

COMMENT: This Section restates existing Guam and California law.

§ 43.40. Theft by Threatening; Defined; Defense.

(a) A person is guilty of *theft* if he intentionally obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense;

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(2) accuse anyone of a criminal offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) take or withhold action as an official, or cause an official to take or withhold action;

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act;

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) do any other act which would not substantially benefit the defendant but which is calculated to harm another person.

(b) It is an affirmative defense to prosecution for extortion by threats to charge any person with a crime that the defendant honestly believed the threatened charge to be true and that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances to which such charge addressed.

SOURCE: G.P.C. §§ 518-524; M.P.C. § 223.4; *Cal. § 2904 (T.D.3 1969); Cal. § 1018 (1971); Mass. ch. 266, § 17(a)(5); N.J. § 2C:20-5.

CROSS-REFERENCES: New York Penal Law § 115.15(2) - Rel. to Subsection (b); See Ch. 49 - Official Action by Public Officers.

COMMENT: § 43.40 makes minor changes in Guam extortion law. While the list of threats enumerated in this Section is longer than the enumeration in the Guam Penal Code, § 519, most of the specifically enumerated threats would clearly constitute extortion under existing California, and probably Guam, law. The one possible exception may be the threat listed under Subsection (a)(6) since no similar provision appeared in the Penal Code. No cases have appeared in California which deal with this precise threat.

Additionally, all of the threats listed in this Section may be threats to injure any person whereas the Guam Penal Code requires threats to defame or accuse of crime be threats with reference to the victim, a relative or a member of the family. For unenumerated threats, the general principle stated in § 43.40 is that the threat be to do harm which does not benefit the defendant substantially, but which is calculated to do harm to another person. This would avoid some of the problems experienced by California courts under Penal Code § 519(1). This Section requires that any unenumerated threats be a threat of "unlawful" harm. Some threats, such as the threat of a strike or boycott, are privileged when they are not used by the defendant for the purpose of personal gain. Present California law is unclear whether the requirement of "unlawful" harm is merely tautological, or whether the defendant is privileged to

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threaten and do harm he would be otherwise privileged to inflict, as a basis for demand for money. Present § 43.40 clears up such doubt.

§ 43.45. Theft of Property Lost, Mislaid or Delivered by Mistake; Defined.

A person who comes into control of property of another that he knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

SOURCE: G.P.C. § 45; See also §§ 355 (Attempt) and 545; M.P.C. § 223.5; *Cal. 2905 (T.D.3 1969); Cal. 1002(e) (1971); Mass. ch. 266, § 17(a)(4); N.J. § 2C:20-6.

COMMENT: This provision, in addition to replacing Guam Penal § 45, reaches both lost and mislaid property, and requires actual knowledge that the property is lost or misplaced, and that the defendant has an intent to deprive the true owner. Thus, this Section would not impose theft penalties on the merely negligent finder. In addition, this Section reaches property delivered by mistake as to the nature or amount of the property -covering such situations as the defendant who has accepted a Ten Dollar (\$10.00) bill in change, knowing that the person who gave it to him thought he was handing over a One Dollar (\$1.00) bill. (See California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project No. 82, (tent. draft No. 3, July 1969).

§ 43.50. Theft by Receiving Stolen Property; Defined.

(a) A person is guilty of *theft* if he intentionally receives, retains or disposes of movable property of another knowing that it has been stolen or believing that it has probably been stolen. It is a defense to a charge of violating this Section that the defendant received, retained or disposed of the property with intent to restore it to the owner.

(b) Where the defendant is in the business of buying, selling or otherwise dealing in property, proof that he obtained stolen property without having made reasonable inquiry whether the person from whom he obtained it has the legal right to sell or deliver it, and that he obtained it under circumstances which should have caused him to make such inquiry, gives rise to an inference that he obtained it knowing that it has been stolen or believing that it has been probably been stolen.

(c) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain for a minimum of one (1) year after the last entry a log book of all purchases made from on-island sources, indicating the nature of the items bought, the name and address of the seller, the price paid, and the date of purchase. In

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addition, in the case of items purchased from a person not in the business of selling gold, coins, diamonds, gems, silver, or jewelry, the purchaser shall either take a picture of the seller, or shall obtain identification from the seller containing a picture. The above records shall be made available to law enforcement officers upon request.

(d) Any person or corporation which is in the business of buying or selling gold, diamonds, coins, silver, or gems or jewelry shall retain all items purchased on Guam from persons not business licensed for the purpose of buying or selling gold, diamonds, coins, silver, gems or jewelry for a period of seven (7) days before selling, melting, destroying, or otherwise disposing of such items purchased on Guam.

(e) It shall be unlawful for any person to knowingly purchase gold, diamonds, jewelry, silver, gems or coins from any person under the age of eighteen (18) years, provided that nothing herein shall be construed as prohibiting the parent or guardian of a minor child from selling gold, diamonds, jewelry, coins or gems belonging to a minor child, on behalf of said child.

(f) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, shall retain, for a minimum of one (1) year form authorized by the Chief of Police of all purchases of copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans from on-island sources, indicating the nature and a reasonable estimate of the size, shape, weight, and length of the items bought, the name, signature and address of the seller, the price paid, and the date of purchase, telephone number, and shall obtain and maintain a copy of each seller's identification documents, including, but not limited to, a government driver's license, government identification card or passport, and a copy of the registration certificate of the vehicles used to transport the copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, the name of the employee representing the scrap metal business in the transaction. The above records shall be made available to law enforcement officers upon request. Copies of all completed forms or paper of information required by this Section, immediately upon purchase

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of the copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall be immediately transmitted via email or by facsimile transmittal to the Guam Police Department.

(g) Any person, corporation or entity who, as a substantial part of a business, buys and sells used items, including copper wire, bronze, brass, aluminum and other non ferrous metals but shall not include recyclable aluminum cans, and including any contractor who buys copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, in the course of conducting his or her business, who purchases said items from persons who do not have a business license for buying or selling copper wire, bronze, brass, aluminum and other non ferrous metals, but shall not include recyclable aluminum cans, shall keep such items for a period of seven (7) days before altering, selling, melting, destroying, or otherwise disposing of said items purchased on Guam.

(h) Any knowing violation of Subsections (c), (d) or (e) of § 43.50 of Chapter 43 of Title 9 GCA shall be a misdemeanor upon the first conviction of any such violation, and shall be a felony of the third degree for any subsequent offense. Any violation of Subsections (f) or (g) shall be a felony of the third degree. A third conviction of any such violation shall require revocation of the offender's business license.

(i) Any violation of subsections (f) or (g), *shall* be punishable by a term of one (1) to five (5) years in prison, a fine of Ten Thousand Dollars (\$10,000) to Twenty-five Thousand Dollars (\$25,000) and restitution per incident. The amount of restitution *shall* include the replacement cost of the item, the cost of repairs for damages caused by the theft and the cost associated with the loss of use of the item.

SOURCE: (Subsections (a) and (b)): G.P.C. § 496; M.P.C. § 223.6; *Cal. § 2906 (T.D.3 1969); Cal. § 1002(f) (1971); Mass. ch. 266, § 21; N.J. § 2C:20-7. (Subsections (c), (d), (e) and (f)): Added by P.L. 17-41:1, 2, 3 and 4. Subsection (f) amended and subsections (g) and (h) added by P.L. 28-018:2. Subsection (f) and (g) amended by P.L. 29-072:1 (May 7, 2008). Subsection (i) added by P.L. 29-072:2 (May 7, 2008).

COMMENT: (To Subsections (a) and (b)) § 43.50 differs from Guam Penal Code, § 496, which requires knowledge that the property had been stolen for conviction of receiving stolen property. In contrast, this Section adopts a less demanding standard which adds a belief "that it has probably been stolen." With reference to either, this Section raises an inference of the requisite knowledge when the dealer has been shown negligent in not ascertaining if the seller had actual title to the goods. Such an inference would be raised, for example, when a dealer bought from a seller large

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quantities of expensive telephone cable knowing fully well that there are only one (1) or two (2) legitimate owners of that item in Guam, neither of which was the seller.

Nevertheless, § 43.50, by creating an “inference” only, allows the dealer to attempt to convince the jury that he did not subjectively believe that the property had probably been stolen, even though he failed to make inquiry as to the seller's right to sell.

§ 43.50(a) contains a special affirmative defense that the defendant has received the property within intent to restore it to the owner. It is desirable to have a special provision for such cases as where as an insurance company pays a reward for the return of stolen property with no questions asked. (California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project No. 82-83 (tent. draft No. 3, July 1969).

§ 43.51. Theft of Utilities.

(a) A person is guilty of *theft* if he knowingly tampers with, alters or by-passes meters for the purpose of obtaining electrical power, gas or water without paying compensation to the entity providing such services. A person commits theft if he knowingly diverts telephone service, electrical power, gas or water to his own benefit or to the benefit of another not entitled thereto with the intent to avoid payment to the entity providing such service.

(b) Unauthorized Electrical Connections; Bypass or Obstruction of Meter. Every user, contractor or business who shall unlawfully and knowingly injure, alter, or procure to be injured, make or cause to be made any connection in any manner whatsoever with any electric wire or electric appliance of any character whatsoever operated by any user, users, corporations or government entities authorized to generate, transmit and sell electric current, or who shall so willfully and knowingly with intent to injure or defraud, use or cause to be used any such connection in such manner as to supply any electric current for heat or light or power to any electric lamp, apparatus or device, by, or at which electric current is consumed or otherwise used or wasted, without passing through a meter for the measuring and registering of the quantity passing through such electric wire or apparatus, or who shall, knowingly or with like intent injure, alter or procure to be injured or altered any electric meter, or obstruct its working, or procure the same to be tampered with or injured, or use or cause to be used any electric meter, or appliance so tampered with or injured, shall be deemed guilty of a theft constituting a felony in the third degree, and shall be subject to any and all fines, penalties and terms of imprisonment applicable by law, as well as any and all fines payable to the Guam Power Authority.

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SOURCE: Enacted by P.L. 15-122:1 (4/22/80). Repealed and reenacted and added a new subsection (b) by P.L. 24-31;4. Subsection (b) repealed and reenacted by P.L. 24-126:2.

§ 43.55. Theft of Services; Defined.

(a) A person is guilty of *theft* if he intentionally 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 include 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 services is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to an inference that the service was obtained by deception as to intention to pay.

(b) 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.

SOURCE: G.P.C. §§ 42, 499, 499(a), 591, 625; M.P.C. § 223.7; *Cal. § 2907 (T.D.3 1969); Cal. 1002(g) 1971; Mass. ch. 266, § 17(a); N.J. § 2C:20-8.

CROSS-REFERENCES: Hawaii PC, §§ 708-800(18); §§ 708-831(b); §§ 708-832(b); §§ 708-832(a); Cal. P.C. § 537.

§ 43.56. Unauthorized Reception of Cable Service.

(a) Unauthorized Interception or Receipt or Assistance in Intercepting or Receiving Service; Definition of ‘Assist in Intercepting or Receiving.’

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this Section, the term ‘assist in intercepting or receiving’ shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of Subparagraph (1).

(b) Penalties for Willful Violation.

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(1) Any person who willfully violates Subsection (a)(1) shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both, for the first such offense and shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Hundred Dollars (\$300.00) or imprisoned for not more than three (3) years, or both, for any subsequent offense.

(2) Any person who violates Subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be guilty of a felony of the third degree and shall be punished by a fine of not more than Three Thousand Dollars (\$3,000.00) or imprisoned for not more than three (3) years, or both, for the first such offense and shall be guilty of a felony of the second degree and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more than five (5) years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of Subsection (a)(1), the prohibited activity established herein, as it applies to each such device, shall be deemed a separate violation.

SOURCE: Added by P.L. 27-131:3 as section 43.55. However, section 43.55 was already occupied. Thus, this newly added section was renumbered by the Compiler as 43.56.

§ 43.60. Theft of Property Held in Trust; Defined.

A person who in the course of business obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property as his own and fails to make the required disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

SOURCE: G.P.C. §§ 506-508, 561a, 653a; M.P.C. § 223.8; *Cal. § 2908 (T.D.3 1969); Cal. § 1002(i) (1971); N.J. § 2C:20-9.

CROSS-REFERENCES: GC § 46015(2), Wage and Hour Law; GC § 46034, - Failure to pay wages.

CROSS-REFERENCES: § 43.60 is a single, generalized section which provides criminal liability for the misappropriation of funds even though those funds in a sense

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“belong” to the defendant. This Section applies both where the defendant receives funds earmarked for a particular purpose and where the defendant misappropriated funds “from his own property to be reserved in an equivalent amount.”

This latter provision, for example, would apply where an employer has an arrangement with his employees pursuant to which he withholds part of their pay on the understanding that the money withheld will be used to pay certain obligations of the employee to third persons. If the employer fails to pay and uses the funds for his own purposes he is subject to liability under this Section.

§ 43.65. Unauthorized Use of Vehicle: Defined; Punished; Defense.

(a) A person commits a misdemeanor if he operates an automobile, aircraft, motorcycle, motorboat or other motor-propelled vehicle or vessel, or sailboat, without consent of the owner or other person authorized to give consent.

(b) It is an affirmative defense to prosecution under this Section that the defendant reasonably believed that the owner or other person authorized to give consent would have consented to the operation had he known of it.

SOURCE: G.P.C. § 499b, 499c; M.P.C. § 223.9; *Cal. § 2909 (T.D.3 1969); Cal. § 1020 (1971); Mass. ch. 266, § 22; N.J. 2C:20-10.

CROSS-REFERENCES: 16 GCA § 3111 - as grounds for suspension or revocation of license. GC § 23403, Vehicle Code - Taking of a vehicle permanently or temporarily - a felony, repealed.

COURT DECISIONS: “It is clear from the evidence that even if this minor did not actually operate the vehicle, yet there was concert of plan and action proved and established beyond a reasonable doubt. Actual driving by this minor is not necessary, both otherwise having planned and joined in the action, and this minor clearly knew that he was aiding and assisting in the unlawful operation of a vehicle. [See 9 GCA § 4.60]” *People in the interest of Steven Santos, a minor*, J.D. Case No. 2-81. For similar finding see *People in the interest of Steven Jesse Santos, a minor*, J.D. Case No. 17-81.

SUPER.CT. 1982 Where facts show that two youths assisted each other in “hot-wiring” a vehicle, then one youth was the driver and one a passenger, the youth who was the passenger was equally guilty of violating § 43.65(a) as was the youth who actually drove the vehicle. *People in the Interest of C.S.I.*, JD#50-82.

COMMENT: § 43.65 deals with simple joyriding. If the defendant intends to “deprive” the owner of the vehicle, as the term is defined in § 43.10, i.e., permanently or for an extended period of time so as to cause the owner to lose a major portion of its value, the defendant would be subject to ordinary theft penalty. This provision will be a lesser included offense within the charge of theft.

§ 43.70. Reimbursement to Owner of Stolen Livestock.

In any case where there is conviction under the provisions of Chapter 43 of this Code and the property stolen by the defendant was livestock, in

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addition to a fine or imprisonment imposed, the court shall direct that the defendant pay to owner of the stolen livestock its fair market value as determined by the court. Failure to make such payments shall be deemed a failure to pay a fine and punished accordingly.

SOURCE: P.L. 13-204, 13th Guam Legislature.

CROSS-REFERENCES: § 80.56 - Failure to pay fine; § 80.52 (c) - Superseded for purposes of this Section only - Restitution in place of fine.

COMMENT: The Legislature, by P.L. 13-204, determined that cattle stealing had such a serious impact upon the farmers whose cows were stolen that restitution should be the paramount concern. An identical Section, § 490.1, was added to the Guam Penal Code to be effective on December 17, 1976.

§ 43.75. Theft of Dog or Cat, When a Felony of the Second Degree.

It shall be theft punishable as a felony of the second degree, for any person:

(a) To steal any dog or cat for the purpose of or with the intent of holding the same for ransom or a reward for the return thereof; or

(b) To demand payment of a reward, ransom, or any thing of value for the return to the rightful owner of any dog or cat which is stolen, lost or strayed; or

(c) To refuse to return of a dog or a cat which is stolen, lost or strayed to the rightful owner except upon payment of a reward or ransom; or

(d) To steal any dog or cat for the purposes of killing or maiming the same; or

(e) To steal any dog for purpose of, or with intent of using the dog for any dog fight or fight with any other animals which could result in injury to the dog.

SOURCE: Added by P.L. 23-54:1.

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**ARTICLE 2
RETAIL THEFT**

- § 43.80. General Definitions.
- § 43.81. Conceal Defined.
- § 43.82. Full Retail Value Defined.
- § 42.83. Merchandise Defined.
- § 43.84. Merchant Defined.
- § 43.85. Minor Defined.
- § 43.86. Person Defined.
- § 43.87. Peace Officer Defined.
- § 43.88. Premises of a Retail Mercantile Establishment Defined.
- § 43.89. Shopping Cart Defined.
- § 43.90. Under-Ring Defined.
- § 43.91. Retail Theft; Defined.
- § 43.92. Presumptions.
- § 43.93. Detention.
- § 43.94. Affirmative Defense.
- § 43.94.1. Severability.
- § 43.95. Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.

§ 43.80. General Definitions.

For the purposes of this Article, the words and phrases defined in §§ 43.82 through 43.92 have the meanings ascribed to them in those sections unless a contrary meaning is clear from the context.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.81. Conceal Defined.

To *conceal* merchandise means that although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.82. Full Retail Value Defined.

Full Retail Value means the merchant's stated or advertised price of the merchandise.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.83. Merchandise Defined.

Merchandise means any item of tangible personal property.

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SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.84. Merchant Defined.

Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise or independent contractor of such owner or operator.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.85. Minor Defined.

Minor means a person who is less than eighteen (18) years of age, is unemancipated and resides with his parents or legal guardian.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.86. Person Defined.

Person means any natural person or individual.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.87. Peace Officer Defined.

Peace Officer has the meaning ascribed to that term in § 5.55 of the Criminal Procedure Code.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.88. Premises of a Retail Mercantile Establishment Defined.

Premises of a Retail Mercantile Establishment includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.89. Shopping Cart Defined.

Shopping Cart means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.90. Under-Ring Defined.

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Under-Ring means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.91. Retail Theft; Defined.

A person is guilty of *theft* if he knowingly:

(a) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

(b) alters, transfers or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of depriving the merchant of the full retail value of such value of merchandise;

(c) transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise;

(d) under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or

(e) removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.92. Presumptions.

If any person:

(a) conceals upon his person or among his belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last station for receiving payments for that merchandise in that retail mercantile establishment, such person shall be presumed to have possessed,

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carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.93. Detention.

Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to request identification;

(b) to verify such identification;

(c) to make reasonable oral inquiry as to whether such person has in his possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(d) to inform a peace officer of the detention of the person and surrender custody of that person to a peace officer; or

(e) in the case of a minor, to immediately inform a peace officer and the parents or guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of such minor to such person.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.94. Affirmative Defense.

A detention, as permitted in this Article, does not constitute an arrest or unlawful restraint, as defined in § 22.35 of this Code, nor shall it render the merchant liable to the person so detained unless said detention is done unreasonably or without proper cause or justification.

SOURCE: P.L. 15-116, eff. 3/28/80.

§ 43.94.1. Severability.

If any part of this Article is declared invalid by a court, then the remainder of this Article shall still be in effect.

SOURCE: Added as § 43.95 by P.L. 15-116, eff. 3/28/80. Renumbered by Compiler in accordance with P.L. 29-064:2 (Apr. 4, 2008).

§ 43.95. Unlawful Use of Theft Detection Shielding *or* Deactivation Devices.

This Section defines and penalizes the distribution *or* possession of a detection shielding device *or* any tool *or* device designed to remove a theft detection device from merchandise prior to purchase for the intent to commit (*or* aid *or* abet) theft. A person who activates an anti-shoplifting device may be lawfully detained in a reasonable manner for a reasonable period of time.

(a) A person is guilty of unlawful distribution of a theft detection shielding device when he knowingly manufactures, sells, offers for sale *or* distributes in any way any laminated *or* coated bag intended to shield merchandise from detection by an electronic *or* magnetic theft detector.

(b) A person is guilty of unlawful possession of a theft detection shielding device when he knowingly possesses any laminated *or* coated bag *or* device intended to shield merchandise from detection by an electronic *or* magnetic theft detector, with the intent to commit (*or* aid *or* abet) theft.

(c) A person is guilty of unlawful possession of a theft detection device deactivator *or* remover when he knowingly possesses any tool *or* device designed to allow *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device with the intent to use such tool *or* device to deactivate any theft detection device on, *or* to remove any theft detection device from, any merchandise without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(d) A person is guilty of unlawful distribution of a theft detection device deactivator *or* remover when he knowingly manufactures, sells, offers for sale *or* distributes in any way any tool *or* device designed to allow, *or* capable of allowing the deactivation *or* removal from any merchandise of any theft detection device without the permission of the merchant *or* person owning *or* lawfully holding said merchandise.

(e) A person is guilty of unlawful deactivation *or* removal of a theft detection device when he intentionally deactivates in a retail establishment a theft detection device on, *or* removes a theft detection device from, merchandise prior to purchase.

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(f) Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *less than* Five Hundred Dollars (\$500) is guilty of a petty misdemeanor. Any person convicted for violating the provisions of Subsections (a), (b), (c), (d) *or* (e) of this Section where the value of the merchandise is *more than* Five Hundred Dollars (\$500) is guilty of a misdemeanor.

(g) The activation of an anti-shoplifting *or* inventory control device as a result of a person exiting the establishment *or* a protected security device within the area within the establishment *shall* constitute reasonable cause for the detention of the person so exiting by the owner *or* operator of the establishment *or* by an agent *or* employee of the owner *or* operator, provided notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting *or* inventory control devices. Each such detention *shall* be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device *or* for the recovery of goods.

(h) Such taking into custody and detention by a law enforcement officer, security officer, merchant, merchant's employee *or* agent, if done in compliance with all the requirements of the foregoing Subsection, *shall* not render such law enforcement officer, security officer, merchant, merchant's employee *or* agent, criminally *or* civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress *or* defamation.

SOURCE: Added by P.L. 29-064:1 (Apr. 4, 2008). The severability clause that formerly occupied this section was renumbered § 43.94.1 per P.L. 29-064:2.

ARTICLE 3
ANTI-SKIMMING ACT

SOURCE: This Article was added by P.L. 29-142:1 (Jan. 30, 2009), as §§ 43300-43303. Renumbered by Compiler to harmoniously fit this Chapter.

§ 43.96. Purpose.

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§ 43.97. Short Title.

§ 43.98. Definitions.

§ 43.99. Penalties.

§ 43.96. Purpose.

This Article criminalizes the use of a scanning device *or* re-encoder to capture encoded information from a magnetic strip from a credit, debit, *or* other payment card and then places it on a different credit, debit, *or* other payment card with the intent to defraud.

§ 43.97. Short Title.

This Article *shall* be cited as the “Anti-Skimming Act.”

§ 43.98. Definitions.

As used in this Article:

(a) *Scanning device* means a scanner, reader *or* any other electronic device that is used to access, read, scan, obtain, memorize *or* store, temporarily *or* permanently, information encoded on the magnetic strip *or* stripe of a payment card.

(b) *Re-encoder* means an electronic device that places encoded information from the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different payment card.

(c) *Payment card* means a credit card, charge card, debit card, hotel key card, stored value card *or* any other card that is issued to an authorized card user and that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

(d) *Merchant* is defined as an owner *or* operator of any retail mercantile establishment, *or* any agent, employee, lessee, consignee, officer, director, franchisee *or* independent contractor of such owner *or* operator. A *merchant* means a person who receives from an authorized user of a payment card *or* someone the person believes to be an authorized user, a payment card *or* information from a payment card *or* what the person believes to be a payment card *or* information from a payment card as the instrument for obtaining, purchasing *or* receiving goods, services, money *or* anything else of value from the person.

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(e) *Authorized card user* means any person with the empowerment, permission *or* competence to act in the usage of any payment card to include, but *not be limited to*, a credit card, debit card, hotel key card, stored value card *or* any other card that allows the user to obtain, purchase *or* receive goods, services, money *or* anything else of value from a merchant.

§ 43.99. Penalties.

(a) It is a felony of the third degree felony for a person to use:

(1) A scanning device to access, read, obtain, memorize *or* store, temporarily or permanently, information encoded on the magnetic strip *or* stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(2) A re-encoder to place information encoded on the magnetic strip *or* stripe of a payment card onto the magnetic strip *or* stripe of a different card without the permission of the authorized user of the card from which the information is being re-encoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card *or* a merchant.

(b) Any person who violates subparagraph (a)(1) *or* (2) a second *or* subsequent time commits a second degree felony.
