

14.5 THEFT OF COMMUNICATIONS SERVICES

§ 812.15(2)(a), Fla. Stat.

To prove the crime of Theft of Communications Services, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant) **knowingly and willfully**
 - a. **intercepted, received, decrypted, disrupted, transmitted, retransmitted or acquired access to any communication service.**
 - b. **assisted [others] [another] in intercepting, receiving, decrypting, disrupting, transmitting, retransmitting or acquiring access to any communication service.**
2. (Defendant) **did not have the express authorization of the cable operator or other communications service provider to do so.**
3. (Defendant) **did so with the intent to defraud the cable operator or communications service provider.**

§ 812.15(3)(b), Fla. Stat. Give if applicable.

If you find the defendant guilty of Theft of Communications Services, you must further determine beyond a reasonable doubt whether the defendant acted for the purpose of direct or indirect commercial advantage or private financial gain.

No Defense. § 812.15(9), Fla. Stat. Give only if applicable.

This offense may be deemed to have been committed at any place where the defendant manufactured, developed or assembled any communications devices involved in the violation, or assists others in these acts, or any place where the communications device is sold or delivered to a purchaser or recipient.

It is not a defense that some of the acts constituting the offense occurred outside the state.

Definitions.

“Willfully” means intentionally and purposely.

“Cable Operator” means a communications service provider who provides some or all of its communications services pursuant to a “cable television franchise” issued by a “franchising authority.” See 47 U.S.C. s. 522(9-10) (1992) for definitions of “cable television franchise” and “franchising authority.”

“Cable System” means any communications service network, system or facility owned or operated by a cable operator.

“Communications Device” means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter,

connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communication device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

“Communications service” means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, microwave, data transmission, internet-based, or wireless distribution network, system, or facility, including but not limited to, any electronic, data, video, audio, internet access, microwave, and radio communications, transmissions, signals, and service, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

“Communications service provider” means:

1. Any person or entity owning or operating any cable system or any fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, wireless, microwave, radio, data transmission, or internet-based distribution network, system, or facility.
2. Any person or entity providing any lawful communications service, whether directly or indirectly, as a reseller or licensee, by or through any such distribution network, system or facility.

Give 1 or 2 as applicable, only if element 1b is charged.

The term “assisted others” includes:

1. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of facilitating the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission, or access to any communications service offered by a cable operator or any other communications service provider.
2. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of defeating or circumventing any effective technology, device, or software, or any component thereof, used by cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition interception, disruption, decryption, transmission, retransmission.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

A first violation of this statute is a first-degree misdemeanor. A subsequent conviction becomes a

third-degree felony. As of September 2020, it is unclear whether the fact of a prior conviction will be viewed as an element of the felony or as a recidivist factor for the judge to determine at sentencing.

If treated as an element, it is error to inform the jury of a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior Theft of Communications Services convictions, do not read that allegation and do not send the information or indictment into the jury room. Instead, a modified version of the information or indictment alleging a misdemeanor violation may be read and/or sent into the jury room. If the defendant is found guilty, the historical fact of a prior conviction shall be determined beyond a reasonable doubt in a bifurcated proceeding before a jury. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2007 [965 So. 2d 811] and amended on October 2, 2020.