, the defendant in this case, has been charged with the crime of theft of services by deception, force, threat, or other means to avoid payment for the services.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant obtained services;

(2) the defendant obtained the services by [deception] [force] [threat] or other means to avoid payment for the services;

(3) the defendant knew the services to be available only for compensation; [and]

[(4) the value of the services was $750 or more.]

[(4) the value of the services was $250 or more; and

(5) within the preceding five years, the person has been convicted and sentenced for theft or concealment of merchandise on two or more separate occasions in this or another jurisdiction.]

[If you find that the defendant absconded without paying for hotel, restaurant, or other services for which compensation is customarily paid immediately upon the receiving of them, then you may infer that the services were obtained by deception, but you are not required to make that inference.]

# USE NOTE

The following terms are defined in other instructions:

"deception" – 11.81.900(b)

"force" – 11.81.900(b)

"knowingly" - 11.81.900(b)

"obtain" – 11.46.990

"services" - 11.81.900(b)

"threat" – 11.81.900(b)

For determination of value, see AS 11.46.980.

The language of the final bracketed paragraph is based on Brackhan v. State, 839 P.2d 414 (Alaska App. 1992).

Alaska Statute 11.46.295 provides that for purposes of considering prior convictions in prosecuting certain subsections of the theft or concealment of merchandise statutes, "a conviction for an offense under law or ordinance with similar elements" is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed.

Unless the parties stipulate to prior convictions, the state must prove them as essential elements to the jury. See Morgan v. State, 661 P.2d 1102 (Alaska App. 1983); Wortham v. State, 689 P.2d 1133 (Alaska App. 1984); and Azzarella v. State, 703 P.2d 1182 (Alaska App. 1985).

Bifurcation of the trial to separate issues regarding prior convictions is required unless the trial judge determines that evidence concerning the prior convictions is otherwise relevant and satisfies Evidence Rule 403. Ostlund v. State, 51 P.3d 938 (Alaska App. 2002).

Theft in the Second Degree is defined as theft of property worth less than $25,000 but more than $750 (except for recidivists); however, any value over $750 will suffice. (For recidivists, any value over $250 will suffice.) *See* AS 11.81.615.