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**DRAFT**

**THEFT**

**RSA 637:3: Theft by Unauthorized Taking or Transfer**

The defendant is charged with the crime of theft by unauthorized taking or transfer. The definition of this crime has [three] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant acted with a purpose to deprive another of the property; and
3. The property had a value in excess of: [\$1,000 class A felony][\\$500 class B felony][under \$500 misdemeanor]<sup>1</sup>.

These are the elements of the crime of theft by unauthorized taking. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property<sup>2</sup>.

“Property” means anything of value.<sup>3</sup>

“Purpose to deprive” means [a conscious object or intention to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost][to restore the property only upon payment of a reward or compensation][to dispose of the property under circumstances making it unlikely that the owner would recover it.]

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<sup>1</sup> RSA 637:2 V (a) [Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grad of the offense.]

<sup>2</sup> For further definition see RSA 637:2, II.

<sup>3</sup> For further definition see RSA 637 :2, I.

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**DRAFT**  
**RSA 637:5: Theft by Extortion**  
**(Class B felony regardless of value of property)**

The defendant is charged with the crime of theft by extortion. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant did so through extortion, that is he threatened [to cause physical harm to any person][to cause harm to property at any time][to subject any person to physical confinement or restraint]; and
3. The defendant acted with a purpose to deprive another of the property.

These are the elements of the crime of theft by extortion. Certain words in the definition need to be defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property<sup>2</sup>

“Property” means anything of value<sup>3</sup>

“Purpose to deprive” means [a conscious object or intention to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost][to restore the property only upon payment of a reward or compensation][to dispose of the property under circumstances making it unlikely that the owner would recover it.]

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<sup>1</sup> RSA 637:11, II(c)

<sup>2</sup> RSA 637:2, II

<sup>3</sup> RSA 637:2, I

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**DRAFT**  
**RSA 637:5. Theft by Extortion<sup>3\*</sup>**  
**(Level of offense depends on value of property)**

The defendant is charged with the crime of theft by extortion. The definition of this crime has [three][four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another;<sup>2, 3</sup> and
2. The defendant did so through extortion, in that he threatened <sup>4</sup>[If appropriate, instruct that threats need not be express, but may be implied in words and/or conduct. *State v. O'Flynn*, 126 N.H. 706 (1985).] to [insert the appropriate statutory variant from RSA 637:5, II(a) through ( i):
- [3. The defendant acted with a purpose to deprive another of the property.]
- [4. The property had a value<sup>5</sup> in excess of [\$1,000 Class A Felony][\$500 Class B Felony].]
- [5. The property was taken pursuant to a scheme or course of conduct.<sup>6</sup>]

These are the elements of the crime of theft by extortion. Certain words in the definition need to be defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property.<sup>7</sup>

“Property” means anything of value<sup>8</sup>.

“Purpose to deprive” means<sup>9</sup> a conscious object to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost] [to restore the property only upon payment of a reward or compensation] [to dispose of the property under circumstances making it unlikely that the owner would recover it].

The value of property may be determined by any reasonable standard.<sup>10</sup>

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<sup>32</sup> RSA 637:11

<sup>2</sup> RSA 637:2 I

<sup>3</sup> RSA 637:2 IV The State is not required to prove the identity of the owner. *State v. Stanley*, 132 N.H. 571 (1989).

<sup>4</sup> [If appropriate, instruct that threats need not be express, but may be implied in words and/or conduct. *State v. O'Flynn*, 126 N.H. 706 (1985).]

<sup>5</sup> Minimum dollar value of property is not an element for misdemeanor theft. RSA 637:11, II.

<sup>6</sup> Include this instruction in cases where separate thefts are aggregated pursuant to RSA 637:2, V(a). *State v. Sampson*, 120 N.H. 251 (1980); *State v. O'Flynn*, 126 N.H. 706 (1985); *State v. Weeks*, 137 N.H. 687 (1993).]

<sup>7</sup> RSA 637:2, II.

<sup>8</sup> RSA 637:2, I

<sup>9</sup> It is not necessary for the State to elect or prove which variant of purpose to deprive applied in this case, unless the indictment specifies one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 126 N.H. 514 (1985); *State v. Erickson*, 129 N.H. 515 (1987).

<sup>10</sup> *State v. Belanger*, 114 N.H. 616; *State v. Hammell*, 128 N.H. 787 (1986).