

FILING CHARGES FOR THEFT OF SERVICES: PROBABLY A VERY BAD IDEA

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A customer comes to your marina or shop asking you to repair his engine or boat. You get a signed work order and make all the necessary repairs. However, the customer never pays and leaves the boat in your yard. Or he pays part of the bill, you allow him to have his boat back - but he later refuses to pay the balance due. A friend suggests that you go to the local police station to file a Summons in the Municipal Court under New Jersey's criminal statute of theft of services.

For a person to be found guilty of the offense of theft of services, it must be proven beyond a reasonable doubt that the customer used deception or threats to obtain the valuable services. This means that your case might be very weak if the situation can be interpreted as a dispute.

If the customer is found guilty of theft of services the judge may require him to pay a fine which goes to the State (which does not help your bottom line) and might impose a jail sentence (if the value is high enough). In some cases, the judge might order restitution as well.

The risks you assume by following this route include the possibility of being sued by the customer if he is found not guilty. If the customer is found not guilty or if you voluntarily dismiss the Summons, the customer can then sue you in New Jersey's Superior Court, Law Division for claims which may include malicious prosecution, abuse of process, and defamation. If the customer is successful, you may be required to pay compensatory and punitive damages that could be very significant - likely many multiples of the sums that were in dispute.

So, even though your frustration and sense of justice might lead you to think filing criminal charges against a customer who refuses to pay is in your best interest, the risks and costs involved in filing a criminal complaint are most likely too great to make the process worthwhile. Of course, each case is unique and you must consult with your attorney before you take any action of this nature. He or she will be able to give you specific advice as to how your interests will be best served.