

INTRODUCTORY CHARGE TO ROBBERY
PENAL LAW 160.00

(Revised April 2003; June 2015; & Nov 2023)¹

[NOTE: The Introductory Charge to Robbery must be given once and prior to giving an instruction on one or more of the degrees of robbery.]

The (specify) count(s) [charges / charge] a degree of Robbery.

Under our law, Robbery is defined as forcible stealing. Thus, each degree of robbery, which I will define for you, will include "forcible stealing" as the first element of the crime.

The term "forcible stealing" has its own special meaning. I will give you the meaning of that term by first defining the term "stealing," which the law also calls "larceny," and then the term "forcible stealing."²

¹ The 2003 revision was for the purpose of conforming the definition of larceny with the revision of that definition made at the same time in the charges defining larceny. See, e.g., CJI2d [NY] Penal Law § 155.25.

The 2015 revision was for the purpose of simplifying the first two paragraphs of the charge and to incorporate the holding of *People v Smith*, 79 NY2d 309 (1992), explained in footnote four, in the definition of "forcibly steals."

The 2023 revision was for the purpose of inserting a definition of "immediately" in accord with the cases cited in footnote 5.

² The following summary definition of larceny should be used unless the circumstances of the case suggest the need for, or a party requests, a complete explanation of one or more of the terms used in the definition of larceny. In that event, you must use the standard charge on larceny or the appropriate portion thereof set forth in the charge of Petit Larceny (see *People v Blacknall*, 63 NY2d 912 [1984] [failure of the trial judge to include in the jury charge, as requested, the statutory definitions of 'deprive' and 'appropriate'...was reversible error in this attempted larceny case]).

A person **STEALS** property and commits **LARCENY** when with the intent to deprive another of property or to appropriate the property to himself or herself [or to a third person], such person wrongfully takes, obtains, or withholds property from the owner of the property.³

A person **FORCIBLY STEALS** property and commits robbery when, in the course of committing a larceny, such person uses or threatens the immediate use of physical force upon another person for the purpose of, meaning with the intent of ⁴:

Select appropriate alternative(s) and if multiple alternatives apply, renumber them accordingly:

[one:] compelling the owner of such property [or another person] to deliver up the property; [or]

[two:] preventing or overcoming resistance to the taking of the property; [or]

[three:] preventing or overcoming resistance to the retention of the property, immediately after the taking;

[Add if in issue: The term "IMMEDIATELY" does not require a specific time; it is sufficient that the larceny, that is, the taking of the property and the use of force were part of a continuous series of events even if separated by a brief period of

³ See Penal Law § 155.05 (1).

⁴ See *People v Smith*, 79 NY2d 309, 312-314 (1992) ("Logically, a defendant cannot act with a specified purpose unless an intent is formed to carry out that purpose. Thus, courts in this state have uniformly read the 'for the purpose' language as an intent element of the statute....thus, the plain language of the statute...establishes that 'for the purpose of' was intended by the legislature to be a mens rea element").

time and space.⁵ [or]

[four:] compelling the owner of such property to engage in other conduct which aids in the commission of the larceny.

INTENT means conscious objective or purpose. Thus, a person acts with the intent to engage in such conduct when that person's conscious objective or purpose is to do so.⁶

⁵ See *People v Dekle*, 83 AD2d 522, 522 [1st Dept 1981], *affd*, 56 NY2d 835 [1982] [the “jury was entitled to find that defendant's taking of the property was a continuous act, including removal of the item from the showcase, the removal of its price tags in the adjacent department and its removal from the store, and that defendant's threat to use the knife (against store detectives who had followed him on his leaving the store and had confronted him some distance from the store) was a threat of ‘the immediate use of physical force’ so shortly after the taking as to constitute the use of physical force ‘immediately after the taking’ to overcome the victim's resistance to the defendant's retention of the property”]; *McTiernan, v Tedford, Supt., Adirondack Correctional Facility*, 2023 WL 3407600 [SDNY May 12, 2023] [“Under New York law, robbery requires an ‘immediate use’ or threatened immediate use of ‘physical force’ ‘[n]o specific time is required’ for the jury to find this element of the crime to have been met. . . . Appellate courts in New York have upheld robbery convictions where the larceny and the use of force were separated by a brief period of time but were part of a “continuous series of events” . . . see, e.g., *People v. Gordon*, 23 N.Y.3d 643, 652–53 (2014)”]; *People v Jones*, 282 AD2d 382, 382 [1st Dept 2001] [“Although the actual taking ended after defendant departed from the bus with the property, the jury could have reasonably concluded that defendant's threat to use a brick to hit a pursuing employee of the bus company, which occurred within minutes and only several blocks away, took place ‘so shortly after the taking as to constitute the use of physical force ‘immediately after the taking’ to overcome . . . resistance to the defendant's retention of the property”]; *People v Thomas*, 226 AD2d 120 [1st Dept 1996] the evidence “showed defendant's use of force occurred ‘immediately’ after he shoplifted the merchandise . . . notwithstanding that the altercation occurred some 10 minutes after the taking and some four blocks away. The store security guard testified that he pursued defendant immediately after alerting other employees and apprehended him as soon as he could”]; *People v Kellam*, 189 AD2d 1008, 1009-10 [3d Dept 1993].

⁵ See Penal Law § 15.05 (1).

I will now define for you the degree(s) of Robbery charged in this case, specifically (*list the crime[s] of robbery that is/are being submitted to the jury*):