

**GRAND LARCENY IN THE THIRD DEGREE**  
**(Automated teller machine)**  
**Penal Law § 155.35 (2)**  
**(Committed on or after Nov. 1, 2010)**

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*NOTE: The definition of what constitutes larceny encompasses, and is limited to, the theories of larceny specified in subdivision two of Penal Law § 155.05. People v Foster, 73 NY2d 596 (1989). Those theories of larceny are imbedded in the definition of the term “wrongfully take, obtain, or withhold.” The most common theory of larceny expressed in the definition of that term is larceny by trespassory taking. Thus, the following charge is premised on a theory of larceny that is limited to larceny by trespassory taking. The definition of each additional theory of larceny is included in the Additional Charges section that may be found at the end of the charges for this article. If the theory of larceny is other than or in addition to larceny by trespassory taking, the appropriate definition or definitions for “wrongfully take, obtain, or withhold” can be substituted or added in this charge at the point where that term is defined.*

The (*specify*) count is Grand Larceny in the Third Degree.

Under our law, a person is guilty of Grand Larceny in the Third Degree when he or she steals property and when the property is an automated teller machine or the contents of an automated teller machine.

A person STEALS PROPERTY and commits larceny when, with the intent to deprive another of property or to appropriate the same to himself or herself [*or to a third person*], such person wrongfully takes, obtains, or withholds such property from an owner of the property.<sup>1</sup>

The following terms used in that definition have a special

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<sup>1</sup> See Penal Law § 155.05 (1).

meaning:

OWNER means a person having a right to possession to the property superior to that of the person who takes, obtains or withholds it.<sup>2</sup>

INTENT means a conscious objective or purpose. Thus, a person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [or to a third person] when such person's conscious objective or purpose is:

(1) to withhold the property or cause it to be withheld permanently,<sup>3</sup> or

(2) to exercise control over the property, [or to aid a third person to exercise control over it], permanently,<sup>4</sup> or

(3) to dispose of the property either for the benefit of himself or herself [or a third person], or, under such circumstances as to render it unlikely that an owner will

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<sup>2</sup> See Penal Law § 155.00 (5). Also see that section for special definitions of "owner" to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

<sup>3</sup> In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word "permanently"; namely: "or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person."

<sup>4</sup> In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word "permanently"; namely: "or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person."

recover such property.<sup>5</sup>

*NOTE: The next definition is the definition of “wrongfully takes, obtains, or withholds,” property. As explained at the beginning of the charge, the most common theory of larceny expressed in the definition of that term is larceny by trespassory taking. Thus, the following definition is premised on a theory of larceny that is limited to larceny by trespassory taking. The definition of each additional theory of larceny is included in the Additional Charges section that may be found at the end of the charges for this article. If the theory of larceny is other than or in addition to larceny by trespassory taking, the appropriate definition or definitions for “wrongfully take, obtain, or withhold” can be substituted or added here.*

A person WRONGFULLY TAKES, OBTAINS, OR WITHHOLDS PROPERTY from an owner when

that person takes property without an owner's consent, and

exercises dominion and control over that property for a period of time, however temporary,

in a manner wholly inconsistent with the rights of the owner.

The exercise of dominion and control of the property includes a requirement that the property be intentionally moved, at least slightly, by the taker.<sup>6</sup>

Thus, under the law's definition of larceny it is not necessary that the owner be in fact deprived of property permanently or that the property be in fact appropriated

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<sup>5</sup> See Penal Law §§ 15.05 (1); 155.00 (3); 155.03 (4).

<sup>6</sup> See *People v Olivo*, 52 NY2d 309, esp 318, n.6 (1981); *People v Alamo*, 34 NY2d 453 (1974).

permanently. The crime of larceny is complete when a person has the intent to deprive or appropriate the property permanently, and that person wrongfully takes the property for any period of time, however temporary.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following two elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), wrongfully took, obtained, or withheld [an automated teller machine or] the contents of an automated teller machine from its owner;
2. That the defendant did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person].

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.