

AGGRAVATED GRAND LARCENY
(Automated teller machine; prior conviction)
Penal Law § 155.43
(Committed on or after Nov. 1, 2010)

No charge has been prepared.

However, the definition of this crime is the same as the definition in Penal Law § 155.35 (2) except for the instant crime there is the added element of the defendant having been previously convicted of grand larceny in the third degree within the previous five years.

Thus, the charge for the lesser included offense of “grand larceny in the third degree,” pursuant to Penal Law § 155.35 (2), can be utilized, and if necessary, as explained below, the additional element related to the defendant’s previous conviction of “grand larceny in the third degree” within the previous five years may be added.

The additional element must be pleaded in a “special information” pursuant to CPL 200.60. *See People v Cooper*, 78 NY2d 476 (1991). Thereafter that statute directs that the defendant must be arraigned upon that special information. And, if, upon such arraignment, the defendant admits that element, the court must not make any reference to it in the definition of the crime or in listing its elements. But, if the defendant denies that element or remains mute, the court must add this element to the definition of the crime and the list of elements, as follows:

At the end of the definition of the crime in the charge for Penal Law § 155.35 (2) add: “and has been previously convicted of grand larceny in the third degree within the previous five years.”

Then, add a third element to that charge:

“3. That the defendant has been previously convicted of grand larceny in the third degree within the previous five years.”