

GRAND LARCENY FOURTH DEGREE
(Theft of specific property)
(E Felony)
PENAL LAW § 155.30

Penal Law § 155.30 (2), (3), (7), & (8)
(Committed on or after Nov. 1, 1986)

Penal Law § 155.30 (4)
(Committed on or after Jan. 1, 1988)

Penal Law § 155.30 (9)
(Committed on or after Nov. 1, 1990)

Penal Law § 155.30 (10)
(Committed on or after Nov. 1, 1992)

Penal Law § 155.30(11)
(Committed on or after Oct. 1, 2005)

(Revised July, 2009)¹

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,

¹ The purpose of the revision was to add subdivision 11 of Penal Law § 155.30.

obtain, or withhold” can be substituted or added, in this charge at the point where that term is defined.

The ___ count is Grand Larceny in the Fourth Degree

Under our law, a person is guilty of Grand Larceny in the Fourth Degree when such person steals property and when the property consists of:

[NOTE: Select appropriate paragraph:

a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant;²

secret scientific material;³

a credit card⁴ or a debit card;⁵

one or more firearms, rifles or shotguns;⁶

a motor vehicle having a value in excess of one hundred dollars;⁷

² Penal Law § 155.30(2).

³ Penal Law § 155.30(3). For the definition of “secret scientific material” see Penal Law § 155.00(6).

⁴ Penal Law § 155.30(4), effective September 1, 1969. For the definition of “credit card,” see Penal Law § 155.00(7).

⁵ Penal Law § 155.30(4), effective January 1, 1988. For the definition of “debit card,” see Penal Law § 155.00(7-a).

⁶ Penal Law § 155.30(7), effective September 1, 1969. For the definition of a “firearm, rifle or shotgun”, see Penal Law § 265.00.

⁷ Penal Law § 155.30(8), effective November 1, 1986. For the definition of “motor vehicle,” see Vehicle and Traffic Law § 125.

a scroll, religious vestment, vessel or other item of property having a value of at least one hundred dollars kept for or used in connection with religious worship in any building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law;⁸

an access device which the person intends to use unlawfully to obtain telephone service;⁹

anhydrous ammonia or liquified ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquified ammonia gas to manufacture methamphetamine.¹⁰

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.¹¹

Some of the terms used in this definition of “steals property” have their own special meaning in our law. I will now give you the meaning of the terms: “property,” “owner,” “intent to deprive or appropriate,” and “wrongfully takes.”

PROPERTY means (name the property in issue and give its statutory definition if any).

OWNER means a person having a right to possession to

⁸ Penal Law § 155.30(9), effective on or after November 1, 1990.

⁹ Penal Law § 155.30(10), effective on or after November 1, 1992. For the definition of “access device” see Penal Law § 155.00(7-c).

¹⁰ Penal Law § 155.30(11), effective on or after October 1, 2005.

¹¹ Penal Law § 155.05(1).

the property superior to that of the person who takes it.¹²

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,¹³ *or*

(2) to exercise control over the property, [*or to aid a third person to exercise control over it*], permanently,¹⁴ *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 recover such property.¹⁵

¹² 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.

¹³ In the typical larceny by trespassory taking 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.”

¹⁴ In the typical larceny by trespassory taking 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.”

¹⁵ See Penal Law §§ 15.05(1); 155.00(3); 155.03(4).

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 owner's rights of the owner.

[NOTE: If the property allegedly stolen was not a vehicle, add the following paragraph:

The exercise of dominion and control of the property includes a requirement that the property be intentionally moved, at least slightly, by the taker.^{16]}

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

¹⁶ See *People v. Olivo*, 52 NY2d 309, esp 318, n 6 (1981). Movement of the property is not required where the property is a vehicle which is capable of movement. *Id.*, *People v. Alamo*, 34 NY2d 453 (1974). If the property allegedly stolen was a vehicle which was capable of movement but was not moved, the following may, if applicable, be added: “A motor vehicle when activated comes within the dominion and control of the operator, even if the motor vehicle is not moved.” *People v. Alamo*, *supra*.

the property be in fact appropriated 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 the evidence in the case beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), wrongfully took, obtained, or withheld (specify property) 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*]; and
3. That the property consists of: (insert the exact language of the subdivision of the statute with respect to the property in issue).

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Grand Larceny in the ___ Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Grand Larceny in the _____ Degree as charged in the ___ count.