

## LARCENY FROM THE PERSON

The defendant is charged with larceny from the person. Section 25(b) of chapter 266 of our General Laws provides as follows:

“Whoever commits larceny  
by stealing from the person of another  
shall be punished . . . .”

Larceny from the person is the wrongful taking of personal property from the person of another, or from the immediate area of control of another, with the intent to deprive that person of such property permanently.

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

*First:* That the defendant took and carried away property;

*Second:* That the property was owned or possessed by someone other than the defendant;

*Third:* That the defendant took the property from the person of someone who owned or possessed it

**If relevant:** or from such a person's area of control in his or her presence;

and *Fourth*: That the defendant did so with the intent to deprive that person of the property permanently.

See the definitions of "took and carried away," "property," "of another," and "intent to deprive permanently" in the supplemental instructions to Instruction 8.520 (*Larceny by Stealing*). See also Instruction 3.120 (*Intent*).

*Commonwealth v. Glowacki*, 398 Mass. 507, 514, 499 N.E.2d 290, 294 (1986) (larceny from the person is lesser included offense of robbery); *Commonwealth v. Stewart*, 365 Mass. 99, 108, 309 N.E.2d 470, 476 (1974) (in robbery prosecution, element of larceny "from the person" includes the common law concept of larceny in the victim's presence); *Commonwealth v. Jones*, 362 Mass. 83, 86-87, 283 N.E.2d 840, 843-844 (1972) (same; offense distinguished from robbery by absence of use or threat of force); *Commonwealth v. Subilosky*, 352 Mass. 153, 166, 224 N.E.2d 197, 206 (1967) (property need only be taken from victim's area of control in his presence; here, theft from cash drawers supervised by bank manager); *Commonwealth v. Cline*, 213 Mass. 225, 225-226, 100 N.E. 358, 359 (1913) (unnecessary to allege victim's name or to allege description or value of property); *Commonwealth v. Luckis*, 99 Mass. 431, 433 (1868) (wallet need not be removed from victim's pocket, but defendant "must for an instant at least have had perfect control of the property"); *Commonwealth v. Burke*, 12 Allen 182, 183 (1866) (value of property is not an element); *Commonwealth v. McDonald*, 5 Cush. 365, 367 (1850) (putting hand into empty pocket will support conviction for attempted larceny from person); *Commonwealth v. Diamond*, 5 Cush. 235, 237-238 (1849) (offense may be committed by fraud rather than stealth). See *Commonwealth v. Acevedo*, 25 Mass. App. Ct. 1114, 519 N.E.2d 1371 (No. 87-628, March 2, 1988) (unpublished opinion under Appeals Court Rule 1:28) (theft of package set on ground while victim opened auto trunk is "from the person").

NOTES:

1. **Pickpocketing and purse snatching.** An ordinary pickpocketing usually is a larceny from the person rather than an unarmed robbery, even if the victim realizes what is happening, because no intimidation is involved and the "force" utilized is not the kind of violence necessary for robbery. *Commonwealth v. Davis*, 7 Mass. App. Ct. 9, 11, 385 N.E.2d 278, 279-280 (1979). But a purse snatching of which the victim is aware involves sufficient force to constitute robbery, even if done so quickly as to deny the victim any opportunity to resist. *Jones*, 362 Mass. at 88-89, 283 N.E.2d at 844-845. The same is true of rolling a drunk. *Commonwealth v. Smith*, 21 Mass. App. Ct. 619, 623-624, 489 N.E.2d 203, 205-206 (1986), *aff'd*, 400 Mass. 1002, 508 N.E.2d 598 (1987).

2. **Value of property.** Note that, unlike larceny offenses prosecuted under G.L. c. 266, § 30, whether the stolen property is worth more or less than \$250 is irrelevant to punishment in a prosecution under G.L. c. 266, § 25.

3. **Victim 65 years or older.** Larceny from the person of a victim who is 65 years or older (G.L. c. 266, § 25[a]) is an aggravated form of this offense. The model instruction may be adapted by adding as a fifth element that the victim was 65 years of age or older. The jury may consider the victim's physical appearance as one factor in determining age, but appearance alone is not sufficient evidence of age unless the victim is of "a marked extreme" age, since "[e]xcept at the poles, judging age on physical appearance is a guess . . ." *Commonwealth v. Pittman*, 25 Mass. App. Ct. 25, 28, 514 N.E.2d 857, 859 (1987).