

## Unarmed Robbery<sup>1</sup>

The [first] indictment charges DFT with unarmed robbery of AVM on or about [Date]. To prove this offense, the Commonwealth must prove four elements beyond a reasonable doubt:

1. DFT took money [property]<sup>2</sup> from AVM or from his/her immediate control;
2. DFT either applied force to AVM's body,<sup>3</sup> or put him/her in fear by threatening words or gestures;
3. The force, or the threatening words or gestures, were the cause of DFT obtaining possession of the money [property]; and
4. DFT intended to steal the money [property].

**First**, the Commonwealth must prove that DFT took money [property] from AVM or from AVM's immediate control. [ *<If the evidence presents a question about whether the money or property was taken, include:>*

A person "takes" money [property] when he transfers money [property] from the alleged victim's control to his own. It does not matter how far he carried the money [property], as long as DFT transferred possession or control from AVM to himself.<sup>4</sup> ]

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<sup>1</sup> G.L. c. 265, § 19(b) states: "Whoever, not being armed with a dangerous weapon, by force and violence, or by assault and putting in fear robs, steals or takes from the person of another, or from his immediate control, money or other property . . . shall be punished."

<sup>2</sup> If both money and property are at issue, the judge should globally replace this with "money or property" throughout this instruction.

<sup>3</sup> The traditional phrase "force and violence" is redundant and has been omitted. See *Commonwealth v. Benitez*, 464 Mass. 686, 689–690 (2013), citing *Commonwealth v. Rogers*, 459 Mass. 249, 252 n.4, *cert. denied*, 565 U.S. 1080 (2011) ("crime of armed robbery" required "Commonwealth to prove that the defendant or [co-defendant] . . . either applied actual force or violence to the body of the person identified in the indictment, or by words or gestures put him in fear") (emphasis added).

<sup>4</sup> *Commonwealth v. Flowers*, 1 Mass. App. Ct. 415, 418–419 (1973).

AVM did not have to own or physically possess the money [property]. The money [property] was within AVM's "immediate control" if s/he could have readily possessed it physically, but violence or fear overcame his/her will or ability to do so. [The value of the property does not matter as long as it has some value.]

**Second**, the Commonwealth must prove that DFT either applied force to AVM or put him/her in fear by threatening words or gestures. If he used actual force, the Commonwealth must prove that he applied that force to AVM's body. The amount of force does not matter as long as it was enough for DFT to obtain AVM's money [property] against his/her will. When a person uses actual force, the Commonwealth does not have to prove that the person put the alleged victim in fear.

If DFT threatened AVM by words or gestures, then, to prove that he used force, the Commonwealth must prove both that AVM was aware of the threat and that s/he was put in fear. [*<If threat is made to someone other than AVM, include.>* The threatening words or gestures do not have to be directed at AVM, as long as AVM was aware that they were directed at another person and was thereby put in fear.]

**Third**, the actual force, or the threatening words or gestures, must be the cause of DFT obtaining possession of the money [property].

**Fourth**, the Commonwealth must prove that DFT intended to steal the money [property]. The Commonwealth must prove that, at the time he took the money [property] against AVM's will, DFT intended to deprive AVM of it permanently. Intent is a state of mind. It means a person's purpose or objective. [DFT] acted with an intent to deprive [AVM] of possession of an object permanently, if he had the specific purpose or objective of permanently depriving [AVM] of possession of the object when he did the act.

## Unarmed Robbery of a Person over 60 Years Old<sup>5</sup>

*< Unarmed robbery of a person over 60 years old has one element in addition to those required for unarmed robbery. Add the following element to the instructions for unarmed robbery:>*

5. At the time, AVM was 60 years old or older.<sup>6</sup>

*<Add the following explanation of the additional element:>*

The **fifth element**—that AVM was at least 60 years old at the time of the alleged robbery—is self-explanatory.

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<sup>5</sup> G.L. c. 265, § 19(a) states: "Whoever, not being armed with a dangerous weapon, by force and violence, or by assault and putting in fear robs, steals or takes from the person of a person sixty years or older, or from his immediate control, money or other property . . . shall be punished."

<sup>6</sup> Because of this additional element, unarmed robbery of a person 60 years old or older is not a lesser included offense of armed robbery.