

9 GCA CRIMES AND CORRECTIONS
CH. 40 ROBBERY

CHAPTER 40
ROBBERY

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§ 40.10. First Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the first degree* if, in the course of committing a theft, he:

- (1) attempts to kill another; or
- (2) intentionally inflicts or attempts to inflict serious bodily injury upon another.

(b) Robbery in the first degree is a felony of the first degree. In the case of robbery in the first degree, the court shall impose a sentence of imprisonment of a minimum term of ten (10) years and may impose a maximum of up to twenty-five (25) years; the minimum term imposed shall not be suspended nor probation be imposed in lieu of said minimum term nor shall parole, work release or educational programs outside the confines of prison be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such time of imprisonment.

SOURCE: G.P.C. §§ 211-213; M.P.C. 222.1; Cal. § 1016 (1971); Mass. ch. 266, § 16; N.J. 2C:19-1. Subsection (b) amended by P.L. 19-6:9; as amended by P.L. 14-143.

CROSS-REFERENCES: §§ 40.20 and 40.30 (2nd and 3rd degree robbery); § 16.10 (serious bodily injury).

COMMENT: Three (3) degrees of robbery are created by this Section, eliminating the former crimes of robbery and "armed robbery." Robbery consists of theft and actual or threatened injury. While the traditional kind of robbery includes the taking from the "person or immediate presence," this Chapter will also apply, for example, where the offender threatens to shoot the victim in order to compel him to telephone directions for the disposition of property elsewhere.

The degrees of robbery relate to the seriousness of the injury threatened or inflicted upon the victim. Unlike the Model Code, but consistent with former law, use of force or threatened imminent use of force constitutes robbery even though the personal injury caused or threatened does not amount to "serious bodily injury." See § 16.10 (serious bodily injury defined); § 40.30 (third degree robbery). Armed robbery is no longer a separate aggravating factor.

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§ 40.20. Second Degree Robbery; Defined & Punished.

(a) A person is guilty of *robbery in the second degree* if, in the course of committing a theft, he:

- (1) inflicts serious bodily injury upon another; or
- (2) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or
- (3) is armed with or displays what appears to be explosives or a deadly weapon. "Deadly Weapon" has the meaning provided by § 16.10.

(b) Robbery in the second degree is a felony of the second degree. In the case of robbery of the second degree as a felony of the second degree, the court shall impose a sentence of imprisonment of a minimum term of five (5) years and may impose a maximum term of up to ten (10) years; the minimum term imposed shall not be suspended nor may probation be imposed in lieu of the minimum term nor shall parole or work release be granted before completion of the minimum term. The sentence shall include a special parole term of not less than three (3) years in addition to such term of imprisonment.

SOURCE: See § 40.10. Enacted 1977; Subsection (b) amended by P.L. 14-143, eff. 10/01/78.

CROSS-REFERENCES: See § 40.10.

§ 40.30. Third Degree Robbery; Defined & Punished.

(a) A person is guilty of robbery in the third degree if, in the course of committing a theft, he:

- (1) uses force against another with intent to overcome his physical resistance or physical power of resistance; or
- (2) threatens another with or intentionally puts him in fear of the imminent use of force against the person of anyone with intent to compel acquiescence to the taking of or escaping with property.

(b) Robbery in the third degree is a felony of the third degree.

SOURCE: See § 40.10.

CROSS-REFERENCES: § 43.20(b) -Extortion.

COMMENT: There is some overlap here with § 43.40 - Extortion. However, the latter does not require "imminent" force and where the amount taken is relatively small (less than Five Hundred Dollars), extortion is rated as misdemeanor.

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§ 40.40. Definition of an Act.

An *act* occurs in the course of committing a theft if it occurs in an attempt to commit theft or in flight after the attempt or commission.

SOURCE: See § 40.10.

CROSS-REFERENCES: § 37.20(b)(2) -Definition including flight after burglary.

COMMENT: This Section, together with § 37.20(b)(2) includes as part of a theft, or burglary, the flight of the thief, robber or burglar after the offense. This is unusual insofar as it permits a classification of a crime to depend upon acts done after the theft, or burglary has been accomplished. However, the thief's or burglar's willingness to use force against those who would restrain him in flight strongly suggests that he would have employed it, or did employ it, to effect the theft or burglary in the first place.

§ 40.50. No Defense of "Claim of Right".

It is no defense to a prosecution of robbery in any of its degrees that there was no theft because the taking was under a claim of right.

SOURCE: New section.

CROSS-REFERENCES: § 43.25 - Affirmative Defenses to Theft.

COMMENT: Since the essence of robbery is the threat to, or invasion of, the victim's personal security, basis exists for a conviction of robbery even through the defendant mistakenly, although in good faith, believes that he had a right to the property taken.
