

## Robbery

Robbery is a serious crime that involves both theft and violence—or at least the threat of violence. Unlike burglary, robbery involves the offender's immediate use of force or fear to take personal property directly from the victim. A classic example of robbery involves the holdup of a convenience store. A robber pulls a gun (thus using force or fear, even if the gun is unloaded or is actually just a toy gun) and demands money from the clerk. Another example of robbery is purse snatching.

Criminal statutes often define robbery differently and assign different punishment depending on the seriousness of the offense. Robbery under PC 211 carries felony penalties. The precise consequence of a robbery conviction depends on whether you committed robbery of the first degree or of the second degree. A California robbery is considered robbery of the first degree if it is:

- Robbery of any driver or passenger on a bus, taxi streetcar, subway, cable car, etc.,
- Robbery that takes place in an inhabited structure, or
- Robbery of any person who has just used an ATM or is still in the vicinity of the ATM.

First-degree robbery leads to a prison sentence of between three and nine years and/or a fine of up to \$10,000. Second-degree robbery is two, three, or five years in prison and/or a fine of up to \$10,000. Robbery is a “strike” offense within the meaning of the California three strikes law.

### What Must the Prosecutor Prove in a Robbery Case?

Under PC 211, the prosecutor must prove the following beyond a reasonable doubt:

- The defendant took property that was not his/her own;
- The property was taken from another person’s possession and immediate presence;
- The property was taken against the person’s will;
- The defendant used force or fear to take the property or to prevent the person from resisting; AND
- When the defendant used force or fear to take the property, he/she intended to deprive the owner of it permanently or to remove it from the owner’s possession for so an extended period that the owner would be deprived of a major portion of the value or enjoyment of the property.

To parse the language of this definition of robbery, it is necessary to clarify a few of the

terms and phrases.

- Taking of property: This requires more than just possessing the property, the property also must be moved by the accused even if it is only to a miniscule degree.
- Immediate presence or possession: Because the statute refers to possession rather than ownership, a patron or employee can be a victim of robbery in a convenience store robbery. The victim must have either actual or constructive possession of the property. The property must be within range for the victim to control, inspect or reach for the property.
- Against the alleged victim's will: This simply means that the victim cannot have consented to the accused taking of the property.
- Fear or force: This standard only requires that the degree of force or fear be sufficient that the victim complies.

### **Defenses to a Charge of Robbery**

Sanford and Christy Horowitz are very experienced in defending against the crime of robbery. The specific defenses available in a robbery depend on the unique facts and circumstances of each case. Fortunately, there are a variety of legal defenses to robbery charges. Some specific robbery defenses that Sanford & Christy Horowitz might raise include the following:

- Absence of force or fear: If no force or fear is used to take the property, the offense is not a robbery. However, another offense might be charged depending on the facts.
- Misidentification: An eyewitness might incorrectly identify the accused, so it is necessary to challenge the identification and search for other witnesses.
- No intention to keep/take property: While you might use force or fear for some purpose other than to take the property of another, this is not sufficient intent to constitute robbery even if you end up keeping the property. If you use force to throw someone out of your home, you cannot be found to have committed robbery because the person leaves his or her backpack. Again, this does not constitute robbery even if you decide not to return the backpack.
- Honest claim of right: If you honestly believe that you own or have a right of possession of the property, this is a legitimate defense to robbery. All that is required is that you have a subjective belief that you have a right to the property even if that belief is not reasonable.

Whether you are merely the target of an investigation or you have been formally charged with a crime, the consequences of a conviction can turn your life upside down. If you have been arrested, you should immediately assert your right to a criminal defense attorney; do not talk to the police or the prosecutor without your lawyer. Early intervention by skilled criminal defense lawyers, Sanford and Christy Horowitz, means you have someone on your side, protecting your constitutional rights and building an effective defense strategy.