

174.1 Robbery: s 409

174.1 Legislation

[Last reviewed: February 2025]

Criminal Code

[Section 391](#) – Punishment of stealing

[Section 409](#) – Definition of robbery

[Section 411](#) – Punishment of robbery

174.2 Commentary

[Last reviewed: February 2025]

The Defendant must have:

- (1) stolen anything;
- (2) and at or immediately before or immediately after the time of stealing it;
- (3) used or threatened to use actual violence to any person or property;
- (4) in order to obtain the thing stolen or to prevent resistance to its being stolen.

See s 391 of the *Criminal Code* for the definition of ‘stealing’. See also **Chapter 179 – Stealing**.

Meaning of ‘actual violence’

Any degree of violence is sufficient (*R v Jerome and McMahon* [1964] Qd R 595, [601]). The fear of violence without a threat is not sufficient (*R v Parker* [1919] NZLR 365).

Use of violence means that some degree of force is used. It means no more than physical force which is real and not merely threatened or contemplated (*R v De Simoni* (1981) 147 CLR 383).

Circumstances of aggravation

Circumstances of aggravation are listed in s 411(2). The offence is also a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable. See Part 9D, Division 1 of the *Penalties and Sentences Act 1992* (Qld) for relevant definitions.

Alternative verdicts

Stealing is open as an alternative verdict on a charge of robbery; however assault is not. Attempted robbery is a substantive offence under s 412.

174.3 Suggested Direction

[Last reviewed: February 2025]

The prosecution must prove beyond reasonable doubt that:

1. **The Defendant stole something.** [Identify the thing alleged to have been stolen and refer to **Chapter 179 – Stealing** for a direction on the elements of stealing].
2. **At the time of, or immediately before, or immediately after, stealing it, the Defendant used or threatened to use actual violence to any person or property.**

Any degree of violence is sufficient.

(Where appropriate): **use of violence means that some degree of force is used.**

3. **The use or threat of violence must have been done in order to obtain the thing stolen or to prevent or overcome resistance to it being stolen.**

(Refer to any circumstances of aggravation, where relevant).