

ASSEMBLY, No. 1952

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblyman DiMaio, Assemblywoman Handlin, Assemblymen DeAngelo, Coughlin, Assemblywomen N.Munoz, Jimenez, Assemblymen Lagana, Wimberly, Clifton, Dancer, Benson, Rooney, Thomson and Harold J. Wirths

SYNOPSIS

Creates first degree crime of home invasion, makes crime subject to No Early Release Act, and upgrades burglary of a residence to a second degree crime under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/6/2018)

1 AN ACT concerning home invasion, supplementing Title 2C of the
2 New Jersey Statutes, and amending N.J.S.2C:18-2 and P.L.1997,
3 c.117.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. A person is guilty of home invasion if he
9 enters or surreptitiously remains in the residential dwelling of
10 another, knowing that he is not licensed or privileged to do so, with
11 the intent to commit a robbery, as defined in N.J.S.2C:15-1, any
12 crime of the first or second degree, or any crime or offense set forth
13 in chapters 13 and 14 of Title 2C of the New Jersey Statutes, at a
14 time when a person or persons, other than persons acting in concert
15 with the actor, are present and the actor:

16 (1) uses force or inflicts bodily injury on a person in the
17 residential dwelling;

18 (2) threatens a person in the residential dwelling with, or
19 purposely or knowingly puts him in fear of, immediate bodily
20 injury;

21 (3) commits, attempts to commit, or threatens to commit any
22 crime of the first or second degree or any crime or offense set forth
23 in chapters 13 and 14 of Title 2C of the New Jersey Statutes; or

24 (4) is armed with or threatens the use of a deadly weapon or
25 explosive.

26 b. Home invasion is a crime of the first degree.
27 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 or
28 any other law to the contrary, a person convicted under this section
29 shall be sentenced to a term of imprisonment between 10 and 30
30 years.

31 c. As used in this section:

32 “Bodily injury” and “deadly weapon” shall have the meaning set
33 forth in N.J.S.2C:11-1.

34 “Explosive” shall have the meaning set forth in subsection e. of
35 N.J.S.2C:39-1.

36 “Residential dwelling” means a permanent structure intended as
37 and currently being utilized as a residence by a private person or
38 persons.

39

40 2. N.J.S.2C:18-2 is amended to read as follows:

41 2C:18-2. Burglary. a. Burglary defined. A person is guilty of
42 burglary if, with purpose to commit an offense therein or thereon
43 he:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (1) Enters a research facility, structure, or a separately secured
2 or occupied portion thereof unless the structure was at the time
3 open to the public or the actor is licensed or privileged to enter;

4 (2) Surreptitiously remains in a research facility, structure, or a
5 separately secured or occupied portion thereof knowing that he is
6 not licensed or privileged to do so; or

7 (3) Trespasses in or upon utility company property where public
8 notice prohibiting trespass is given by conspicuous posting, or
9 fencing or other enclosure manifestly designed to exclude intruders.

10 b. Grading. Burglary is a crime of the second degree if in the
11 course of committing the offense, the actor:

12 (1) Purposely, knowingly or recklessly inflicts, attempts to
13 inflict or threatens to inflict bodily injury on anyone; **[or]**

14 (2) Is armed with or displays what appear to be explosives or a
15 deadly weapon; or

16 (3) Enters a residential dwelling or surreptitiously remains in the
17 dwelling when a resident or any other person, other than a person
18 acting in concert with the actor, is present in the dwelling.

19 Otherwise burglary is a crime of the third degree. An act shall
20 be deemed "in the course of committing" an offense if it occurs in
21 an attempt to commit an offense or in immediate flight after the
22 attempt or commission.

23 As used in this section, the term "residential dwelling" means a
24 permanent structure intended as and currently being utilized as a
25 residence by a private person or persons.

26 For the purposes of paragraph (3) of this subsection, it is not an
27 element of the offense that the actor knew that any other person was
28 present in the dwelling when the actor entered or surreptitiously
29 remained in the dwelling, and it shall not be a defense that the actor
30 did not know that any other person was present in the residential
31 dwelling when the actor entered or surreptitiously remained in the
32 dwelling.

33 (cf: P.L.2009, c.283, s.2)

34

35 3. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
36 read as follows:

37 2. a. A court imposing a sentence of incarceration for a crime
38 of the first or second degree enumerated in subsection d. of this
39 section shall fix a minimum term of 85% of the sentence imposed,
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section
42 shall be fixed as a part of every sentence of incarceration imposed
43 upon every conviction of a crime enumerated in subsection d. of
44 this section, whether the sentence of incarceration is determined
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
46 other provision of law, and shall be calculated based upon the
47 sentence of incarceration actually imposed. The provisions of
48 subsection a. of this section shall not be construed or applied to

1 reduce the time that must be served before eligibility for parole by
2 an inmate sentenced to a mandatory minimum period of
3 incarceration. Solely for the purpose of calculating the minimum
4 term of parole ineligibility pursuant to subsection a. of this section,
5 a sentence of life imprisonment shall be deemed to be 75 years.

6 c. Notwithstanding any other provision of law to the contrary
7 and in addition to any other sentence imposed, a court imposing a
8 minimum period of parole ineligibility of 85 percent of the sentence
9 pursuant to this section shall also impose a five-year term of parole
10 supervision if the defendant is being sentenced for a crime of the
11 first degree, or a three-year term of parole supervision if the
12 defendant is being sentenced for a crime of the second degree. The
13 term of parole supervision shall commence upon the completion of
14 the sentence of incarceration imposed by the court pursuant to
15 subsection a. of this section unless the defendant is serving a
16 sentence of incarceration for another crime at the time he completes
17 the sentence of incarceration imposed pursuant to subsection a., in
18 which case the term of parole supervision shall commence
19 immediately upon the defendant's release from incarceration.
20 During the term of parole supervision the defendant shall remain in
21 release status in the community in the legal custody of the
22 Commissioner of the Department of Corrections and shall be
23 supervised by the State Parole Board as if on parole and shall be
24 subject to the provisions and conditions of section 3 of P.L.1997,
25 c.117 (C.30:4-123.51b).

26 d. The court shall impose sentence pursuant to subsection a. of
27 this section upon conviction of the following crimes or an attempt
28 or conspiracy to commit any of these crimes:

- 29 (1) N.J.S.2C:11-3, murder;
- 30 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 31 (3) N.J.S.2C:11-5, vehicular homicide;
- 32 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 33 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),
34 disarming a law enforcement officer;
- 35 (6) N.J.S.2C:13-1, kidnapping;
- 36 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 37 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
38 subsection c. of N.J.S.2C:14-2, sexual assault;
- 39 (9) N.J.S.2C:15-1, robbery;
- 40 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 41 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
42 arson;
- 43 (12) N.J.S.2C:18-2, burglary;
- 44 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 45 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
46 booby traps in manufacturing or distribution facilities;
- 47 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 48 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

1 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
2 possessing chemical weapons, biological agents or nuclear or
3 radiological devices; **[or]**

4 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
5 degree; or

6 (19) P.L. , c. (C.) (pending before the Legislature as
7 this bill), home invasion.

8 e. (Deleted by amendment, P.L.2001, c.129).

9 (cf: P.L.2013, c.136, s.4)

10
11 4. This act shall take effect immediately.

12
13
14 STATEMENT

15
16 This bill creates the first degree crime of home invasion and makes
17 this crime subject to the No Early Release Act. In addition, the bill
18 upgrades burglary of a residence to a second degree crime under
19 certain circumstances.

20 Specifically, under the provisions of this bill, a person commits the
21 crime of home invasion if he or she enters a person's residence with
22 the intent to commit a robbery, a first or second degree crime, or
23 certain kidnapping and sexual crimes or offenses when another person
24 or persons are present and the actor: 1) uses force or inflicts bodily
25 injury on a person in the residence; 2) threatens a person in the
26 residence with, or purposely or knowingly, puts the person in fear of
27 immediate bodily injury; 3) commits, attempts to commit, or threatens
28 to commit any first or second degree crime or certain kidnapping and
29 sexual crimes and offenses; or 4) is armed with or threatens the use of
30 a deadly weapon or explosive.

31 Under this bill, home invasion is a first degree crime, and upon
32 conviction, requires the person to be sentenced to a term of
33 imprisonment between 10 and 30 years.

34 In addition, the bill provides that a person who is convicted of the
35 crime of home invasion is subject to sentencing under the No Early
36 Release Act (NERA). A person sentenced under the NERA is required
37 to serve 85% of the sentence imposed, during which he or she would
38 not be eligible for parole.

39 Further, under the provisions of this bill, burglary is upgraded to a
40 second degree crime if a person enters a residence when a resident or
41 any other person, other than a person acting in concert with the actor,
42 is present in the home. Under this bill, knowledge that another person
43 was in the home is not an element of this offense and it is not a
44 defense that the offender was unaware that another person was present
45 in the home when they entered the residence.

46 Under current law, burglary is a crime of the second degree if the
47 defendant inflicted, attempted to inflict, or threatened bodily injury or
48 was armed during the course of the offense. In all other
49 circumstances, burglary is a crime of the third degree. A crime of the

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1 second degree is punishable by a term of imprisonment between five to
2 10 years, a fine not to exceed \$150,000 or both. A crime of the third
3 degree is punishable by a term of imprisonment between three to five
4 years, a fine not to exceed \$15,000 or both.