

# ASSEMBLY, No. 1035

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Assemblyman ANTHONY M. BUCCO**

**District 25 (Morris and Somerset)**

**Assemblyman RALPH R. CAPUTO**

**District 28 (Essex)**

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**District 25 (Morris and Somerset)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblyman Benson**

**SYNOPSIS**

Upgrades burglary of a residence as a crime of the second degree; upgrades it to a crime of the first degree if committed while armed.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 3/9/2012)**

1 AN ACT concerning burglary and amending N.J.S.2C:18-2 and  
2 P.L.1997, c.117.

3

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

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

8 2C:18-2. Burglary. a. Burglary defined. A person is guilty of  
9 burglary if, with purpose to commit an offense therein or thereon  
10 he:

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

14 **[or]**

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

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

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

23 (1) Purposely, knowingly or recklessly inflicts, attempts to  
24 inflict or threatens to inflict bodily injury on anyone; or

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

27 (3) Unlawfully enters or surreptitiously remains in a dwelling or  
28 other structure adapted for overnight accommodation of persons,  
29 whether or not a person is actually present.

30 Burglary is a crime of the first degree if in the course of  
31 committing the offense the actor unlawfully enters or surreptitiously  
32 remains in a dwelling or other structure adapted for overnight  
33 accommodation of persons, whether or not a person is actually  
34 present, and is armed with or displays what appear to be explosives  
35 or a deadly weapon.

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

40 (cf: P.L.2009, c.283, s.3)

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

44 2. a. A court imposing a sentence of incarceration for a crime of  
45 the first or second degree enumerated in subsection d. of this

**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 section shall fix a minimum term of 85% of the sentence imposed,  
2 during which the defendant shall not be eligible for parole.

3 b. The minimum term required by subsection a. of this section  
4 shall be fixed as a part of every sentence of incarceration imposed  
5 upon every conviction of a crime enumerated in subsection d. of  
6 this section, whether the sentence of incarceration is determined  
7 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
8 other provision of law, and shall be calculated based upon the  
9 sentence of incarceration actually imposed. The provisions of  
10 subsection a. of this section shall not be construed or applied to  
11 reduce the time that must be served before eligibility for parole by  
12 an inmate sentenced to a mandatory minimum period of  
13 incarceration. Solely for the purpose of calculating the minimum  
14 term of parole ineligibility pursuant to subsection a. of this section,  
15 a sentence of life imprisonment shall be deemed to be 75 years.

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

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

- 39 (1) N.J.S.2C:11-3, murder;
- 40 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 41 (3) N.J.S.2C:11-5, vehicular homicide;
- 42 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 43 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),  
44 disarming a law enforcement officer;
- 45 (6) N.J.S.2C:13-1, kidnapping;
- 46 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

- 1 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
2 subsection c. of N.J.S.2C:14-2, sexual assault;  
3 (9) N.J.S.2C:15-1, robbery;  
4 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;  
5 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
6 arson;  
7 (12) N.J.S.2C:18-2, burglary, when it is a crime of the first  
8 degree, and when it is a crime of the second degree under  
9 paragraphs (1) and (2) of subsection b. of N.J.S.2C:18-2;  
10 (13) subsection a. of N.J.S.2C:20-5, extortion;  
11 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
12 booby traps in manufacturing or distribution facilities;  
13 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;  
14 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;  
15 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
16 possessing chemical weapons, biological agents or nuclear or  
17 radiological devices; or  
18 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
19 degree.  
20 e. (Deleted by amendment, P.L.2001, c.129).  
21 (cf: P.L.2007, c.341, s.6)

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23 3. This act shall take effect immediately.

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#### STATEMENT

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28 This bill upgrades the crime of burglary of a residence.  
29 Specifically, the bill makes it second degree burglary to unlawfully  
30 enter or surreptitiously remain in a dwelling or other structure  
31 adapted for overnight accommodation of persons, whether or not a  
32 person is actually present. Burglary of a residence is upgraded to  
33 first degree burglary under the bill if the person is armed with or  
34 displays what appears to be explosives or a deadly weapon while  
35 committing the burglary.

36 Presently, burglary is punishable under N.J.S.2C:18-2 as a crime  
37 of the second degree if the defendant either was armed or inflicted,  
38 attempted to inflict or threatened, bodily injury during the course of  
39 the offense. In all other circumstances, burglary is a crime of the  
40 third degree. A crime of the second degree is punishable by a term  
41 of imprisonment between five to 10 years, a fine not to exceed  
42 \$150,000 or both. A crime of the third degree is punishable by a  
43 term of imprisonment between three to five years, a fine not to  
44 exceed \$15,000 or both.

45 This bill clarifies that a person who commits second degree  
46 burglary of a residence under the bill would not be subject to the  
47 provisions of the No Early Release Act (NERA), but a person who  
48 commits the upgraded first degree crime of burglarizing a residence

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1 while armed would be sentenced under NERA. Under NERA,  
2 persons convicted of certain enumerated violent crimes of the first  
3 or second degree are required to serve a minimum term of at least  
4 85% of the sentence imposed.