

ASSEMBLY, No. 2752

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman AURA K. DUNN

District 25 (Morris and Somerset)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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:

6

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

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

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

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

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

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

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

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

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

40

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

43 2. a. A court imposing a sentence of incarceration for a crime
44 of the first or second degree enumerated in subsection d. of this
45 section shall fix a minimum term of 85% of the sentence imposed,

**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 during which the defendant shall not be eligible for parole.

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

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

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

- 38 (1) N.J.S.2C:11-3, murder;
- 39 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 40 (3) N.J.S.2C:11-5, vehicular homicide;
- 41 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 42 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),
43 disarming a law enforcement officer;
- 44 (6) N.J.S.2C:13-1, kidnapping;
- 45 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 46 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
47 subsection c. of N.J.S.2C:14-2, sexual assault;
- 48 (9) N.J.S.2C:15-1, robbery;

- 1 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
2 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
3 arson;
4 (12) N.J.S.2C:18-2, burglary, when it is a crime of the first
5 degree, and when it is a crime of the second degree under
6 paragraphs (1) and (2) of subsection b. of N.J.S.2C:18-2;
7 (13) subsection a. of N.J.S.2C:20-5, extortion;
8 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
9 booby traps in manufacturing or distribution facilities;
10 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
11 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
12 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
13 possessing chemical weapons, biological agents or nuclear or
14 radiological devices;
15 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
16 degree;
17 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or
18 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or
19 permitting a child to engage in a prohibited sexual act, knowing that
20 the act may be reproduced or reconstructed in any manner, or be
21 part of an exhibition or performance.
22 e. (Deleted by amendment, P.L.2001, c.129).
23 (cf: P.L.2013, c.136, s.4)

24
25 3. This act shall take effect immediately.
26
27

28 STATEMENT

29
30 This bill upgrades the crime of burglary of a residence.
31 Currently, burglary is a crime of the third degree, unless the
32 defendant either: (1) inflicts, attempts to inflict or threatens to
33 inflict bodily injury during the course of committing the offense, or
34 (2) is armed with or displays what appear to be explosives or a
35 deadly weapon. In such cases burglary is a crime of the second
36 degree.

37 Under the bill, it would also be a crime of the second degree to
38 unlawfully enter or surreptitiously remain in a dwelling or other
39 structure adapted for overnight accommodation of persons, whether
40 or not a person is actually present. If the defendant is armed with or
41 displays what appears to be explosives or a deadly weapon,
42 burglary of a residence would be a crime of the first degree.

43 A crime of the first degree is punishable by a term of
44 imprisonment of 10 to 20 years, a fine of up to \$200,000, or both; a
45 crime of the second degree, by a term of five to 10 years, a fine of
46 up to \$150,000, or both; and a crime of the third degree, by a term
47 of three to five years, a fine of up to \$15,000, or both.

1 Under current law, a person who commits the second degree
2 crime of burglary (by inflicting, attempting to inflict, or threatening
3 to inflict bodily injury or by being armed) is subject to the
4 provisions of the “No Early Release Act” (NERA). However, the
5 bill provides that a person who commits the new second degree
6 crime of burglary of a residence would not be subject to NERA.
7 Under NERA, persons convicted of certain enumerated violent
8 crimes of the first or second degree are required to serve a
9 minimum term of at least 85% of the sentence imposed.