

ASSEMBLY, No. 3339

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)

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

As introduced.



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

44 (1) Enters a research facility, structure, or a separately secured

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 or occupied portion thereof unless the structure was at the time
2 open to the public or the actor is licensed or privileged to enter;

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

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

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

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

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

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

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

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

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

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

33

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

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

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

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

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

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

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

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

6 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; ~~or~~

7 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or
8 permitting a child to engage in a prohibited sexual act, knowing that
9 the act may be reproduced or reconstructed in any manner, or be
10 part of an exhibition or performance ;~~or~~

11 (21) section 1 of P.L. , c. (C.) (pending before the
12 Legislature as this bill), home invasion.

13 e. (Deleted by amendment, P.L.2001, c.129) ~~[:]~~
14 (cf: P.L.2013, c.136, s.4)

15
16 4. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill creates the first degree crime of home invasion and makes
22 this crime subject to the No Early Release Act. In addition, the bill
23 upgrades burglary of a residence to a second degree crime under
24 certain circumstances.

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

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

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

44 Further, under the provisions of this bill, burglary is upgraded to a
45 second degree crime if a person enters a residence when a resident or
46 any other person, other than a person acting in concert with the actor,
47 is present in the home. Under this bill, knowledge that another person
48 was in the home is not an element of this offense and it is not a

1 defense that the offender was unaware that another person was present
2 in the home when they entered the residence.
3 Under current law, burglary is a crime of the second degree if the
4 defendant inflicted, attempted to inflict, or threatened bodily injury or
5 was armed during the course of the offense. In all other
6 circumstances, burglary is a crime of the third degree. A crime of the
7 second degree is punishable by a term of imprisonment between five to
8 10 years, a fine not to exceed \$150,000 or both. A crime of the third
9 degree is punishable by a term of imprisonment between three to five
10 years, a fine not to exceed \$15,000 or both.