# SENATE, No. 263

# STATE OF NEW JERSEY

## 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**
**Senator THOMAS H. KEAN, JR.**
**District 21 (Morris, Somerset and Union)**
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**SYNOPSIS**

Upgrades burglary of a residence to a crime of the second degree; requires mandatory period of parole ineligibility if residence was occupied at time of offense.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.

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

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

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

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

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

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

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

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

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

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

(3) Unlawfully enters or surreptitiously remains in a dwelling or other structure adapted for overnight accommodation of persons, whether or not a person is actually present. If a person was present at the time of the offense the actor shall be subject to the provisions of subsection a. of section 2 of P.L.1997, c.117 (C.2C:43-7.2).

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

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

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

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

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of

**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.**

this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

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

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

(1) N.J.S.2C:11-3, murder;

(2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

(3) N.J.S.2C:11-5, vehicular homicide;

(4) subsection b. of N.J.S.2C:12-1, aggravated assault;

(5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;

(6) N.J.S.2C:13-1, kidnapping;

(7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

(8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;

(9) N.J.S.2C:15-1, robbery;

(10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

(11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;

(12) <u>paragraph (3) of subsection b. of</u> N.J.S.2C:18-2, burglary<u>, if a person was present at the time of the offense</u>;

(13) subsection a. of N.J.S.2C:20-5, extortion;

(14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities;

(15) N.J.S.2C:35-9, strict liability for drug induced deaths;

(16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

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

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

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

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

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

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

3. This act shall take effect immediately.

STATEMENT

This bill would upgrade burglary of a residence to a crime of the second degree and provide that an offender is not eligible for early release if a person was present in the residence at the time of the offense.

Currently, all burglary offenses are crimes of the third degree unless the offender purposely, knowingly, or recklessly inflicts, attempts to inflict, or threatens to inflict bodily injury on someone or if the offender is armed with explosives or a deadly weapon, in which case it is a crime of the second degree. This bill would provide that it is also a crime of the second degree to unlawfully enter or surreptitiously remain in a dwelling or other structure adapted for overnight accommodation of persons, whether or not a person is actually present.

Additionally, the bill would provide that, if a person was present in the dwelling at the time of the burglary, the offender would be subject to the provisions of subsection a. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), commonly known as the "No Early Release Act (NERA)," which requires that certain offenders must serve a minimum 85% of the sentence of imprisonment imposed for the offense.

A crime of the second degree is punishable by imprisonment for five to 10 years, up to a $150,000 fine, or both. A crime of the third degree is punishable by imprisonment for three to five years, up to a $15,000 fine, or both.