

SENATE, No. 543

STATE OF NEW JERSEY 219th LEGISLATURE

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Sponsored by:

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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.



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

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.

(2) Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that **the person** 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) Enters a residential dwelling or surreptitiously remains in the dwelling when a resident or any other person, other than a person acting in concert with the actor, is present in the dwelling.

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.

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

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

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

3. 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 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

1 term of parole ineligibility pursuant to subsection a. of this section,
2 a sentence of life imprisonment shall be deemed to be 75 years.

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

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

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

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

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

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

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

10 e. (Deleted by amendment, P.L.2001, c.129) **[:]**

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

12

13 4. This act shall take effect immediately.

14

15

16 STATEMENT

17

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

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

33 The bill requires a mandatory term of imprisonment of between
34 10 years and 30 years for the crime of home invasion. Additionally,
35 the convicted offender would be required to serve 85 percent of the
36 sentence imposed, without possibility of parole, since the bill
37 includes the crime of home invasion under the No Early Release
38 Act, P.L.1997, c.117 (C.2C:43-7.2 et al.). A convicted offender
39 also could be subject to a fine of up to \$200,000 (the ordinary fine
40 amount applicable to first degree crimes).

41 As to burglary, this crime is upgraded to a second degree crime if
42 a person enters a residence when a resident or any other person,
43 other than a person acting in concert with the actor, is present in the
44 home. The bill provides that knowledge that another person was in
45 the home would not be an element of this upgraded crime, and it
46 would not be a defense that the offender was unaware that another
47 person was present in the home when they entered the residence.
48 The upgraded crime would be punishable by a term of

1 imprisonment between five to 10 years, a fine up to \$150,000, or
2 both.

3 Under current law, burglary is only a crime of the second degree
4 if the defendant inflicted, attempted to inflict, or threatened bodily
5 injury or was armed during the course of the offense. In all other
6 circumstances, burglary is a crime of the third degree (ordinarily
7 punishable by a term of imprisonment of between three to five
8 years, a fine not up to \$15,000, or both).