

SENATE, No. 723

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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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.



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. A person is guilty of burglary if, with
9 purpose to commit an offense therein or thereon he:

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

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

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

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

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

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

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

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

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

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

39

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

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

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

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

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

- 35 (1) N.J.S.2C:11-3, murder;
- 36 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 37 (3) N.J.S.2C:11-5, vehicular homicide;
- 38 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 39 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),
40 disarming a law enforcement officer;
- 41 (6) N.J.S.2C:13-1, kidnapping;
- 42 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 43 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
44 subsection c. of N.J.S.2C:14-2, sexual assault;
- 45 (9) N.J.S.2C:15-1, robbery;
- 46 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 47 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
48 arson;

(12) N.J.S.2C:18-2, burglary, when it is a crime of the first degree, and when it is a crime of the second degree under paragraphs (1) and (2) of subsection b. of N.J.S.2C:18-2;

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

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

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

(cf: P.L.2007, c.341, s.6)

3. This act shall take effect immediately.

STATEMENT

This bill upgrades the crime of burglary of a residence. Specifically, the bill makes it second degree burglary 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. Burglary of a residence is upgraded to first degree burglary under the bill if the person is armed with or displays what appears to be an explosive or a deadly weapon while committing the burglary.

This bill clarifies that a person who commits second degree burglary of a residence under the bill would not be subject to the provisions of the No Early Release Act (NERA), but a person who commits the upgraded first degree crime of burglarizing a residence while armed would be sentenced under NERA. Under NERA, persons convicted of certain enumerated violent crimes of the first or second degree are required to serve a minimum term of at least 85% of the sentence imposed.