## 5454

2009-2010 Regular Sessions

IN ASSEMBLY

February 13, 2009

Introduced by M. of A. SPANO, WEISENBERG, FIELDS, MAISEL, CHRISTENSEN, CUSICK, CARROZZA, CLARK, ZEBROWSKI, SCHIMMINGER, BROOK-KRASNY, LANC-MAN, ALESSI, GALEF, KOON, COLTON -- Multi-Sponsored by -- M. of A. ABBATE, EDDINGTON, ENGLEBRIGHT, ESPAILLAT, HYER-SPENCER, MARKEY, PRET-LOW, SEMINERIO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing home invasion robbery offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding a new article 163 to 2 read as follows:

3 ARTICLE 163 4 HOME INVASION ROBBERY 5 SECTION 163.00 HOME INVASION ROBBERY; DEFINED. б 163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE. 7 163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE. 8 S 163.00 HOME INVASION ROBBERY; DEFINED. 9 PURPOSES OF THIS ARTICLE, "HOME INVASION ROBBERY" MEANS ANY FOR THE ROBBERY AS DEFINED IN SECTION 160.00 OF THIS TITLE THAT OCCURS 10 WHEN A 11 PERSON ENTERS A DWELLING WITH THE INTENT TO COMMIT A ROBBERY, AND DOES COMMIT A ROBBERY OF THE OCCUPANTS THEREIN. 12 13 S 163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE. A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE SECOND DEGREE 14 WHEN 15 HE OR SHE COMMITS A HOME INVASION ROBBERY AND IS AIDED BY ANOTHER PERSON 16 ACTUALLY PRESENT. HOME INVASION ROBBERY IN THE SECOND DEGREE IS A CLASS C FELONY. 17 S 163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE. 18 19 A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE FIRST DEGREE WHEN 20 HE OR SHE COMMITS A HOME INVASION ROBBERY AND WHEN, IN THE COURSE OF THE EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

[ ] is old law to be omitted.

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1 COMMISSION OF SUCH CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR SHE OR 2 ANOTHER PARTICIPANT IN SUCH CRIME:

3 1. CAUSES SERIOUS PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTIC-4 IPANT IN SUCH CRIME; OR

5 2. IS ARMED WITH A DEADLY WEAPON; OR

6 3. USES OR THREATENS THE IMMEDIATE USE OF A DANGEROUS INSTRUMENT; OR

7 4. DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM; EXCEPT THAT IN ANY PROSECUTION UNDER THIS 8 SUBDIVISION, IT IS AN AFFIRMATIVE DEFENSE THAT SUCH PISTOL, REVOLVER, 9 10 RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM WAS NOT A LOADED WEAPON FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR OTHER SERIOUS 11 PHYSICAL INJURY, COULD BE DISCHARGED. NOTHING CONTAINED IN THIS SUBDIVI-12 SION SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR, OR PRECLUDE A 13 14 CONVICTION OF, HOME INVASION ROBBERY IN THE SECOND DEGREE OR ANY OTHER 15 OFFENSE.

16 HOME INVASION ROBBERY IN THE FIRST DEGREE IS A CLASS B FELONY.

17 S 2. This act shall take effect on the first of November next succeed-18 ing the date on which it shall have become a law.