

1011

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. LENTOL, PAULIN, LATIMER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of home invasion

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 three new sections,  
2 140.45, 140.50 and 140.55 to read as follows:

3 S 140.45 HOME INVASION IN THE THIRD DEGREE.

4 A PERSON IS GUILTY OF HOME INVASION IN THE THIRD DEGREE WHEN HE OR SHE  
5 COMMITS THE CRIME OF BURGLARY IN THE THIRD DEGREE AND ALSO COMMITS A  
6 VIOLENT ACT DURING THE COMMISSION OF SUCH CRIME.

7 HOME INVASION IN THE THIRD DEGREE IS A CLASS D FELONY.

8 S 140.50 HOME INVASION IN THE SECOND DEGREE.

9 A PERSON IS GUILTY OF HOME INVASION IN THE SECOND DEGREE WHEN HE OR  
10 SHE COMMITS THE CRIME OF BURGLARY IN THE SECOND DEGREE AND ALSO COMMITS  
11 A VIOLENT ACT DURING THE COMMISSION OF SUCH CRIME.

12 HOME INVASION IN THE SECOND DEGREE IS A CLASS C FELONY.

13 S 140.55 HOME INVASION IN THE FIRST DEGREE.

14 A PERSON IS GUILTY OF HOME INVASION IN THE FIRST DEGREE WHEN HE OR SHE  
15 COMMITS THE CRIME OF BURGLARY IN THE FIRST DEGREE AND ALSO COMMITS A  
16 VIOLENT ACT DURING THE COMMISSION OF SUCH CRIME.

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

18 S 2. Subdivision 1 of section 70.02 of the penal law, as separately  
19 amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as  
20 amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as  
21 amended by chapter 405 of the laws of 2010 and paragraph (d) as amended  
22 by chapter 7 of the laws of 2007, is amended to read as follows:

23 1. Definition of a violent felony offense. A violent felony offense is  
24 a class B violent felony offense, a class C violent felony offense, a

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 class D violent felony offense, or a class E violent felony offense,  
2 defined as follows:

3 (a) Class B violent felony offenses: an attempt to commit the class  
4 A-I felonies of murder in the second degree as defined in section  
5 125.25, kidnapping in the first degree as defined in section 135.25, and  
6 arson in the first degree as defined in section 150.20; manslaughter in  
7 the first degree as defined in section 125.20, aggravated manslaughter  
8 in the first degree as defined in section 125.22, rape in the first  
9 degree as defined in section 130.35, criminal sexual act in the first  
10 degree as defined in section 130.50, aggravated sexual abuse in the  
11 first degree as defined in section 130.70, course of sexual conduct  
12 against a child in the first degree as defined in section 130.75;  
13 assault in the first degree as defined in section 120.10, kidnapping in  
14 the second degree as defined in section 135.20, burglary in the first  
15 degree as defined in section 140.30, HOME INVASION IN THE FIRST DEGREE  
16 AS DEFINED IN SECTION 140.55, arson in the second degree as defined in  
17 section 150.15, robbery in the first degree as defined in section  
18 160.15, incest in the first degree as defined in section 255.27, crimi-  
19 nal possession of a weapon in the first degree as defined in section  
20 265.04, criminal use of a firearm in the first degree as defined in  
21 section 265.09, criminal sale of a firearm in the first degree as  
22 defined in section 265.13, aggravated assault upon a police officer or a  
23 peace officer as defined in section 120.11, gang assault in the first  
24 degree as defined in section 120.07, intimidating a victim or witness in  
25 the first degree as defined in section 215.17, hindering prosecution of  
26 terrorism in the first degree as defined in section 490.35, criminal  
27 possession of a chemical weapon or biological weapon in the second  
28 degree as defined in section 490.40, and criminal use of a chemical  
29 weapon or biological weapon in the third degree as defined in section  
30 490.47.

31 (b) Class C violent felony offenses: an attempt to commit any of the  
32 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
33 vated criminally negligent homicide as defined in section 125.11, aggra-  
34 vated manslaughter in the second degree as defined in section 125.21,  
35 aggravated sexual abuse in the second degree as defined in section  
36 130.67, assault on a peace officer, police officer, fireman or emergency  
37 medical services professional as defined in section 120.08, gang assault  
38 in the second degree as defined in section 120.06, strangulation in the  
39 first degree as defined in section 121.13, burglary in the second degree  
40 as defined in section 140.25, HOME INVASION IN THE FIRST DEGREE AS  
41 DEFINED IN SECTION 140.55, robbery in the second degree as defined in  
42 section 160.10, criminal possession of a weapon in the second degree as  
43 defined in section 265.03, criminal use of a firearm in the second  
44 degree as defined in section 265.08, criminal sale of a firearm in the  
45 second degree as defined in section 265.12, criminal sale of a firearm  
46 with the aid of a minor as defined in section 265.14, soliciting or  
47 providing support for an act of terrorism in the first degree as defined  
48 in section 490.15, hindering prosecution of terrorism in the second  
49 degree as defined in section 490.30, and criminal possession of a chemi-  
50 cal weapon or biological weapon in the third degree as defined in  
51 section 490.37.

52 (c) Class D violent felony offenses: an attempt to commit any of the  
53 class C felonies set forth in paragraph (b); reckless assault of a child  
54 as defined in section 120.02, assault in the second degree as defined in  
55 section 120.05, menacing a police officer or peace officer as defined in  
56 section 120.18, stalking in the first degree, as defined in subdivision

1 one of section 120.60, strangulation in the second degree as defined in  
2 section 121.12, rape in the second degree as defined in section 130.30,  
3 criminal sexual act in the second degree as defined in section 130.45,  
4 sexual abuse in the first degree as defined in section 130.65, course of  
5 sexual conduct against a child in the second degree as defined in  
6 section 130.80, aggravated sexual abuse in the third degree as defined  
7 in section 130.66, facilitating a sex offense with a controlled  
8 substance as defined in section 130.90, HOME INVASION IN THE FIRST  
9 DEGREE AS DEFINED IN SECTION 140.55, criminal possession of a weapon in  
10 the third degree as defined in subdivision five, six, seven or eight of  
11 section 265.02, criminal sale of a firearm in the third degree as  
12 defined in section 265.11, intimidating a victim or witness in the  
13 second degree as defined in section 215.16, soliciting or providing  
14 support for an act of terrorism in the second degree as defined in  
15 section 490.10, and making a terroristic threat as defined in section  
16 490.20, falsely reporting an incident in the first degree as defined in  
17 section 240.60, placing a false bomb or hazardous substance in the first  
18 degree as defined in section 240.62, placing a false bomb or hazardous  
19 substance in a sports stadium or arena, mass transportation facility or  
20 enclosed shopping mall as defined in section 240.63, and aggravated  
21 unpermitted use of indoor pyrotechnics in the first degree as defined in  
22 section 405.18.

23 (d) Class E violent felony offenses: an attempt to commit any of the  
24 felonies of criminal possession of a weapon in the third degree as  
25 defined in subdivision five, six, seven or eight of section 265.02 as a  
26 lesser included offense of that section as defined in section 220.20 of  
27 the criminal procedure law, persistent sexual abuse as defined in  
28 section 130.53, aggravated sexual abuse in the fourth degree as defined  
29 in section 130.65-a, falsely reporting an incident in the second degree  
30 as defined in section 240.55 and placing a false bomb or hazardous  
31 substance in the second degree as defined in section 240.61.

32 S 3. This act shall take effect on the first of November next succeed-  
33 ing the date on which it shall have become a law.