

6630

2011-2012 Regular Sessions

I N A S S E M B L Y

March 23, 2011

Introduced by M. of A. CURRAN -- read once and referred to the Committee
on Codes

AN ACT to amend the penal law, in relation to carjacking

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 161 to
2 read as follows:

3 ARTICLE 161

4 CARJACKING

5 SECTION 161.00 CARJACKING; DEFINED.

6 161.05 CARJACKING IN THE THIRD DEGREE.

7 161.10 CARJACKING IN THE SECOND DEGREE.

8 161.15 CARJACKING IN THE FIRST DEGREE.

9 S 161.00 CARJACKING; DEFINED.

10 CARJACKING. A PERSON COMMITS CARJACKING WHEN, IN THE COURSE OF
11 COMMITTING LARCENY OF A MOTOR VEHICLE FROM THE PERSON OR PRESENCE OF
12 ANOTHER PERSON, HE OR SHE USES OR THREATENS THE IMMEDIATE USE OF PHYS-
13 ICAL FORCE UPON ANOTHER PERSON FOR THE PURPOSE OF:

14 1. PREVENTING OR OVERCOMING RESISTANCE TO THE TAKING OF THE MOTOR
15 VEHICLE OR TO THE RETENTION THEREOF IMMEDIATELY AFTER THE TAKING; OR

16 2. COMPELLING THE OWNER OF SUCH MOTOR VEHICLE OR ANOTHER PERSON TO
17 DELIVER UP THE MOTOR VEHICLE OR TO ENGAGE IN OTHER CONDUCT WHICH AIDS IN
18 THE COMMISSION OF THE LARCENY.

19 S 161.05 CARJACKING IN THE THIRD DEGREE.

20 A PERSON IS GUILTY OF CARJACKING IN THE THIRD DEGREE WHEN HE OR SHE
21 FORCIBLY STEALS A MOTOR VEHICLE FROM THE PERSON OR PRESENCE OF ANOTHER
22 PERSON.

23 CARJACKING IN THE THIRD DEGREE IS A CLASS D FELONY.

24 S 161.10 CARJACKING IN THE SECOND DEGREE.

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

LBD08599-01-1

1 A PERSON IS GUILTY OF CARJACKING IN THE SECOND DEGREE WHEN HE OR SHE
2 FORCIBLY STEALS A MOTOR VEHICLE FROM THE PERSON OR PRESENCE OF ANOTHER
3 PERSON AND WHEN:

4 1. HE OR SHE IS AIDED BY ANOTHER PERSON ACTUALLY PRESENT; OR
5 2. IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE
6 FLIGHT THEREFROM, HE OR SHE OR ANOTHER PARTICIPANT IN THE CRIME:

7 (A) CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN
8 THE CRIME; OR

9 (B) DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN,
10 MACHINE GUN OR OTHER FIREARM.

11 CARJACKING IN THE SECOND DEGREE IS A CLASS C FELONY.

12 S 161.15 CARJACKING IN THE FIRST DEGREE.

13 A PERSON IS GUILTY OF CARJACKING IN THE FIRST DEGREE WHEN HE OR SHE
14 FORCIBLY STEALS A MOTOR VEHICLE FROM THE PERSON OR PRESENCE OF ANOTHER
15 PERSON AND WHEN, IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF
16 IMMEDIATE FLIGHT THEREFROM, HE OR SHE OR ANOTHER PARTICIPANT IN THE
17 CRIME:

18 1. CAUSES SERIOUS PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTIC-
19 IPANT IN THE CRIME; OR

20 2. IS ARMED WITH A DEADLY WEAPON; OR

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

22 4. DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN,
23 MACHINE GUN OR OTHER FIREARM; EXCEPT THAT IN ANY PROSECUTION UNDER THIS
24 SUBDIVISION, IT IS AN AFFIRMATIVE DEFENSE THAT SUCH PISTOL, REVOLVER,
25 RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM WAS NOT A LOADED WEAPON
26 FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR OTHER SERIOUS
27 PHYSICAL INJURY, COULD BE DISCHARGED. NOTHING CONTAINED IN THIS SUBDI-
28 VISION SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR, OR PRECLUDE A
29 CONVICTION OF, CARJACKING IN THE SECOND DEGREE, CARJACKING IN THE THIRD
30 DEGREE OR ANY OTHER CRIME.

31 CARJACKING IN THE FIRST DEGREE IS A CLASS B FELONY.

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

37 1. Definition of a violent felony offense. A violent felony offense is
38 a class B violent felony offense, a class C violent felony offense, a
39 class D violent felony offense, or a class E violent felony offense,
40 defined as follows:

41 (a) Class B violent felony offenses: an attempt to commit the class
42 A-I felonies of murder in the second degree as defined in section
43 125.25, kidnapping in the first degree as defined in section 135.25, and
44 arson in the first degree as defined in section 150.20; manslaughter in
45 the first degree as defined in section 125.20, aggravated manslaughter
46 in the first degree as defined in section 125.22, rape in the first
47 degree as defined in section 130.35, criminal sexual act in the first
48 degree as defined in section 130.50, aggravated sexual abuse in the
49 first degree as defined in section 130.70, course of sexual conduct
50 against a child in the first degree as defined in section 130.75;
51 assault in the first degree as defined in section 120.10, kidnapping in
52 the second degree as defined in section 135.20, burglary in the first
53 degree as defined in section 140.30, arson in the second degree as
54 defined in section 150.15, robbery in the first degree as defined in
55 section 160.15, CARJACKING IN THE FIRST DEGREE AS DEFINED IN SECTION
56 161.15, incest in the first degree as defined in section 255.27, crimi-

1 nal possession of a weapon in the first degree as defined in section
2 265.04, criminal use of a firearm in the first degree as defined in
3 section 265.09, criminal sale of a firearm in the first degree as
4 defined in section 265.13, aggravated assault upon a police officer or a
5 peace officer as defined in section 120.11, gang assault in the first
6 degree as defined in section 120.07, intimidating a victim or witness in
7 the first degree as defined in section 215.17, hindering prosecution of
8 terrorism in the first degree as defined in section 490.35, criminal
9 possession of a chemical weapon or biological weapon in the second
10 degree as defined in section 490.40, and criminal use of a chemical
11 weapon or biological weapon in the third degree as defined in section
12 490.47.

13 (b) Class C violent felony offenses: an attempt to commit any of the
14 class B felonies set forth in paragraph (a) of this subdivision; aggra-
15 vated criminally negligent homicide as defined in section 125.11, aggra-
16 vated manslaughter in the second degree as defined in section 125.21,
17 aggravated sexual abuse in the second degree as defined in section
18 130.67, assault on a peace officer, police officer, fireman or emergency
19 medical services professional as defined in section 120.08, gang assault
20 in the second degree as defined in section 120.06, strangulation in the
21 first degree as defined in section 121.13, burglary in the second degree
22 as defined in section 140.25, robbery in the second degree as defined in
23 section 160.10, CARJACKING IN THE SECOND DEGREE AS DEFINED IN SECTION
24 161.10, criminal possession of a weapon in the second degree as defined
25 in section 265.03, criminal use of a firearm in the second degree as
26 defined in section 265.08, criminal sale of a firearm in the second
27 degree as defined in section 265.12, criminal sale of a firearm with the
28 aid of a minor as defined in section 265.14, soliciting or providing
29 support for an act of terrorism in the first degree as defined in
30 section 490.15, hindering prosecution of terrorism in the second degree
31 as defined in section 490.30, and criminal possession of a chemical
32 weapon or biological weapon in the third degree as defined in section
33 490.37.

34 (c) Class D violent felony offenses: an attempt to commit any of the
35 class C felonies set forth in paragraph (b); reckless assault of a child
36 as defined in section 120.02, assault in the second degree as defined in
37 section 120.05, menacing a police officer or peace officer as defined in
38 section 120.18, stalking in the first degree, as defined in subdivision
39 one of section 120.60, strangulation in the second degree as defined in
40 section 121.12, rape in the second degree as defined in section 130.30,
41 criminal sexual act in the second degree as defined in section 130.45,
42 sexual abuse in the first degree as defined in section 130.65, course of
43 sexual conduct against a child in the second degree as defined in
44 section 130.80, aggravated sexual abuse in the third degree as defined
45 in section 130.66, facilitating a sex offense with a controlled
46 substance as defined in section 130.90, CARJACKING IN THE THIRD DEGREE
47 AS DEFINED IN SECTION 161.05, criminal possession of a weapon in the
48 third degree as defined in subdivision five, six, seven or eight of
49 section 265.02, criminal sale of a firearm in the third degree as
50 defined in section 265.11, intimidating a victim or witness in the
51 second degree as defined in section 215.16, soliciting or providing
52 support for an act of terrorism in the second degree as defined in
53 section 490.10, and making a terroristic threat as defined in section
54 490.20, falsely reporting an incident in the first degree as defined in
55 section 240.60, placing a false bomb or hazardous substance in the first
56 degree as defined in section 240.62, placing a false bomb or hazardous

1 substance in a sports stadium or arena, mass transportation facility or
2 enclosed shopping mall as defined in section 240.63, and aggravated
3 unpermitted use of indoor pyrotechnics in the first degree as defined in
4 section 405.18.

5 (d) Class E violent felony offenses: an attempt to commit any of the
6 felonies of criminal possession of a weapon in the third degree as
7 defined in subdivision five, six, seven or eight of section 265.02 as a
8 lesser included offense of that section as defined in section 220.20 of
9 the criminal procedure law, persistent sexual abuse as defined in
10 section 130.53, aggravated sexual abuse in the fourth degree as defined
11 in section 130.65-a, falsely reporting an incident in the second degree
12 as defined in section 240.55 and placing a false bomb or hazardous
13 substance in the second degree as defined in section 240.61.

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