

S T A T E O F N E W Y O R K

3205--A

Cal. No. 227

2011-2012 Regular Sessions

I N S E N A T E

February 11, 2011

Introduced by Sens. FLANAGAN, AVELLA, MARTINS, OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of
2 the penal law, paragraph (a) as amended by chapter 320 of the laws of
3 2006 and paragraph (b) as amended by chapter 405 of the laws of 2010,
4 are amended to read as follows:
5 (a) Class B violent felony offenses: an attempt to commit the class
6 A-I felonies of murder in the second degree as defined in section
7 125.25, kidnapping in the first degree as defined in section 135.25, and
8 arson in the first degree as defined in section 150.20; manslaughter in
9 the first degree as defined in section 125.20, aggravated manslaughter
10 in the first degree as defined in section 125.22, rape in the first
11 degree as defined in section 130.35, criminal sexual act in the first
12 degree as defined in section 130.50, aggravated sexual abuse in the
13 first degree as defined in section 130.70, course of sexual conduct
14 against a child in the first degree as defined in section 130.75;
15 assault in the first degree as defined in section 120.10, kidnapping in
16 the second degree as defined in section 135.20, burglary in the first
17 degree as defined in section 140.30, arson in the second degree as
18 defined in section 150.15, robbery in the first degree as defined in
19 section 160.15, HOME INVASION ROBBERY IN THE FIRST DEGREE AS DEFINED IN
20 SECTION 163.10, incest in the first degree as defined in section 255.27,

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

LBD07847-03-1

1 criminal possession of a weapon in the first degree as defined in
2 section 265.04, criminal use of a firearm in the first degree as defined
3 in 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, HOME INVASION ROBBERY IN THE SECOND DEGREE AS DEFINED IN
24 SECTION 163.05, criminal possession of a weapon in the second degree as
25 defined in section 265.03, criminal use of a firearm in the second
26 degree as defined in section 265.08, criminal sale of a firearm in the
27 second degree as defined in section 265.12, criminal sale of a firearm
28 with the aid of a minor as defined in section 265.14, soliciting or
29 providing support for an act of terrorism in the first degree as defined
30 in section 490.15, hindering prosecution of terrorism in the second
31 degree as defined in section 490.30, and criminal possession of a chemi-
32 cal weapon or biological weapon in the third degree as defined in
33 section 490.37.

34 S. 2. The penal law is amended by adding a new article 163 to read as
35 follows:

36 ARTICLE 163

37 HOME INVASION ROBBERY

38 SECTION 163.00 HOME INVASION ROBBERY; DEFINED.

39 163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE.

40 163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE.

41 163.15 HOME INVASION ROBBERY; PROSECUTION.

42 S 163.00 HOME INVASION ROBBERY; DEFINED.

43 FOR THE PURPOSES OF THIS ARTICLE:

44 1. "HOME INVASION ROBBERY" MEANS TO KNOWINGLY ENTER OR REMAIN UNLAW-
45 FULLY IN A DWELLING WITH INTENT TO COMMIT A ROBBERY THEREIN, AND WHEN,
46 (A) WHILE IN EFFECTING ENTRY OR WHILE IN THE DWELLING OR IN IMMEDIATE
47 FLIGHT THEREFROM OR AS A DIRECT RESULT OF THE ENTRY INTO SUCH DWELLING A
48 PERSON COMMITS ANY OFFENSE DEFINED IN ARTICLE ONE HUNDRED SIXTY OF THIS
49 TITLE AND (B) WHILE IN THE COURSE OF COMMITTING SUCH OFFENSE SUCH PERSON
50 COMMITS ANY OFFENSE DEFINED IN TITLE H OF THIS CHAPTER AGAINST ANOTHER
51 PERSON WHO IS NOT A PARTICIPANT IN THE HOME INVASION ROBBERY.

52 2. "DWELLING" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN
53 SUBDIVISION THREE OF SECTION 140.00 OF THIS PART.

54 3. "ENTER OR REMAIN UNLAWFULLY" SHALL HAVE THE SAME MEANING AS SUCH
55 TERM IS DEFINED IN SUBDIVISION FIVE OF SECTION 140.00 OF THIS PART.

1 4. "ROBBERY" MEANS FORCIBLE STEALING AS DEFINED IN SECTION 160.00 OF
2 THIS TITLE.
3 S 163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE.
4 A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE SECOND DEGREE WHEN
5 HE OR SHE COMMITS A HOME INVASION ROBBERY.
6 HOME INVASION ROBBERY IN THE SECOND DEGREE IS A CLASS C FELONY.
7 S 163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE.
8 A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE FIRST DEGREE WHEN
9 HE OR SHE COMMITS A HOME INVASION ROBBERY AND WHEN, IN THE COURSE OF THE
10 COMMISSION OF SUCH CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR SHE OR
11 ANOTHER PARTICIPANT IN SUCH CRIME:
12 1. CAUSES SERIOUS PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTIC-
13 IPANT IN SUCH CRIME; OR
14 2. IS ARMED WITH A DEADLY WEAPON; OR
15 3. USES OR THREATENS THE IMMEDIATE USE OF A DANGEROUS INSTRUMENT; OR
16 4. DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN,
17 MACHINE GUN OR OTHER FIREARM; EXCEPT THAT IN ANY PROSECUTION UNDER THIS
18 SUBDIVISION, IT IS AN AFFIRMATIVE DEFENSE THAT SUCH PISTOL, REVOLVER,
19 RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM WAS NOT A LOADED WEAPON
20 FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR OTHER SERIOUS
21 PHYSICAL INJURY, COULD BE DISCHARGED. NOTHING CONTAINED IN THIS SUBDIVI-
22 SION SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR, OR PRECLUDE A
23 CONVICTION OF, HOME INVASION ROBBERY IN THE SECOND DEGREE OR ANY OTHER
24 OFFENSE.
25 HOME INVASION ROBBERY IN THE FIRST DEGREE IS A CLASS B FELONY.
26 S 163.15 HOME INVASION ROBBERY; PROSECUTION.
27 IN ANY PROSECUTION OF AN OFFENSE DEFINED IN THIS ARTICLE, NO PROVISION
28 OF THE CHAPTER SHALL PRECLUDE OR PROHIBIT PROSECUTION FOR ANY OTHER
29 OFFENSE NOT DEFINED IN THIS ARTICLE WHICH OCCURRED DURING THE SAME TRAN-
30 SACTION OR OCCURRENCE AS THE OFFENSE COMMITTED IN VIOLATION OF THE
31 PROVISIONS OF THIS ARTICLE.
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.