

4075

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. LENTOL, PAULIN -- 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 ASSEM-
BLY, 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 1 of the laws of 2013, 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.

LBD04445-02-3

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, assault on a
38 judge as defined in section 120.09, gang assault in the second degree as
39 defined in section 120.06, strangulation in the first degree as defined
40 in section 121.13, burglary in the second degree as defined in section
41 140.25, HOME INVASION IN THE FIRST DEGREE AS DEFINED IN SECTION 140.55,
42 robbery in the second degree as defined in section 160.10, criminal
43 possession of a weapon in the second degree as defined in section
44 265.03, criminal use of a firearm in the second degree as defined in
45 section 265.08, criminal sale of a firearm in the second degree as
46 defined in section 265.12, criminal sale of a firearm with the aid of a
47 minor as defined in section 265.14, aggravated criminal possession of a
48 weapon as defined in section 265.19, soliciting or providing support for
49 an act of terrorism in the first degree as defined in section 490.15,
50 hindering prosecution of terrorism in the second degree as defined in
51 section 490.30, and criminal possession of a chemical weapon or biolog-
52 ical weapon in the third degree as defined in section 490.37.

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

1 section 120.18, stalking in the first degree, as defined in subdivision
2 one of section 120.60, strangulation in the second degree as defined in
3 section 121.12, rape in the second degree as defined in section 130.30,
4 criminal sexual act in the second degree as defined in section 130.45,
5 sexual abuse in the first degree as defined in section 130.65, course of
6 sexual conduct against a child in the second degree as defined in
7 section 130.80, aggravated sexual abuse in the third degree as defined
8 in section 130.66, facilitating a sex offense with a controlled
9 substance as defined in section 130.90, HOME INVASION IN THE FIRST
10 DEGREE AS DEFINED IN SECTION 140.55, criminal possession of a weapon in
11 the third degree as defined in subdivision five, six, seven, eight, nine
12 or ten of section 265.02, criminal sale of a firearm in the third degree
13 as defined in section 265.11, intimidating a victim or witness in the
14 second degree as defined in section 215.16, soliciting or providing
15 support for an act of terrorism in the second degree as defined in
16 section 490.10, and making a terroristic threat as defined in section
17 490.20, falsely reporting an incident in the first degree as defined in
18 section 240.60, placing a false bomb or hazardous substance in the first
19 degree as defined in section 240.62, placing a false bomb or hazardous
20 substance in a sports stadium or arena, mass transportation facility or
21 enclosed shopping mall as defined in section 240.63, and aggravated
22 unpermitted use of indoor pyrotechnics in the first degree as defined in
23 section 405.18.

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

33 S 3. This act shall take effect on the first of November next succeed-
34 ing the date on which it shall have become a law; provided, however,
35 that if section 27 of chapter 1 of the laws of 2013 shall not have taken
36 effect on or before such date then section two of this act shall take
37 effect on the same date and in the same manner as such chapter of the
38 laws of 2013 takes effect.