

5160

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 20, 2013

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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.

LBD08403-01-3

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 1 of the laws of 2013 and paragraph (d) as amended by  
36 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, assault on a  
20 judge as defined in section 120.09, gang assault in the second degree as  
21 defined in section 120.06, strangulation in the first degree as defined  
22 in section 121.13, burglary in the second degree as defined in section  
23 140.25, robbery in the second degree as defined in section 160.10,  
24 CARJACKING IN THE SECOND DEGREE AS DEFINED IN SECTION 161.10, criminal  
25 possession of a weapon in the second degree as defined in section  
26 265.03, criminal use of a firearm in the second degree as defined in  
27 section 265.08, criminal sale of a firearm in the second degree as  
28 defined in section 265.12, criminal sale of a firearm with the aid of a  
29 minor as defined in section 265.14, aggravated criminal possession of a  
30 weapon as defined in section 265.19, soliciting or providing support for  
31 an act of terrorism in the first degree as defined in section 490.15,  
32 hindering prosecution of terrorism in the second degree as defined in  
33 section 490.30, and criminal possession of a chemical weapon or biolog-  
34 ical weapon in the third degree as defined in section 490.37.

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

1 degree as defined in section 240.62, placing a false bomb or hazardous  
2 substance in a sports stadium or arena, mass transportation facility or  
3 enclosed shopping mall as defined in section 240.63, and aggravated  
4 unpermitted use of indoor pyrotechnics in the first degree as defined in  
5 section 405.18.

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

15 S 3. This act shall take effect on the first of November next succeed-  
16 ing the date on which it shall have become a law; provided, however,  
17 that the amendments to paragraphs (b) and (c) of subdivision 1 of  
18 section 70.02 of the penal law, as made by section two of this act,  
19 shall take effect on the same date and in the same manner as section 27  
20 of chapter 1 of the laws of 2013, takes effect.