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

5160

2013-2014 Regular Sessions

I N A S S E M B L Y

February 20, 2013

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:

Section 1. The penal law is amended by adding a new article 161 to read as follows:

ARTICLE 161
CARJACKING

SECTION 161.00 CARJACKING; DEFINED.
161.05 CARJACKING IN THE THIRD DEGREE.
161.10 CARJACKING IN THE SECOND DEGREE.
161.15 CARJACKING IN THE FIRST DEGREE.

S 161.00 CARJACKING; DEFINED.

CARJACKING. A PERSON COMMITS CARJACKING WHEN, IN THE COURSE OF COMMITTING LARCENY OF A MOTOR VEHICLE FROM THE PERSON OR PRESENCE OF ANOTHER PERSON, HE OR SHE USES OR THREATENS THE IMMEDIATE USE OF PHYSICAL FORCE UPON ANOTHER PERSON FOR THE PURPOSE OF:

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

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

S 161.05 CARJACKING IN THE THIRD DEGREE.

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

CARJACKING IN THE THIRD DEGREE IS A CLASS D FELONY.

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

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

1. HE OR SHE IS AIDED BY ANOTHER PERSON ACTUALLY PRESENT; OR

2. IN THE COURSE OF THE COMMISSION OF THE CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR SHE OR ANOTHER PARTICIPANT IN THE CRIME:

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

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

CARJACKING IN THE SECOND DEGREE IS A CLASS C FELONY.

S 161.15 CARJACKING IN THE FIRST DEGREE.

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

1. CAUSES SERIOUS PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME; OR

2. IS ARMED WITH A DEADLY WEAPON; OR

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

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

CARJACKING IN THE FIRST DEGREE IS A CLASS B FELONY.

S 2. Subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as amended by chapter 1 of the laws of 2013 and paragraph (d) as amended by chapter 7 of the laws of 2007, is amended to read as follows:

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

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

nal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, CARJACKING IN THE SECOND DEGREE AS DEFINED IN SECTION 161.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

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

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

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

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