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2015-2016 Regular Sessions

I N   S E N A T E

January 21, 2015

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Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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 1 of the laws of 2013, are  
4     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,  
21    criminal possession of a weapon in the first degree as defined in  
22    section 265.04, criminal use of a firearm in the first degree as defined  
23    in section 265.09, criminal sale of a firearm in the first degree as  
24    defined in section 265.13, aggravated assault upon a police officer or a  
25    peace officer as defined in section 120.11, gang assault in the first

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

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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, HOME INVASION ROBBERY IN THE SECOND DEGREE AS DEFINED IN SECTION 163.05, 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.

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

#### ARTICLE 163

##### HOME INVASION ROBBERY

SECTION 163.00 HOME INVASION ROBBERY; DEFINED.

163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE.

163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE.

163.15 HOME INVASION ROBBERY; PROSECUTION.

S 163.00 HOME INVASION ROBBERY; DEFINED.

FOR THE PURPOSES OF THIS ARTICLE:

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

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

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

4. "ROBBERY" MEANS FORCIBLE STEALING AS DEFINED IN SECTION 160.00 OF THIS TITLE.

S 163.05 HOME INVASION ROBBERY IN THE SECOND DEGREE.

1 A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE SECOND DEGREE WHEN  
2 HE OR SHE COMMITS A HOME INVASION ROBBERY.

3 HOME INVASION ROBBERY IN THE SECOND DEGREE IS A CLASS C FELONY.  
4 S 163.10 HOME INVASION ROBBERY IN THE FIRST DEGREE.

5 A PERSON IS GUILTY OF HOME INVASION ROBBERY IN THE FIRST DEGREE WHEN  
6 HE OR SHE COMMITS A HOME INVASION ROBBERY AND WHEN, IN THE COURSE OF THE  
7 COMMISSION OF SUCH CRIME OR OF IMMEDIATE FLIGHT THEREFROM, HE OR SHE OR  
8 ANOTHER PARTICIPANT IN SUCH CRIME:

9 1. CAUSES SERIOUS PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTIC-  
10 IPANT IN SUCH CRIME; OR

11 2. IS ARMED WITH A DEADLY WEAPON; OR

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

13 4. DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN,  
14 MACHINE GUN OR OTHER FIREARM; EXCEPT THAT IN ANY PROSECUTION UNDER THIS  
15 SUBDIVISION, IT IS AN AFFIRMATIVE DEFENSE THAT SUCH PISTOL, REVOLVER,  
16 RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM WAS NOT A LOADED WEAPON  
17 FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR OTHER SERIOUS  
18 PHYSICAL INJURY, COULD BE DISCHARGED. NOTHING CONTAINED IN THIS SUBDIVI-  
19 SION SHALL CONSTITUTE A DEFENSE TO A PROSECUTION FOR, OR PRECLUDE A  
20 CONVICTION OF, HOME INVASION ROBBERY IN THE SECOND DEGREE OR ANY OTHER  
21 OFFENSE.

22 HOME INVASION ROBBERY IN THE FIRST DEGREE IS A CLASS B FELONY.

23 S 163.15 HOME INVASION ROBBERY; PROSECUTION.

24 IN ANY PROSECUTION OF AN OFFENSE DEFINED IN THIS ARTICLE, NO PROVISION  
25 OF THE CHAPTER SHALL PRECLUDE OR PROHIBIT PROSECUTION FOR ANY OTHER  
26 OFFENSE NOT DEFINED IN THIS ARTICLE WHICH OCCURRED DURING THE SAME TRAN-  
27 SACTION OR OCCURRENCE AS THE OFFENSE COMMITTED IN VIOLATION OF THE  
28 PROVISIONS OF THIS ARTICLE.

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