

# STATE OF NEW YORK

5701

2017-2018 Regular Sessions

## IN ASSEMBLY

February 14, 2017

Introduced by M. of A. CURRAN, BUTLER, FINCH, RAIA, HARRIS -- Multi-Sponsored by -- M. of A. BARCLAY, HAWLEY -- 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:

### ARTICLE 161

#### CARJACKING

3 Section 161.00 Carjacking; defined.

4 161.05 Carjacking in the third degree.

5 161.10 Carjacking in the second degree.

6 161.15 Carjacking in the first degree.

7 § 161.00 Carjacking; defined.

8 Carjacking. A person commits carjacking when, in the course of  
9 committing larceny of a motor vehicle from the person or presence of  
10 another person, he or she uses or threatens the immediate use of phys-  
11 ical force upon another person for the purpose of:

12 1. Preventing or overcoming resistance to the taking of the motor  
13 vehicle or to the retention thereof immediately after the taking; or

14 2. Compelling the owner of such motor vehicle or another person to  
15 deliver up the motor vehicle or to engage in other conduct which aids in  
16 the commission of the larceny.

17 § 161.05 Carjacking in the third degree.

18 A person is guilty of carjacking in the third degree when he or she  
19 forcibly steals a motor vehicle from the person or presence of another  
20 person.

21 Carjacking in the third degree is a class D felony.

22 § 161.10 Carjacking in the second degree.

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

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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.

§ 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.

§ 2. Subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, paragraphs (a) and (c) as amended by chapter 368 of the laws of 2015, paragraph (b) 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, sex trafficking as defined in paragraphs (a) and (b) of subdivi-

1 sion five of section 230.34, incest in the first degree as defined in  
2 section 255.27, criminal possession of a weapon in the first degree as  
3 defined in section 265.04, criminal use of a firearm in the first degree  
4 as defined in section 265.09, criminal sale of a firearm in the first  
5 degree as defined in section 265.13, aggravated assault upon a police  
6 officer or a peace officer as defined in section 120.11, gang assault in  
7 the first degree as defined in section 120.07, intimidating a victim or  
8 witness in the first degree as defined in section 215.17, hindering  
9 prosecution of terrorism in the first degree as defined in section  
10 490.35, criminal possession of a chemical weapon or biological weapon in  
11 the second degree as defined in section 490.40, and criminal use of a  
12 chemical weapon or biological weapon in the third degree as defined in  
13 section 490.47.

14 (b) Class C violent felony offenses: an attempt to commit any of the  
15 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
16 vated criminally negligent homicide as defined in section 125.11, aggra-  
17 vated manslaughter in the second degree as defined in section 125.21,  
18 aggravated sexual abuse in the second degree as defined in section  
19 130.67, assault on a peace officer, police officer, fireman or emergency  
20 medical services professional as defined in section 120.08, assault on a  
21 judge as defined in section 120.09, gang assault in the second degree as  
22 defined in section 120.06, strangulation in the first degree as defined  
23 in section 121.13, burglary in the second degree as defined in section  
24 140.25, robbery in the second degree as defined in section 160.10,  
25 carjacking in the second degree as defined in section 161.10, criminal  
26 possession of a weapon in the second degree as defined in section  
27 265.03, criminal use of a firearm in the second degree as defined in  
28 section 265.08, criminal sale of a firearm in the second degree as  
29 defined in section 265.12, criminal sale of a firearm with the aid of a  
30 minor as defined in section 265.14, aggravated criminal possession of a  
31 weapon as defined in section 265.19, soliciting or providing support for  
32 an act of terrorism in the first degree as defined in section 490.15,  
33 hindering prosecution of terrorism in the second degree as defined in  
34 section 490.30, and criminal possession of a chemical weapon or biolog-  
35 ical weapon in the third degree as defined in section 490.37.

36 (c) Class D violent felony offenses: an attempt to commit any of the  
37 class C felonies set forth in paragraph (b); reckless assault of a child  
38 as defined in section 120.02, assault in the second degree as defined in  
39 section 120.05, menacing a police officer or peace officer as defined in  
40 section 120.18, stalking in the first degree, as defined in subdivision  
41 one of section 120.60, strangulation in the second degree as defined in  
42 section 121.12, rape in the second degree as defined in section 130.30,  
43 criminal sexual act in the second degree as defined in section 130.45,  
44 sexual abuse in the first degree as defined in section 130.65, course of  
45 sexual conduct against a child in the second degree as defined in  
46 section 130.80, aggravated sexual abuse in the third degree as defined  
47 in section 130.66, facilitating a sex offense with a controlled  
48 substance as defined in section 130.90, labor trafficking as defined in  
49 paragraphs (a) and (b) of subdivision three of section 135.35, carjack-  
50 ing in the third degree as defined in section 161.05, criminal  
51 possession of a weapon in the third degree as defined in subdivision  
52 five, six, seven, eight, nine or ten of section 265.02, criminal sale of  
53 a firearm in the third degree as defined in section 265.11, intimidating  
54 a victim or witness in the second degree as defined in section 215.16,  
55 soliciting or providing support for an act of terrorism in the second  
56 degree as defined in section 490.10, and making a terroristic threat as

1 defined in section 490.20, falsely reporting an incident in the first  
2 degree as defined in section 240.60, placing a false bomb or hazardous  
3 substance in the first degree as defined in section 240.62, placing a  
4 false bomb or hazardous substance in a sports stadium or arena, mass  
5 transportation facility or enclosed shopping mall as defined in section  
6 240.63, and aggravated unpermitted use of indoor pyrotechnics in the  
7 first degree as defined in section 405.18.

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

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