

# STATE OF NEW YORK

5121

2021-2022 Regular Sessions

## IN ASSEMBLY

February 11, 2021

Introduced by M. of A. REILLY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to crimes committed during a riot

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The closing paragraph of section 240.06 of the penal law,  
2 as amended by chapter 294 of the laws of 2005, is amended to read as  
3 follows:

4 Riot in the first degree is a class [~~E~~] D felony.

5 § 2. The closing paragraph of section 240.05 of the penal law, as  
6 amended by section 791 of the laws of 1967, is amended to read as  
7 follows:

8 Riot in the second degree is a class [~~A-misdemeanor~~] E felony.

9 § 3. The closing paragraph of section 240.08 of the penal law, as  
10 added by section 791 of the laws of 1967, is amended to read as follows:

11 Inciting to riot is a class [~~A-misdemeanor~~] E felony.

12 § 4. Subdivision 4 of section 140.30 of the penal law, as amended by  
13 section 374 of the laws of 1973, is amended and a new subdivision 5 is  
14 added to read as follows:

15 4. Displays what appears to be a pistol, revolver, rifle, shotgun,  
16 machine gun or other firearm; except that in any prosecution under this  
17 subdivision, it is an affirmative defense that such pistol, revolver,  
18 rifle, shotgun, machine gun or other firearm was not a loaded weapon  
19 from which a shot, readily capable of producing death or other serious  
20 physical injury, could be discharged. Nothing contained in this subdivi-  
21 sion shall constitute a defense to a prosecution for, or preclude a  
22 conviction of, burglary in the second degree, burglary in the third  
23 degree or any other crime[~~-~~]; or

24 5. Is simultaneously engaged in conduct that is an offense defined in  
25 section 240.05, 240.06 or 240.08 of this part.

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

LBD06953-01-1

1 § 5. The opening paragraph of section 150.15 of the penal law, as  
2 amended by chapter 225 of the laws of 1979, is amended to read as  
3 follows:

4 A person is guilty of arson in the second degree when he intentionally  
5 damages a building or motor vehicle by starting a fire, and

6 1. when (a) another person who is not a participant in the crime is  
7 present in such building or motor vehicle at the time, and (b) the  
8 defendant knows that fact or the circumstances are such as to render the  
9 presence of such a person therein a reasonable possibility; or

10 2. such person is simultaneously engaged in conduct that is an offense  
11 defined in section 240.05, 240.06 or 240.08 of this part.

12 § 6. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the  
13 criminal procedure law, as added by section 2 of part UU of chapter 56  
14 of the laws of 2020, are amended and a new paragraph (u) is added to  
15 read as follows:

16 (s) a felony, where the defendant qualifies for sentencing on such  
17 charge as a persistent felony offender pursuant to section 70.10 of the  
18 penal law; [~~or~~]

19 (t) any felony or class A misdemeanor involving harm to an identifi-  
20 able person or property, where such charge arose from conduct occurring  
21 while the defendant was released on his or her own recognizance or  
22 released under conditions for a separate felony or class A misdemeanor  
23 involving harm to an identifiable person or property, provided, however,  
24 that the prosecutor must show reasonable cause to believe that the  
25 defendant committed the instant crime and any underlying crime. For the  
26 purposes of this subparagraph, any of the underlying crimes need not be  
27 a qualifying offense as defined in this subdivision[~~+~~]; or

28 (u) riot in the second degree as defined in section 240.05 of the  
29 penal law, riot in the first degree as defined in section 240.06 of the  
30 penal law or inciting a riot as defined in section 240.08 of the penal  
31 law.

32 § 7. This act shall take effect immediately.