STATE OF NEW YORK

3373

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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:

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

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

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

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

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

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

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

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, burglary in the second degree, burglary in the third degree or any other crime[~~.~~]; or

5. Is simultaneously engaged in conduct that is an offense defined in 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.

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

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

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

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

§ 6. Paragraphs (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (t) as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; [~~or~~]

(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law[~~.~~]**;**

or

(v) riot in the second degree as defined in section 240.05 of the penal law, riot in the first degree as defined in section 240.06 of the penal law or inciting a riot as defined in section 240.08 of the penal law.

§ 7. This act shall take effect immediately.