

# STATE OF NEW YORK

4211

2023-2024 Regular Sessions

## IN SENATE

February 6, 2023

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed 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 chapter 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 chapter 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 chapter 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.

LBD02026-01-3

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 or she inten-  
5 tionally 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 (t) and (u) of subdivision 4 of section 510.10 of the  
13 criminal procedure law, paragraph (t) as amended and paragraph (u) as  
14 added by section 2 of subpart B of part UU of chapter 56 of the laws of  
15 2022, are amended and a new paragraph (v) is added to read as follows:

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

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

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

44 § 7. This act shall take effect immediately.