

SPONSOR: Rep. Bolden & Rep. Heffernan & Sen. Sokola
Reps. Baumbach, Bentz, Cooke, Longhurst, Minor-Brown; Sens. Lockman, Townsend

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 77
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO BURGLARY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 824 Burglary in the third degree; class F felony.

A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class F felony.

§ 825 Burglary in the second degree; class D felony.

(a) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein.

(b) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein and where the person is armed with explosives or a deadly weapon or where the person causes physical injury to any other person who is not a participant in the crime.

Burglary in the second degree is class D felony.

~~(1) In a dwelling with intent to commit a crime therein; or~~

~~(2) In a building and when, in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime:~~

~~a. Is armed with explosives or a deadly weapon; or~~

~~b. Causes physical injury to any person who is not a participant in the crime.~~

~~Burglary in the second degree is class D felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class C felony.~~

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~~(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the second degree shall receive a minimum sentence of:~~

~~(1) One year at Level V; or~~

~~(2) Three years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this~~ title.

~~(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the second degree as well as burglary in the second degree.~~

§ 826 Burglary in the first degree; class C or B felony.

(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in an occupied dwelling with the intent to commit a crime therein.

(b) A person is guilty of Home Invasion Burglary First Degree if the elements of § 826(a) are met and in effecting entry or when in the dwelling or immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:

(1) Robbery in the first or second degree;

(2) Assault in the first or second degree;

(3) Murder in the first or second degree;

(4) Manslaughter;

(5) Rape in any degree;

(6) Kidnapping in the first or second degree

(c) Burglary in the first degree is a class C felony. A person convicted of Burglary in the first degree shall receive a minimum sentence of 1 year at Level V.

(d) Notwithstanding any provision of this section or Code to the contrary, where a person is convicted of Burglary in the first degree pursuant to § 826(a) and who either (1) is armed with explosives or a deadly weapon; or (2) causes physical injury to any person who is not a participant in the crime, Burglary in the first degree is a class B felony.

(e) Notwithstanding any provision of this section or Code to the contrary, any person convicted of Home Invasion Burglary first degree as defined in §826(b), shall receive a minimum sentence of 6 years at Level V.

(f) The sentencing provisions applicable to §826 apply to the attempted burglary in the first degree as well as attempted home invasion burglary in the first degree.

(g) It is no defense that the accused did not know that the dwelling was occupied at the time of entry.

~~(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:~~

~~(1) Is armed with explosives or a deadly weapon; or~~

~~(2) Causes physical injury to any person who is not a participant in the crime.~~

~~Burglary in the first degree is a class C felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class B felony.~~

~~(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the first degree shall receive a minimum sentence of:~~

~~(1) Two years at Level V; or~~

~~(2) Four years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~

~~(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the first degree as well as burglary in the first degree.~~

~~§ 826A Home invasion; class B felony.~~

~~(a) A person is guilty of home invasion when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a violent felony therein, and:~~

~~(1) That dwelling is occupied by another person who is not a participant in the crime; and~~

~~(2) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:~~

~~a. Robbery in any degree;~~

~~b. Assault in the first or second degree;~~

~~c. Murder in any degree;~~

~~d. Manslaughter;~~

~~e. Rape in any degree;~~

~~f. Kidnapping in any degree; and~~

~~(3) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:~~

~~a. Is armed with explosives or a deadly weapon; or~~

~~b. Causes physical injury to any person who is not a participant in the crime.~~

~~Home invasion is a class B felony.~~

~~(b)(1) Notwithstanding any provision of this section or Code to the contrary, any person convicted of home invasion shall receive a minimum sentence of:~~

~~a. Six years at Level V; or~~

~~b. Eight years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first- or second-degree conviction.~~

~~(2) Notwithstanding the provisions of paragraph (b)(1) of this section or any provision of this section or Code to the contrary, any person convicted of home invasion where the other person present in the dwelling, who is not another participant in the crime, is a person 62 years of age or older shall receive a minimum sentence of:~~

~~a. Seven years at Level V; or~~

~~b. Nine years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~

~~(c) The sentencing provisions of subsection (b) of this section apply to attempted home invasion as well as home invasion.~~

§ 827 Multiple offenses.

A person may be convicted both of burglary ~~or home invasion~~ and of the offense which it was the purpose of the person's unlawful entry to commit or for an attempt to commit that offense. A person may be convicted of home invasion burglary first degree and any of the underlying offenses designated in § 826(b).

§ 828 Possession of burglar's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of burglar's tools or instruments facilitating theft when, under circumstances evidencing an intent to use or knowledge that some other person intends to use the same in the commission of an offense of such character, the person possesses any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating:

(1) Offenses involving unlawful entry into or upon premises,

(2) Offenses involving the unlocking, overriding, or disabling of a security device without authorization,

(3) Offenses involving forcible breaking or opening of safes, vending machines, automatic teller machines, lock boxes, gates, doors or any container or depositories of property, or

(4) The offense of identity theft, such as a credit card, driver license or other document issued in a name other than the name of the person who possesses the document.

(b) Possession of burglar's tools or instruments facilitating theft is a class F felony.

§ 829 Definitions relating to criminal trespass, burglary and home invasion.

(a) "Burglar's tool or instruments" includes the term "bump key" which is a type of key used for a specific lock picking technique called lock bumping.

(b) "Dwelling" means a building which is usually occupied by a person lodging therein at night <u>including a building that has been adapted or is customarily used for overnight accommodation.</u>.

<u>(c) “Occupied Dwelling” means a dwelling, and a person is lawfully present on the property at the time of the offense.</u>

(~~c~~<u>d</u>) A person "enters" upon premises when the person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.

(~~d~~<u>e</u>) A person "enters or remains unlawfully" in or upon premises when the person is not licensed or privileged to do so. A person who, regardless of intent, enters or remains upon premises which appear at the time to be open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(~~e~~<u>f</u>) The "intent to commit a crime therein" may be formed prior to the unlawful entry, be concurrent with the unlawful entry or such intent may be formed after the entry while the person remains unlawfully.

(~~f~~<u>g</u>) "Night" means a period between 30 minutes after sunset and 30 minutes before sunrise.

(~~g~~<u>h</u>) "Premises" include the term "building" as defined in § 222 of this title, and any real property.

(~~h~~i) "Security device" includes any lock, whether mechanical or electronic; or any warning device designed to alert a person or the general public of a possible attempt to gain unlawful entry into or upon premises or a possible attempt to unlock, bypass or otherwise disable a lock.

(~~i~~k) A person possesses burglar tools or instruments facilitating theft "under circumstances evincing an intent to use or knowledge that some other person intends to use" such when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a trespass, burglary, home invasion, or theft-related offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.