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

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 78
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE.

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:

§ 831 Robbery in the second degree; class E or D felony.

(a) A person is guilty of robbery in the second degree when, in the course of committing theft, the person uses or threatens the immediate use of force upon another person with intent to:

(1) Prevent or overcome resistance to the taking of the property or to the retention thereof immediately after the taking; or

(2) Compel the owner of the property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft.

(b) Except as provided in paragraph (d) of this section, Robbery second degree is a class E felony.

(c)~~(b)~~ In addition to its ordinary meaning, the phrase "in the course of committing theft" includes any act which occurs in an attempt to commit theft or in immediate flight after the attempt or commission of the theft.

(d) Robbery in the second degree is a class D felony when, in the course of committing an offense under subsection (a) of this section, the person takes possession of a motor vehicle, and while in possession or control of such vehicle, the person does any of the following:

(1) Commits or attempts to commit a class D or greater felony.

(2) Drives or operates the vehicle in violation of § 4177 of Title 21.

(3) Commits any offense set forth in Chapter 47 of Title 16.

(4) Engages in conduct which causes or creates a substantial risk of physical injury to another person.

(e) Definitions relating to § 831(d).

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(1) "Another person" means and includes the owner of the motor vehicle or any operator, occupant, passenger of the motor vehicle or any other person who has an interest in the use of the motor vehicle which the offender is not privileged to infringe.

(2) "Motor vehicle" or "vehicle," means its ordinary meaning and includes any watercraft.

§ 832 Robbery in the first degree~~.~~ ; class B felony..

(a) A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, the person or another participant in the crime:

(1) Causes physical injury to any person who is not a participant in the crime; or

(2) Displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon; or

(3) Is armed with and uses or threatens the use of a dangerous instrument; or

(4) Commits said crime against a person who is ~~62~~ 65 years of age or older; or

(5) Threatens death upon another.

Robbery in the first degree is a class B felony.

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

(1) Three years at Level V; or

(2) Five years at Level V if the conviction was either of the following:

a. ~~is for~~ For an offense committed pursuant to §832(a)(3) and the deadly weapon was a firearm, and was committed within ~~10~~ 7 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within ~~10~~ 7 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

b. For an offense committed within 2 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within 2 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

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

(c) The sentencing provisions of this section apply to attempted robbery in the first degree as well as robbery in the first degree.

~~§§ 833 , 834. [Reserved.]~~

~~§ 835 Carjacking in the second degree; class E felony; class D felony.~~

~~(a) A person is guilty of carjacking in the second degree when that person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person.~~

~~(b)(1) Except as provided in paragraph (b)(2) of this section, carjacking in the second degree is a class E felony.~~

~~(2) Carjacking in the second degree is a class D felony if the elements of subsection (a) of this section are met and if, while in possession or control of the vehicle, the person:~~

~~a. Recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person; or~~

~~b. Compels a lawful occupant of the vehicle to leave the vehicle; or~~

~~c. Causes the vehicle to be operated recklessly.~~

~~(c) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.~~

~~(d) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.~~

~~§ 836 Carjacking in the first degree; class C felony; class B felony.~~

~~(a) A person is guilty of carjacking in the first degree when the person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person, and:~~

~~(1) While in possession or control of such vehicle the person commits or attempts to commit a class D or greater felony; or~~

~~(2) While in possession or control of such vehicle the person drives or operates the vehicle in violation of § 4177 of Title 21; or~~

~~(3) While in possession or control of such vehicle the person commits any offense set forth in Chapter 47 of Title 16; or~~

~~(4) While in possession or control of such vehicle or while in the course of taking or attempting to take possession or control of such vehicle the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon.~~

~~(5) While in possession or control of such vehicle the person causes physical injury to another person; or~~

~~(6) The person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, is 62 years of age or older or 14 years of age or younger.~~

~~(b) Carjacking in the first degree as defined in paragraphs (a)(1), (a)(2) and (a)(3) of this section is a class C felony. Carjacking in the first degree as defined in paragraphs (a)(4), (a)(5) and (a)(6) of this section is a class B felony.~~

~~(c) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.~~

~~(d) It is no defense to a prosecution under paragraph (a)(6) of this section, that the accused did not know the age of the person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, or that the accused reasonably believed such person to be under the age of 62 or over the age of 14.~~

~~(e) For the purpose of any prosecution under paragraph (a)(5) of this section, it is unnecessary to prove the accused's state of mind with regard to causation of physical injury, notwithstanding the provisions of § 251 or § 252 of this title or any other statute to the contrary.~~

~~(f) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.~~

~~§ 837 Definitions relating to carjacking.~~

~~(a) "Another person" includes the owner of the vehicle or any operator, occupant, passenger of the vehicle or any other person who has an interest in the use of the vehicle which the offender is not privileged to infringe.~~

~~(b) "Motor vehicle" or "vehicle," in addition to its ordinary meaning, includes any watercraft~~.