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HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE BILL NO. 277
AS AMENDED BY
HOUSE AMENDMENT NO. 3
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO HOME INVASION
AND 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 insertions as shown by
underlining as follows:

§ 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 (1) of this subsection 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.

Section 2. Amend § 921(2)b., Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

b. Any child charged in this State with delinquency by having committed, after reaching his or her sixteenth birthday, murder in the second degree, manslaughter, robbery in the second degree, attempted murder (first or second degree), home invasion, burglary in the first degree or arson in the first degree; provided, however, that such child shall, after his first appearance in the Court, be given a hearing as soon as practicable to determine his amenability to the processes of the Court. The Court shall give immediate notice of such hearing in writing to the Department of Justice and to the child's custodian, near relative, attorney or other interested person, if known, and then the Court shall proceed in accordance with the provisions of § 1010 of this title. The Attorney General or one of his or her deputies shall be present at any such hearing.

Section 3. Amend § 1010(a)(3), Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

(3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were he or she charged as an adult under the laws of this State, and has reached his or her sixteenth birthday and the acts which form the basis of the current allegations constitute 1 or more of the following offenses: conspiracy first degree, rape in the third degree, arson first degree, burglary first degree, home invasion, §§ 4752 and 4753 of Title 16 or any attempt to commit any of the offenses set forth in this paragraph;

Section 4. Amend § 1018(a)(4), Title 10 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(4) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are designated as violent felonies or sex offenses excepting rape first degree [§ 773 of Title 11], rape second degree [§ 772 of Title 11], arson first degree [§ 803 of Title 11], robbery first degree [§ 832 of Title 11], ~~and~~ burglary first degree [§ 826 of Title 11], and home invasion [§ 826A of Title 11], provided the petitioner has no other prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that more than 5 years have passed following the date the adjudication of delinquency was entered in Family Court.

Section 5. Amend § 616(a)(2), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(2) “Pattern of criminal gang activity” means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

- a. Assault, as defined in § 612 or § 613 of this title.
- b. Any criminal acts causing death as defined in §§ 632--636 of this title.
- c. Any criminal acts relating to sexual offenses defined in §§ 768--780 of this title.
- d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782--783A of this title.
- e. Any criminal acts of arson as defined in §§ 801--803 of this title.
- f. Any criminal acts relating to burglary which are defined in §§ 824--826A of this Title.
- g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.
- h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.
- i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.
- j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§ 1447--1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.

k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, 4754, 4755, 4756, 4757(c) of Title 16.

Section 6. Amend § 827, Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

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.

Section 7. Amend the catchline to § 829, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

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

Section 8. Amend § 829(i), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(i) 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.

Section 9. Amend § 4201(c), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(c) The following felonies shall be designated as violent felonies:

Title 11, Section Crime

513 Conspiracy First Degree

602 Aggravated Menacing

604 Reckless Endangering First Degree

605 Abuse of a Pregnant Female in the Second Degree

606 Abuse of a Pregnant Female in the First Degree

612 Assault in the Second Degree

613 Assault in the First Degree

614 Assault on a Sports Official

615 Assault by Abuse

617 Criminal Youth Gangs

629 Vehicular Assault in the First Degree

630 Vehicular Homicide in the Second Degree

630A Vehicular Homicide in the First Degree

631 Criminally Negligent Homicide

632 Manslaughter

633 Murder by Abuse or Neglect in the Second Degree

634 Murder by Abuse or Neglect in the First Degree

635 Murder in the Second Degree

636 Murder in the First Degree

645 Promoting Suicide

768 Unlawful Sexual Contact in the Second Degree

769 Unlawful Sexual Contact in the First Degree

770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree

771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree

772 Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree

773 Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree

774 Sexual Extortion

775 Bestiality

776 Continuous Sexual Abuse of Child

777 Dangerous Crime Against a Child

777A Sex Offender Unlawful Sexual Conduct Against a Child

778 Sexual Abuse of a Child by a Person in a Position of Trust,
Authority or Supervision in the First Degree

778A Sexual Abuse of a Child by a Person in a Position of
Trust, Authority or Supervision in the Second Degree

782 Unlawful Imprisonment in the First Degree

783 Kidnapping in the Second Degree

783A Kidnapping in the First Degree

802 Arson in the Second Degree

803 Arson in the First Degree

825 Burglary in the Second Degree

826 Burglary in the First Degree

826A Home Invasion

831 Robbery in the Second Degree

832 Robbery in the First Degree

835 Carjacking in the Second Degree

836 Carjacking in the First Degree

846 Extortion

1108 Sexual Exploitation of a Child

1109 Unlawfully Dealing in Child Pornography

1112A Sexual Solicitation of a Child

1250 Assault in the First Degree Against a Law-Enforcement Animal

1253 Escape After Conviction

1254 Assault in a Detention Facility

1256 Promoting Prison Contraband (Deadly Weapon)

1302 Riot

1304 Hate Crimes

1312 Stalking

1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices

1339 Adulteration (Causing Injury or Death)

1353 Promoting Prostitution in the First Degree

1442 Carrying a Concealed Deadly Weapon (Firearm Offense)

1444 Possessing a Destructive Weapon

1445 Unlawfully Dealing With a Dangerous Weapon

1447 Possessing a Deadly Weapon During the Commission of a Felony

1447A Possessing a Firearm during the Commission of a Felony

1448(e) Possession of a Deadly Weapon by Persons Prohibited

(Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).

1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)

1449 Wearing Body Armor During the Commission of a Felony

1503 Racketeering

3533 Aggravated Act of Intimidation

Title 16, Section Crime

1136 Abuse/Mistreatment/Neglect of a Patient

4751 Former Manufacture/Delivery/Possession With Intent to

Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or
Delivery Causing Death

4752 Former Manufacture/Delivery/Possession With Intent to

Deliver a Controlled or Counterfeit Controlled Substance

4752A Former Unlawful Delivery of a Noncontrolled Substance

4753A Former Trafficking in Marijuana, Cocaine, Illegal Drugs,
Methamphetamine, LSD, Designer Drugs or MDMA

4752 Drug Dealing - Aggravated Possession; Class B Felony

4753 Drug Dealing - Aggravated Possession; Class C Felony

4754 Drug Dealing - Aggravated Possession; Class D Felony

4755 Aggravated Possession; Class E Felony

4756 Aggravated Possession; Class F Felony

4761 Former Distribution to Minors

4761(c) and (d) Illegal Delivery of Prescription Drugs

4774 Delivery of Drug Paraphernalia to a Minor

Title 31, Section Crime

3913 Abuse/Neglect/Exploit/Mistreat an Infirm Adult

Any attempt to commit any felony designated in this subsection as a violent felony shall also be designated as a violent felony.

Section 10. Amend § 4209(e)(1)j., Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

j. The murder was committed while the defendant was engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any degree of rape, unlawful sexual intercourse, arson, kidnapping, robbery, sodomy, ~~or burglary,~~ or home invasion.

Section 11. Amend § 4214(b), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(b) Any person who has been 2 times convicted of a felony or an attempt to commit a felony hereinafter specifically named, under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony hereinafter specifically named, or an attempt to commit such specific felony, is declared to be an habitual criminal, and the court in which such third or subsequent conviction is had, in imposing sentence, shall impose a life sentence upon the person so convicted unless the subsequent felony conviction requires or allows and results in the imposition of capital punishment. Such sentence shall not be subject to the probation or parole provisions of Chapter 43 of this title.

Such felonies shall be:

Section Crime

803 Arson in the first degree

826 Burglary in the first degree

825 Burglary in the second degree

826A Home Invasion

636 Murder in the first degree

635 Murder in the second degree

632 Manslaughter

783 Kidnapping in the second degree

783A Kidnapping in the first degree

606 Abuse of a pregnant female in the first degree

613 Assault in the first degree

615 Assault by abuse

Former 763 Rape in the second degree

Former 764 Rape in the first degree

Former 766 Sodomy in the first degree

832 Robbery in the first degree

836 Carjacking in the first degree

Former 771 Unlawful sexual penetration in the second degree

Former 772 Unlawful sexual penetration in the first degree

Former 773 Sexual intercourse in the third degree

Former 774 Unlawful sexual intercourse in the second degree

Former 775 Unlawful sexual intercourse in the first degree

771 Rape in the third degree

772 Rape in the second degree

773 Rape in the first degree

778(1), (2) or (3) Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree

Title 16, Section Crime

Former 4751 Manufacture, delivery or possession with intent to manufacture or deliver a narcotic drug

Former 4752 Manufacture, delivery or possession with intent to manufacture or deliver nonnarcotic, controlled substance

Former 4752A Unlawful delivery or attempt to deliver noncontrolled substance

Former 4753A Trafficking in marijuana, cocaine, illegal drugs or methamphetamine.

4752 Drug Dealing - Aggravated Possession; Class B Felony

4753 Drug Dealing - Aggravated Possession; Class C Felony

4754 Drug Dealing - Aggravated Possession; Class D Felony

4755 Aggravated Possession; Class E Felony

Notwithstanding any provision of this title to the contrary, any sentence imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without benefit of probation, parole, earned good time or any other reduction.

Section 12. Amend § 4362(a), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(a) When the Board of Pardons considers for recommendation to the Governor, for pardon or commutation of sentence, any person who has been convicted of an act causing death (subpart B of subchapter II of Chapter 5 of

this title); sexual offenses (subpart D of subchapter II of Chapter 5 of this title); kidnapping and related offenses (subpart E of subchapter II of Chapter 5 of this title); arson and related offenses (subpart A of subchapter III of Chapter 5 of this title); home invasion; burglary in the first degree; burglary in the second degree; robbery (subpart C of subchapter III of Chapter 5 of this title); offenses relating to children and incompetents (subchapter V of Chapter 5 of this title); cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse of children (Chapter 9 of Title 16); and distribution of a controlled substance to a person under age 18 ([former] § 4761 of Title 16 [repealed]); or for an attempt as provided by statute to commit any of these crimes, there shall be furnished to each member of the Board of Pardons and to the Governor, in case recommendation for a pardon or commutation of sentence be made, a copy of the report of the psychiatrist and/or psychologist who have examined such person, as provided in subsection (b) of this section.

Section 13. Amend § 6703, Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

For purposes of this chapter, the words “violent crime” shall mean: abuse of an infirm adult; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; home invasion; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm offense); continuous sexual abuse of child; criminally negligent homicide; dealing with child pornography, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in

the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

Section 14. Amend § 9401(2), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(2) “Crime” means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

601. Offensive touching; unclassified misdemeanor.

602. Menacing; unclassified misdemeanor.

603. Reckless endangering in the second degree; class A misdemeanor.

604. Reckless endangering in the first degree; class E felony.

611. Assault in the third degree; class A misdemeanor.

612. Assault in the second degree; class D felony.

613. Assault in the first degree; class C felony.

621. Terroristic threatening.

628A. Vehicular assault in the second degree; class B misdemeanor.

629. Vehicular assault in the first degree; class A misdemeanor.

630. Vehicular homicide in the second degree; class F felony; minimum sentence; juvenile offenders.

631. Criminally negligent homicide; class E felony.

631A. Vehicular homicide in the first degree; class E felony; minimum sentence; juvenile offenders.

632. Manslaughter; class C felony.

635. Murder in the second degree; class B felony.

636. Murder in the first degree; class A felony.

645. Promoting suicide; class F felony.

764. Indecent exposure in the second degree; unclassified misdemeanor.

765. Indecent exposure in the first degree; class A misdemeanor.

766. Incest; class A misdemeanor.

767. Unlawful sexual contact in the third degree; class A misdemeanor.

768. Unlawful sexual contact in the second degree; class G felony.

769. Unlawful sexual contact in the first degree; class F felony.

Former 770. Unlawful sexual penetration in the third degree; class E felony.

Former 771. Unlawful sexual penetration in the second degree; class D felony.

Former 772. Unlawful sexual penetration in the first degree; separate charges; class C felony.

Former 773. Unlawful sexual intercourse in the third degree; class C felony.

Former 774. Unlawful sexual intercourse in the second degree; class B felony.

Former 775. Unlawful sexual intercourse in the first degree; class A felony.

770. Rape in the fourth degree; class C felony.

771. Rape in the third degree; class B felony.

772. Rape in the second degree; class B felony.

773. Rape in the first degree; class A felony.

781. Unlawful imprisonment in the second degree; class A misdemeanor.

782. Unlawful imprisonment in the first degree; class G felony.

783. Kidnapping in the second degree; class C felony.

783A. Kidnapping in the first degree; class B felony.

785. Interference with custody; class G felony; class A misdemeanor.

801. Arson in the third degree; affirmative defense; class G felony.

802. Arson in the second degree; affirmative defense; class D felony.

803. Arson in the first degree; class C felony.

811. Criminal mischief; felony.

823. Criminal trespass in the first degree; class A misdemeanor.

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

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

826. Burglary in the first degree; class C felony.

826A. Home invasion; class B felony.

831. Robbery in the second degree; class E felony.

832. Robbery in the first degree.

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

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

840. Shoplifting; class G felony; class A misdemeanor.

841. Theft; class G felony; class A misdemeanor.

846. Extortion; class E felony.

848. Misapplication of property; class G felony; class A misdemeanor.

851. Receiving stolen property; class G felony; class A misdemeanor.

854. Identity theft; class E felony; class D felony.

861. Forgery; class F felony; class G felony; class A misdemeanor; restitution required.

900. Issuing a bad check; class A misdemeanor; class G felony.

903. Unlawful use of credit card; class G felony; class A misdemeanor.

1101. Abandonment of child; class A misdemeanor.

1102. Endangering the welfare of a child; class A misdemeanor.

1105. Crime against a vulnerable adult; class A misdemeanor or higher.

1108. Sexual exploitation of a child; class B felony.

1112A. Sexual Solicitation of a Child; class C felony.

1261. Bribing a witness; class E felony.

1263. Tampering with a witness; class E felony.

1263A. Interfering with child witness.

1264. Bribing a juror; class E felony.

1312. Aggravated harassment; class B misdemeanor.

1312A. Stalking; class F felony.

1339. Adulteration; class G felony; class E felony; class A felony.

2113. Penalties for noncompliance with conditions of recognizance; bond or conditions.

3532. Act of intimidation; class E felony.

3533. Aggravated act of intimidation; class D felony.

2113. Penalties for noncompliance with conditions of recognizance; bond or conditions.

3532. Act of intimidation; class E felony.

3533. Aggravated act of intimidation; class D felony.