

# ASSEMBLY, No. 5035

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 10, 2023

**Sponsored by:**

**Assemblywoman SHANIQUE SPEIGHT**

**District 29 (Essex)**

**Assemblyman P. CHRISTOPHER TULLY**

**District 38 (Bergen and Passaic)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Upgrades burglary of a residence to crime of the second degree.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/15/2023)

A5035 SPEIGHT, TULLY

2

1 AN ACT concerning burglary and amending N.J.S.2C:18-2 and  
2 P.L.1997, c.117.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. N.J.S.2C:18-2 is amended to read as follows:

8 2C:18-2. Burglary. a. Burglary defined. A person is guilty of  
9 burglary if, with purpose to commit an offense therein or thereon  
10 he:

11 (1) Enters a research facility, structure, or a separately secured  
12 or occupied portion thereof unless the structure was at the time  
13 open to the public or the actor is licensed or privileged to enter;

14 (2) Surreptitiously remains in a research facility, structure, or a  
15 separately secured or occupied portion thereof knowing that he is  
16 not licensed or privileged to do so; or

17 (3) Trespasses in or upon utility company property where public  
18 notice prohibiting trespass is given by conspicuous posting, or  
19 fencing or other enclosure manifestly designed to exclude intruders.

20 b. Grading. Burglary is a crime of the second degree if in the  
21 course of committing the offense, the actor:

22 (1) Purposely, knowingly or recklessly inflicts, attempts to  
23 inflict or threatens to inflict bodily injury on anyone; or

24 (2) Is armed with or displays what appear to be explosives or a  
25 deadly weapon; or

26 (3) Unlawfully enters or surreptitiously remains in a dwelling or  
27 other structure adapted for overnight accommodation of persons,  
28 whether or not a person is actually present.

29 Otherwise burglary is a crime of the third degree. An act shall  
30 be deemed "in the course of committing" an offense if it occurs in  
31 an attempt to commit an offense or in immediate flight after the  
32 attempt or commission.

33 (cf: P.L.2009, c.283, s.2)

34

35 2. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to  
36 read as follow:

37 2. a. A court imposing a sentence of incarceration for a crime  
38 of the first or second degree enumerated in subsection d. of this  
39 section shall fix a minimum term of 85% of the sentence imposed,  
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section  
42 shall be fixed as a part of every sentence of incarceration imposed  
43 upon every conviction of a crime enumerated in subsection d. of  
44 this section, whether the sentence of incarceration is determined  
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 other provision of law, and shall be calculated based upon the  
2 sentence of incarceration actually imposed. The provisions of  
3 subsection a. of this section shall not be construed or applied to  
4 reduce the time that must be served before eligibility for parole by  
5 an inmate sentenced to a mandatory minimum period of  
6 incarceration. Solely for the purpose of calculating the minimum  
7 term of parole ineligibility pursuant to subsection a. of this section,  
8 a sentence of life imprisonment shall be deemed to be 75 years.

9 c. Notwithstanding any other provision of law to the contrary  
10 and in addition to any other sentence imposed, a court imposing a  
11 minimum period of parole ineligibility of 85 percent of the sentence  
12 pursuant to this section shall also impose a five-year term of parole  
13 supervision if the defendant is being sentenced for a crime of the  
14 first degree, or a three-year term of parole supervision if the  
15 defendant is being sentenced for a crime of the second degree. The  
16 term of parole supervision shall commence upon the completion of  
17 the sentence of incarceration imposed by the court pursuant to  
18 subsection a. of this section unless the defendant is serving a  
19 sentence of incarceration for another crime at the time he completes  
20 the sentence of incarceration imposed pursuant to subsection a., in  
21 which case the term of parole supervision shall commence  
22 immediately upon the defendant's release from incarceration.  
23 During the term of parole supervision the defendant shall remain in  
24 release status in the community in the legal custody of the  
25 Commissioner of the Department of Corrections and shall be  
26 supervised by the State Parole Board as if on parole and shall be  
27 subject to the provisions and conditions of section 3 of P.L.1997,  
28 c.117 (C.30:4-123.51b).

29 d. The court shall impose sentence pursuant to subsection a. of  
30 this section upon conviction of the following crimes or an attempt  
31 or conspiracy to commit any of these crimes:

- 32 (1) N.J.S.2C:11-3, murder;
- 33 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 34 (3) N.J.S.2C:11-5, vehicular homicide;
- 35 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 36 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),  
37 disarming a law enforcement officer;
- 38 (6) N.J.S.2C:13-1, kidnapping;
- 39 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 40 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
41 subsection c. of N.J.S.2C:14-2, sexual assault;
- 42 (9) N.J.S.2C:15-1, robbery;
- 43 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 44 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
45 arson;
- 46 (12) N.J.S.2C:18-2, burglary, when it is a crime of the second  
47 degree under paragraphs (1), (2) and (3) of subsection b. of  
48 N.J.S.2C:18-2;

- 1 (13) subsection a. of N.J.S.2C:20-5, extortion;  
2 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
3 booby traps in manufacturing or distribution facilities;  
4 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;  
5 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;  
6 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
7 possessing chemical weapons, biological agents or nuclear or  
8 radiological devices;  
9 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
10 degree:  
11 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or  
12 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or  
13 permitting a child to engage in a prohibited sexual act, knowing that  
14 the act may be reproduced or reconstructed in any manner, or be  
15 part of an exhibition or performance.  
16 e. (Deleted by amendment, P.L.2001, c.129).  
17 (cf: P.L.2013, c.136, s.4)

18  
19 3. This act shall take effect immediately.

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21  
22 STATEMENT

23  
24 Presently, burglary is punishable under N.J.S.2C:18-2 as a crime  
25 of the second degree if the defendant either was armed or inflicted,  
26 attempted to inflict or threatened, bodily injury during the course of  
27 the offense. In all other circumstances, burglary is a crime of the  
28 third degree. A crime of the second degree is punishable by a term  
29 of imprisonment between five to 10 years, a fine not to exceed  
30 \$150,000 or both. A crime of the third degree is punishable by a  
31 term of imprisonment between three to five years, a fine not to  
32 exceed \$15,000 or both.

33 This bill upgrades the crime of burglary of a residence to a crime  
34 of the second degree. Specifically, the bill makes it second degree  
35 burglary to unlawfully enter or surreptitiously remain in a dwelling  
36 or other structure adapted for overnight accommodation of persons,  
37 whether or not a person is actually present.

38 This bill further provides that a person who commits second  
39 degree burglary of a residence under the bill would be subject to the  
40 provisions of the No Early Release Act (NERA). Under NERA,  
41 persons convicted of certain enumerated violent crimes of the first  
42 or second degree are required to serve a minimum term of at least  
43 85% of the sentence imposed.