

CHAPTER 252
FORMERLY
HOUSE BILL NO. 277
AS AMENDED BY
HOUSE AMENDMENT NO. 3

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 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 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 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 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], 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 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 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 as follows:

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

Section 8. Amend § 829(i), Title 11 of the Delaware Code 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 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 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, burglary, or home invasion.

Section 11. Amend § 4214(b), Title 11 of the Delaware Code 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 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 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 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.

Approved June 01, 2012