

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL Nos. 189 and 410**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 189 and 410 with my recommendations for reconsideration. This bill would create a new fourth degree crime of using a specific type of lock-pick tool, known as a "bump key," during a burglary. The bill also creates a disorderly persons offense when using a "bump key" for other forced entries, and makes certain technical changes to the existing law prohibiting possession of burglary tools. While I commend the intent of the sponsors, and agree with their efforts to deter new forms of criminal conduct, this bill is an insufficient answer to the stark dangers of burglary, and will not have a significant effect in deterring this all too common offense.

Contrary to its exotic name, a "bump key" refers to a commercially manufactured key that when filed down, inserted into a lock, and struck with a mallet, can turn the lock tumbler and allow entry. These keys, which date back to the early 1920s, are one type of burglary tools used by criminals for unlawful forcible entry. And the possession of these tools is already a criminal offense under New Jersey law since 1978. Adding a specific prohibition to the possession of "bump keys" where the law already penalizes possession of any "engine, machine, tool or implement adapted, designed or commonly used for committing or facilitating... forcible entry into premises" thus does nothing new to deter burglaries in our State.

Stronger deterrence, however, is indeed warranted. According to the New Jersey State Police 2009 Uniform Crime

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Report, a burglary occurs in New Jersey approximately every 14 minutes. Nearly three-quarters of all burglaries involve residential property. The victims of these invasions are harmed not only by the economic loss caused by theft of their property and damage to their homes, but from the serious emotional trauma that accompanies such a personal violation. Most tragically, even where a burglar's plans do not include violence, unexpected encounters between owners and criminals may lead to deadly outcomes. We must act to protect our citizens from criminals who seek to victimize residents in their own homes and the amendments I offer provide a significant deterrent to those contemplating burglary.

Therefore, I recommend that this bill be amended to better address residential burglaries by including a provision that would make the burglary of a person's home a crime of the second degree. Moreover, my amendment requires that those who commit a burglary of a private dwelling at a time when someone is inside the home must serve a minimum of 85% of their sentences under the No Early Release Act.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill Nos. 189 and 410 and recommend that it be amended as follows:

Page 2, Section 1, Lines 7-21:

After "1.", delete in  
their entirety and  
insert, "I. 1978, c. 95;  
amended 1980, c. 112, §  
2 (C. 2C:18-2) is  
amended to read as  
follows:

a. Burglary defined.  
A person is guilty of  
burglary if, with  
purpose to commit an  
offense therein or  
thereon he:

(1) Enters a research  
facility, structure, or  
a separately secured or  
occupied portion thereof  
unless the structure was

at the time open to the public or the actor is licensed or privileged to enter;

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

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

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

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

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

(3) enters or surreptitiously remains in a residential dwelling, currently being used for that purpose, at a time when a resident or any other person, other than a person acting in concert with the actor, is present in the dwelling; or

(4) enters or surreptitiously remains in a residential dwelling, currently being used for that purpose, at a time when the dwelling is unoccupied by the resident or any other person, other than a person acting in concert with the actor.

As used in paragraphs (3) and (4) of

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subsection b. of this section, the term "residential dwelling" shall mean a permanent structure intended as and currently being utilized on a regular and ongoing basis as a residence by a private person or persons.

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

2. L. 1997, c. 117, § 2, eff. June 9, 1997 (C. 2C:43-7.2) is amended to read as follows:

2C:43-7.2. Mandatory service of 85% of sentence for certain offenses

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

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the

time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

c. Notwithstanding any other provision of law to the contrary and in addition to any other sentence imposed, a court imposing a minimum period of parole ineligibility of 85 percent of the sentence pursuant to this section shall also impose a five-year term of parole supervision if the defendant is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the defendant is being sentenced for a crime of the second degree. The term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the Commissioner of the Department of Corrections and shall be

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supervised by the State Parole Board as if on parole and shall be subject to the provisions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

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

(1) N.J.S.2C:11-3, murder;

(2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

(3) N.J.S.2C:11-5, vehicular homicide;

(4) subsection b. of N.J.S.2C:12-1, aggravated assault;

(5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;

(6) N.J.S.2C:13-1, kidnapping;

(7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

(8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;

(9) N.J.S.2C:15-1, robbery;

(10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

(11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;

(12) N.J.S.2C:18-2, burglary, when it is a crime of the second degree under paragraph (1), (2) or (3) of

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subsection b. of that section;

(13) subsection a. of N.J.S.2C:20-5, extortion;

(14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing facilities; or distribution facilities;

(15) N.J.S.2C:35-9, strict liability for drug induced deaths;

(16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

(17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices; or

(18) N.J.S.2C:41-2, racketeering, when it is a crime of the first degree.

e. (Deleted by amendment, P.L.2001, c.129)."

Page 2, Section 2, Line 23:

Delete "2" and insert "3"

Page 2, Section 3, Line 45:

Delete "3" and insert "4"

Respectfully,

/s/ Chris Christie  
Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa  
Chief Counsel to the Governor