



NYSACDL

NEW YORK STATE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

An Affiliate of the National Association of Criminal Defense Lawyers | Founded in 1986

PRESIDENT

LORI COHEN, MANHATTAN

PRESIDENT-ELECT

TIMOTHY HOOVER, BUFFALO

FIRST VICE PRESIDENT

ARNOLD J. LEVINE, MANHATTAN

VICE PRESIDENTS

MICHAEL T. BAKER, BINGHAMTON

JAMES W. GRABLE, JR., BUFFALO

JESSICA HORANI, MANHATTAN

KENNETH MOYNIHAN, SYRACUSE

SUSAN J. WALSH, MANHATTAN

SECRETARY

ALICE FONTIER, MANHATTAN

TREASURER

ALAN S. LEWIS, MANHATTAN

DIRECTORS

STEPHANIE BATCHELLER, ALBANY

EDGAR DE LEON, MANHATTAN

PETER A. DUMAS, MALONE

STEVEN B. EPSTEIN, GARDEN CITY

RENEE HILL, BRONX

JOHN INGRASSIA, NEWBURGH

SCOTT ISEMAN, ALBANY

YUNG-MI LEE, BROOKLYN

ELIZABETH E. MACEDONIO,

MANHATTAN

ALLISON M. MCGAHAY, LAKE PLACID

BRIAN MELBER, BUFFALO

CHERYL MEYERS BUTH, BUFFALO

TIMOTHY P. MURPHY, BUFFALO

GRAINNE E. O'NEILL, BROOKLYN

JILL PAPERNO, ROCHESTER

DONALD G. REHKOPF, JR., ROCHESTER

RUSSELL A. SCHINDLER, KINGSTON

TUCKER C. STANCLIFT, QUEENSBURY

DONALD M. THOMPSON, ROCHESTER

KAREN THOMPSON, NEW YORK

CLAUDIA TRUPP, NEW YORK

MARK S. WILLIAMS, OLEAN

PAST PRESIDENTS

LAWRENCE S. GOLDMAN, MANHATTAN

PAUL J. CAMBRIA, JR., BUFFALO

JACK T. LITMAN, MANHATTAN

MARK J. MAHONEY, BUFFALO

DAVID L. LEWIS, MANHATTAN

WILLIAM I. ARONWALD, WHITE PLAINS

THOMAS F. LIOTTI, GARDEN CITY

IRA D. LONDON, MANHATTAN

JEANNE E. METTLER, COPAKE

MURRAY RICHMAN, BRONX

GERARD M. DAMIANI, NEW CITY

MARVIN E. SCHECHTER, MANHATTAN

KATHRYN M. KASE, HOUSTON, TEXAS

RUSSELL M. GIOIELLA, MANHATTAN

JAMES P. HARRINGTON, BUFFALO

RICHARD J. BARBUTO, GARDEN CITY

MARTIN B. ADELMAN, MANHATTAN

JOSHUA L. DRATEL, MANHATTAN

RAY KELLY, ALBANY

DANIEL N. ARSHACK, MANHATTAN

LISA SCHREIBERSDORF, BROOKLYN

CRAIG SCHLANGER, SYRACUSE

GEORGE R. GOLTZER, MANHATTAN

KEVIN D. O'CONNELL, MANHATTAN

RICHARD D. WILLSTATTER,

WHITE PLAINS

BENJAMIN OSTRER, CHESTER

AARON MYSLIWIEC, NEW YORK

WAYNE C. BODDEN, BROOKLYN

ANDREW KOSSOVER, NEW PALTZ

JOHN S. WALLENSTEIN, GARDEN CITY

ROBERT G. WELLS, SYRACUSE

EXECUTIVE DIRECTOR

JENNIFER CIULLA VAN ORT, ALBANY

MEMO IN SUPPORT

S. 2177 (Bailey) / A. 3058 (Richardson)

The New York State Association of Criminal Defense Lawyers strongly supports the passage of bill S. 2177 (Bailey) / A. 3058 (Richardson) which corrects this erroneous classification by providing that when a person commits burglary in the second degree by entering an unoccupied dwelling, they will not be charged with a violent felony.

Under current law, a person may be convicted of burglary in the second degree based upon their unlawful entry into a building that is a dwelling. This broad category results in convictions for what are essentially crimes against property, where the dwelling is unoccupied and there is no element of violence whatsoever involved. A recent study found that of all residential burglaries committed in the United States between 1998 and 2007, only 1.2% involved violence or threats of violence. However, burglary in the second degree is classified as a class C violent felony regardless of the circumstances.

Classification as a violent or non-violent felony impacts the type of sentence that will be imposed. The sentence for a violent felony consists of a determinate term while a non-violent felony calls for an indeterminate term. Determinate terms can result in significantly longer sentences than indeterminate terms because they provide for a fixed number of years as opposed to a range with a minimum and maximum term. Also, a determinate term precludes the possibility for parole while an indeterminate term allows for such a possibility upon completion of the minimum term of the sentenced range.

A violent felony sentence, which is longer and does not offer the opportunity for parole, is not a fitting punishment for a person who has not engaged in violent behavior. Imposing a harsher violent felony sentence when a person has not displayed any violent behavior is unjust.

This bill corrects this erroneous classification by providing that when a person commits burglary in the second degree by entering an unoccupied dwelling, they will not be charged with a violent felony. Any burglary that is committed while a dwelling is occupied or includes acts of violence, the use or threatened use of a weapon, or the display of what appears to be a weapon will still be charged as a violent felony. However, when burglary is committed as a crime against property, and violence is not involved, it will be appropriately charged as a non-violent felony. By correctly classifying burglary crimes, non-violent offenders will be treated fairly and justly and held responsible for their actions.

New York State Association of Criminal Defense Lawyers (NYSACDL) is a statewide organization of criminal defense attorneys, representing approximately 1,000 private attorneys and public defenders who practice in courthouses across New York State.