

STATE OF NEW YORK

7172--A

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the penal law, in relation to enhanced penalties for certain disaster related crimes during public emergencies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 29-a-1
2 to read as follows:

3 § 29-a-1. Enhanced penalties for certain crimes committed during a
4 disaster emergency. 1. As used in this section the following terms shall
5 have the following meanings:

6 a. "Enhanced penalties period" means a temporal period commencing with
7 the declaration of a state disaster emergency and shall, upon public
8 notice, establish strict liability for the crimes established under
9 article four hundred ninety-three of the penal law.

10 b. "Disaster related crimes" means those offenses articulated under
11 article four hundred ninety-three of the penal law.

12 2. Subject to the state constitution, the federal constitution and
13 federal statutes and regulations, where a declaration of a state disaster
14 emergency has been issued, the governor shall issue an executive
15 order giving notice of an enhanced penalties period where he or she has
16 a reasonable apprehension of the immediate danger of disaster, rioting,
17 catastrophe, or similar public emergencies; or the chance thereof would
18 be detrimental to public safety or the operations of emergency person-
19 nel.

20 3. Enhanced penalties periods shall be subject to the following stand-
21 ards and limits:

22 a. No enhanced penalties periods for designated offenses shall be made
23 for a period in excess of thirty days, provided, however, that upon
24 reconsideration of all of the relevant facts and circumstances, the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13643-03-8

1 governor may extend the suspension for additional periods not to exceed
2 thirty days each;

3 b. No enhanced penalties periods shall be made which does not safe-
4 guard the health and welfare of the public and which is not reasonably
5 necessary to the disaster effort or to maintain public safety;

6 c. Any such enhanced penalties period shall specify the statute or
7 part thereof to be enhanced and the terms and conditions of enhanced
8 criminal penalties;

9 d. The order may provide for such enhanced penalties period only under
10 particular circumstances, and may provide for the alteration or modifi-
11 cation of the requirements of such statute enhanced, and may include
12 other terms and conditions;

13 e. Any such enhanced penalties period order shall provide for public
14 notification of the specified enhanced criminal penalties articulated
15 under article four hundred ninety-three of the penal law.

16 4. Such enhanced penalties periods shall be effective from the time
17 and in the manner prescribed in such orders and shall be published as
18 soon as practicable in the state bulletin and appropriate public media
19 outlets.

20 5. The legislature may terminate by concurrent resolution executive
21 orders issued under this section at any time.

22 § 2. The penal law is amended by adding a new title Y-1-A to read as
23 follows:

24 TITLE Y-1-A
25 DISASTER-RELATED CRIMES

26 ARTICLE 493

27 ENHANCED PENALTIES FOR DISASTER-RELATED CRIMES

28 Section 493.00 Legislative findings.

29 493.05 Disaster-related crimes.

30 493.10 Sentencing.

31 § 493.00 Legislative findings.

32 The legislature finds that during times of emergency it is imperative
33 that the state of New York have the appropriate tools for the stream-
34 lined provision of assistance, as well as the powers to ensure the safe-
35 ty of the public and the operation of law. During emergencies, where
36 police and fire personnel have the primary objective of evacuating,
37 rescuing, and/or providing medical services to endangered New Yorkers,
38 community policing is appropriately left as a secondary task. Neverthe-
39 less, during these times of vulnerability, there have been incidents of
40 theft, vandalism, looting, and exploitation of those impacted. As such,
41 the legislature believes that the punishment for these crimes shall be
42 proportionate to the level of threat and/or emergency presented to these
43 communities, and that the Governor shall provide public notice, where a
44 state disaster emergency has been declared, and there is a reasonable
45 belief of an immediate threat to public safety, that there exists a
46 period of enhanced penalties for those who target communities, busi-
47 nesses, and individuals who are faced with natural disasters or terror-
48 ist acts.

49 § 493.05 Disaster-related crimes.

50 1. A person commits a disaster-related crime when he or she commits a
51 specified offense and either:

52 a. intentionally selects the time period when the offense is committed
53 or intended to be committed in whole or in substantial part because a
54 state of emergency has been declared and there is a belief or perception
55 that emergency personnel are not available for policing; or

1 b. intentionally selects the time period when the offense is committed
2 or intended to be committed in whole or in substantial part because a
3 state of emergency has been declared and there is a belief or perception
4 that the public has abandoned property due to evacuation or public safe-
5 ty efforts.

6 For purposes of this subdivision, a disaster-related crime shall
7 include, but not be limited to, the stealing, embezzlement, or obtaining
8 by fraud, false pretenses, or other illegal means, of retail merchandise
9 in quantities that would not normally be purchased for personal use or
10 consumption, for the purpose of reselling, trading, or otherwise reen-
11 tering such retail merchandise into commerce.

12 2. A declaration of an enhanced penalties period under section twenty-
13 nine-a-one of the executive law shall establish strict liability for
14 an offense committed under this article.

15 3. A "specified offense" is an offense defined by any of the following
16 provisions of this chapter: section 140.17 (criminal trespass in the
17 first degree); section 140.20 (burglary in the third degree); section
18 140.25 (burglary in the second degree); section 140.30 (burglary in the
19 first degree); section 145.05 (criminal mischief in the third degree);
20 section 145.10 (criminal mischief in the second degree); section 145.12
21 (criminal mischief in the first degree); section 145.20 (criminal
22 tampering in the first degree); section 150.05 (arson in the fourth
23 degree); section 150.10 (arson in the third degree); section 150.15
24 (arson in the second degree); section 150.20 (arson in the first
25 degree); section 155.30 (grand larceny in the fourth degree); section
26 150.35 (grand larceny in the third degree); section 155.40 (grand larce-
27 ny in the second degree); section 155.42 (grand larceny in the first
28 degree); section 160.05 (robbery in the third degree); section 160.10
29 (robbery in the second degree); section 160.15 (robbery in the first
30 degree); section 165.45 (criminal possession of stolen property in the
31 fourth degree); section 165.50 (criminal possession of stolen property
32 in the third degree); section 165.52 (criminal possession of stolen
33 property in the second degree); section 165.54 (criminal possession of
34 stolen property in the first degree); section 190.65 (scheme to defraud
35 in the first degree).

36 4. In any prosecution for a specified offense it shall be an affirma-
37 tive defense that the person charged with the offense:

38 a. engaged in the proscribed conduct because he or she was coerced to
39 do so due to the emergency conditions; and

40 b. exercised care reasonably necessary to prevent and limit the depra-
41 vation or injury, including but not limited to stealing or obtaining
42 goods that are intended for personal use or consumption during an emer-
43 gency situation.

44 § 493.10 Sentencing.

45 1. When a person is convicted of a disaster-related crime pursuant to
46 this article, and the specified offense is a violent felony offense, as
47 defined in section 70.02 of this chapter, the disaster-related crime
48 shall be deemed a violent felony offense.

49 2. When a person is convicted of a disaster-related crime pursuant to
50 this article and the specified offense is a class C, D, or E felony, the
51 disaster-related offense shall be deemed to be one category higher than
52 the specified offense the defendant committed, or one category higher
53 than the offense level applicable to the defendant's conviction for an
54 attempt or conspiracy to commit a specified offense, whichever is appli-
55 cable.

1 3. Notwithstanding any other provision of law, when a person is
2 convicted of a disaster-related crime pursuant to this article and the
3 specified offense is a class B felony:

4 a. The maximum term of the indeterminate sentence must be at least six
5 years if the defendant is sentenced pursuant to section 70.00 of this
6 chapter;

7 b. The term of the determinate sentence must be at least eight years
8 if the defendant is sentenced pursuant to section 70.02 of this chapter;

9 c. The term of the determinate sentence must be at least twelve years
10 if the defendant is sentenced pursuant to section 70.04 of this chapter;

11 d. The maximum term of the indeterminate sentence must be at least
12 four years if the defendant is sentenced pursuant to section 70.05 of
13 this chapter; and

14 e. The maximum term of the indeterminate sentence or the term of the
15 determinate sentence must be at least ten years if the defendant is
16 sentenced pursuant to section 70.06 of this chapter.

17 4. Notwithstanding any other provision of law, when a person is
18 convicted of a disaster-related crime pursuant to this article and the
19 specified offense is a class A-1 felony, the minimum period of the inde-
20 terminate sentence shall be not less than twenty years.

21 § 3. This act shall take effect on the first of November next succeed-
22 ing the date on which it shall have become a law.