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:

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

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

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

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

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

3. Enhanced penalties periods shall be subject to the following standards and limits:

a. No enhanced penalties periods for designated offenses shall be made for a period in excess of thirty days, provided, however, that upon 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.

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

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

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

d. The order may provide for such enhanced penalties period only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute enhanced, and may include other terms and conditions;

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

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

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

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

TITLE Y-1-A
DISASTER-RELATED CRIMES

ARTICLE 493
ENHANCED PENALTIES FOR DISASTER-RELATED CRIMES

Section 493.00 Legislative findings.
493.05 Disaster-related crimes.
493.10 Sentencing.

§ 493.00 Legislative findings.

The legislature finds that during times of emergency it is imperative that the state of New York have the appropriate tools for the streamlined provision of assistance, as well as the powers to ensure the safety of the public and the operation of law. During emergencies, where police and fire personnel have the primary objective of evacuating, rescuing, and/or providing medical services to endangered New Yorkers, community policing is appropriately left as a secondary task. Nevertheless, during these times of vulnerability, there have been incidents of theft, vandalism, looting, and exploitation of those impacted. As such, the legislature believes that the punishment for these crimes shall be proportionate to the level of threat and/or emergency presented to these communities, and that the Governor shall provide public notice, where a state disaster emergency has been declared, and there is a reasonable belief of an immediate threat to public safety, that there exists a period of enhanced penalties for those who target communities, businesses, and individuals who are faced with natural disasters or terrorist acts.

§ 493.05 Disaster-related crimes.

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

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

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

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

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

3. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.20 (criminal tampering in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.30 (grand larceny in the fourth degree); section 150.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 160.05 (robbery in the third degree); section 160.10 (robbery in the second degree); section 160.15 (robbery in the first degree); section 165.45 (criminal possession of stolen property in the fourth degree); section 165.50 (criminal possession of stolen property in the third degree); section 165.52 (criminal possession of stolen property in the second degree); section 165.54 (criminal possession of stolen property in the first degree); section 190.65 (scheme to defraud in the first degree).

4. In any prosecution for a specified offense it shall be an affirmative defense that the person charged with the offense:

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

b. exercised care reasonably necessary to prevent and limit the depravation or injury, including but not limited to stealing or obtaining goods that are intended for personal use or consumption during an emergency situation.

§ 493.10 Sentencing.

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.