# STATE OF NEW YORK

955

2021-2022 Regular Sessions

# IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing crimes against essential workers during a declared state disaster emergency

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

Section 1. Part 4 of the penal law is amended by adding a new title Y-3 to read as follows:

TITLE Y-3

CRIMES AGAINST ESSENTIAL WORKERS DURING A DECLARED STATE DISASTER EMERGENCY

ARTICLE 497

CRIMES AGAINST ESSENTIAL WORKERS DURING A DECLARED STATE DISASTER EMERGENCY

Section 497.00 Definitions.
497.05 Crimes against essential workers during a declared state disaster emergency.
497.10 Sentencing.

§ 497.00 Definitions.

As used in this title:

1. "Declared state disaster emergency" shall mean a period of time beginning with the declaration of a disaster pursuant to an executive order and in conformance with article two-B of the executive law. The declared state disaster emergency shall end upon termination of the executive order.

2. "Employee" shall mean a paid worker or volunteer worker providing work and/or services for their employer during the period of the emergency.

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

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3. "Essential worker" shall mean an employee of an essential business or an employee of the state, local government, a school district, a municipality or an authority working within the affected area as defined by the executive order.

4. "Essential business" shall have the same meaning as is defined by the applicable executive order.

§ 497.05 Crimes against essential workers during a declared state disaster emergency.

1. A person commits a crime against an essential worker during a declared state disaster emergency when during the pendency of a declared state of emergency he or she commits a specified offense against an essential worker in the declared disaster area and such crime is committed against such worker while the worker is in the course of their duties or while such worker is in uniform or clothing indicative of their profession.

2. Proof of status as an essential worker does not, by itself, constitute legally sufficient evidence satisfying the people's burden under this title.

3. A "specified offense" for purposes of this title is any offense contained in this article with the exclusion of those crimes enumerated in section 120.08, 120.09, 120.11, 120.18 or 125.27 of this chapter.

§ 497.10 Sentencing.

1. When a person is convicted of a crime against an essential worker during a declared state disaster emergency pursuant to this title, and the specified offense is a violent felony offense, as defined in section 70.02 of this chapter, the crime against an essential worker during a declared state disaster emergency shall be deemed a violent felony offense.

2. When a person is convicted of a crime against an essential worker during a declared state disaster emergency pursuant to this title, and the specified offense is a misdemeanor or a class C, D, or E felony, the crime against the essential worker during a declared state disaster emergency 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 crime against an essential worker during a declared state disaster emergency pursuant to this title 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 crime against an essential worker during a declared state disaster emergency pursuant to this title and the specified offense is a

**class A-1 felony, the minimum period of the indeterminate sentence shall not be less than twenty years.**

§ 2. This act shall take effect immediately and shall apply to crimes committed on or after such date.