

[First Reprint]

ASSEMBLY, No. 3199

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MARCH 7, 2022

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Assemblymen Moen, Spearman, Assemblywomen McKnight, Park and

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SYNOPSIS

Establishes “Health Care Heroes Violence Prevention Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on May 9, 2022, with amendments.



(Sponsorship Updated As Of: 5/19/2022)

1 AN ACT concerning violence against health care professionals
 2 ¹**[and]**,¹ amending ¹N.J.S.2C:44-1,¹ and supplementing
 3 ¹**[various parts of the statutory law]** Title 2C of the New Jersey
 4 Statutes and P.L.1971, c.136 (C.26:2H-1 et seq.)¹.
 5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 7 *of New Jersey:*
 8

9 1. (New section) This act may be known and may be cited as
 10 the “Health Care Heroes Violence Prevention Act.”
 11

12 2. N.J.S.2C:44-1 is amended to read as follows:

13 2C:44-1. a. In determining the appropriate sentence to be
 14 imposed on a person who has been convicted of an offense, the
 15 court shall consider the following aggravating circumstances:

16 (1) The nature and circumstances of the offense, and the role of
 17 the actor in committing the offense, including whether or not it was
 18 committed in an especially heinous, cruel, or depraved manner;

19 (2) The gravity and seriousness of harm inflicted on the victim,
 20 including whether or not the defendant knew or reasonably should
 21 have known that the victim of the offense was particularly
 22 vulnerable or incapable of resistance due to advanced age, ill-
 23 health, or extreme youth, or was for any other reason substantially
 24 incapable of exercising normal physical or mental power of
 25 resistance;

26 (3) The risk that the defendant will commit another offense;

27 (4) A lesser sentence will depreciate the seriousness of the
 28 defendant's offense because it involved a breach of the public trust
 29 under chapters 27 and 30 of this title, or the defendant took
 30 advantage of a position of trust or confidence to commit the
 31 offense;

32 (5) There is a substantial likelihood that the defendant is
 33 involved in organized criminal activity;

34 (6) The extent of the defendant's prior criminal record and the
 35 seriousness of the offenses of which the defendant has been
 36 convicted;

37 (7) The defendant committed the offense pursuant to an
 38 agreement to either pay or be paid for the commission of the
 39 offense and the pecuniary incentive was beyond that inherent in the
 40 offense itself;

41 (8) The defendant committed the offense against a police or
 42 other law enforcement officer, correctional employee or firefighter,
 43 acting in the performance of the officer, employee, or firefighter
 44 duties while in uniform or exhibiting evidence of his authority; the
 45 defendant committed the offense because of the status of the victim

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted May 9, 2022.

1 as a public servant; ¹**["or"]** the defendant committed the offense
2 against a sports official, athletic coach or manager, acting in or
3 immediately following the performance of the person's duties or
4 because of the person's status as a sports official, coach or manager;
5 or the defendant committed the offense against any ¹["worker
6 employed by a licensed health care facility or a"] ¹ health care
7 professional ¹["licensed or otherwise authorized pursuant to Title 26
8 or Title 45 of the New Jersey Statutes to practice a health care
9 profession while clearly identifiable as being engaged in the duties
10 of providing direct patient care, practicing the health care
11 profession, or any other professional duties"], volunteer working for
12 a health care professional or working at a health care facility, or
13 employee of a health care professional or facility, while the health
14 care professional, volunteer, or employee is performing official
15 duties.

16 For the purposes of this paragraph, "health care facility" and
17 "health care professional" mean the same as those terms are defined
18 in subsection b. of section 3 of P.L. , c. (C.)(pending before the
19 Legislature as this bill)¹;

20 (9) The need for deterring the defendant and others from
21 violating the law;

22 (10) The offense involved fraudulent or deceptive practices
23 committed against any department or division of State government;

24 (11) The imposition of a fine, penalty, or order of restitution
25 without also imposing a term of imprisonment would be perceived
26 by the defendant or others merely as part of the cost of doing
27 business, or as an acceptable contingent business or operating
28 expense associated with the initial decision to resort to unlawful
29 practices;

30 (12) The defendant committed the offense against a person who
31 the defendant knew or should have known was 60 years of age or
32 older, or disabled;

33 (13) The defendant, while in the course of committing or
34 attempting to commit the crime, including the immediate flight
35 therefrom, used or was in possession of a stolen motor vehicle;

36 (14) The offense involved an act of domestic violence, as that
37 term is defined in subsection a. of section 3 of P.L.1991, c.261
38 (C.2C:25-19), committed in the presence of a child under 16 years
39 of age; and

40 (15) The offense involved an act of domestic violence, as that
41 term is defined in subsection a. of section 3 of P.L.1991, c.261
42 (C.2C:25-19) and the defendant committed at least one act of
43 domestic violence on more than one occasion.

44 b. In determining the appropriate sentence to be imposed on a
45 person who has been convicted of an offense, the court may
46 properly consider the following mitigating circumstances:

47 (1) The defendant's conduct neither caused nor threatened
48 serious harm;

- 1 (2) The defendant did not contemplate that the defendant's
- 2 conduct would cause or threaten serious harm;
- 3 (3) The defendant acted under a strong provocation;
- 4 (4) There were substantial grounds tending to excuse or justify
- 5 the defendant's conduct, though failing to establish a defense;
- 6 (5) The victim of the defendant's conduct induced or facilitated
- 7 its commission;
- 8 (6) The defendant has compensated or will compensate the
- 9 victim of the defendant's conduct for the damage or injury that the
- 10 victim sustained, or will participate in a program of community
- 11 service;
- 12 (7) The defendant has no history of prior delinquency or
- 13 criminal activity or has led a law-abiding life for a substantial
- 14 period of time before the commission of the present offense;
- 15 (8) The defendant's conduct was the result of circumstances
- 16 unlikely to recur;
- 17 (9) The character and attitude of the defendant indicate that the
- 18 defendant is unlikely to commit another offense;
- 19 (10) The defendant is particularly likely to respond affirmatively
- 20 to probationary treatment;
- 21 (11) The imprisonment of the defendant would entail excessive
- 22 hardship to the defendant or the defendant's dependents;
- 23 (12) The willingness of the defendant to cooperate with law
- 24 enforcement authorities;
- 25 (13) The conduct of a youthful defendant was substantially
- 26 influenced by another person more mature than the defendant; and
- 27 (14) The defendant was under 26 years of age at the time of the
- 28 commission of the offense.
- 29 c. (1) A plea of guilty by a defendant or failure to so plead
- 30 shall not be considered in withholding or imposing a sentence of
- 31 imprisonment.
- 32 (2) When imposing a sentence of imprisonment the court shall
- 33 consider the defendant's eligibility for release under the law
- 34 governing parole, including time credits awarded pursuant to Title
- 35 30 of the Revised Statutes, in determining the appropriate term of
- 36 imprisonment.
- 37 d. Presumption of imprisonment. The court shall deal with a
- 38 person who has been convicted of a crime of the first or second
- 39 degree, or a crime of the third degree where the court finds that the
- 40 aggravating factor in paragraph (5), (14), or (15) of subsection a. of
- 41 this section applies, by imposing a sentence of imprisonment unless,
- 42 having regard to the character and condition of the defendant, it is
- 43 of the opinion that the defendant's imprisonment would be a serious
- 44 injustice which overrides the need to deter such conduct by others.
- 45 Notwithstanding the provisions of subsection e. of this section, the
- 46 court shall deal with a person who has been convicted of theft of a
- 47 motor vehicle or of the unlawful taking of a motor vehicle and who
- 48 has previously been convicted of either offense by imposing a

1 sentence of imprisonment unless, having regard to the character and
2 condition of the defendant, it is of the opinion that imprisonment
3 would be a serious injustice which overrides the need to deter such
4 conduct by others.

5 e. The court shall deal with a person convicted of an offense
6 other than a crime of the first or second degree, who has not
7 previously been convicted of an offense, without imposing a
8 sentence of imprisonment unless, having regard to the nature and
9 circumstances of the offense and the history, character, and
10 condition of the defendant, it is of the opinion that imprisonment is
11 necessary for the protection of the public under the criteria set forth
12 in subsection a. of this section, except that this subsection shall not
13 apply if the court finds that the aggravating factor in paragraph (5),
14 (14) or (15) of subsection a. of this section applies or if the person
15 is convicted of any of the following crimes of the third degree: theft
16 of a motor vehicle; unlawful taking of a motor vehicle; eluding;
17 strict liability vehicular homicide pursuant to section 1 of P.L.2017,
18 c.165 (C.2C:11-5.3); if the person is convicted of a crime of the
19 third degree constituting use of a false government document in
20 violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-
21 2.1); if the person is convicted of a crime of the third degree
22 constituting distribution, manufacture or possession of an item
23 containing personal identifying information in violation of
24 subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); if the
25 person is convicted of a crime of the third or fourth degree
26 constituting bias intimidation in violation of N.J.S.2C:16-1; if the
27 person is convicted of a crime of the third degree under paragraph
28 (12) of subsection b. of N.J.S.2C:12-1 or section 2 of P.L.1997,
29 c.111 (C.2C:12-1.1); or if the person is convicted of a crime of the
30 third or fourth degree under the provisions of section 1 or 2 of
31 P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

32 f. Presumptive Sentences. (1) Except for the crime of murder,
33 unless the preponderance of aggravating or mitigating factors, as set
34 forth in subsections a. and b. of this section, weighs in favor of a
35 higher or lower term within the limits provided in N.J.S.2C:43-6,
36 when a court determines that a sentence of imprisonment is
37 warranted, it shall impose sentence as follows:

38 (a) To a term of 20 years for aggravated manslaughter or
39 kidnapping pursuant to paragraph (1) of subsection c. of
40 N.J.S.2C:13-1 when the offense constitutes a crime of the first
41 degree;

42 (b) Except as provided in subparagraph (a) of this paragraph to a
43 term of 15 years for a crime of the first degree;

44 (c) To a term of seven years for a crime of the second degree;

45 (d) To a term of four years for a crime of the third degree; and

46 (e) To a term of nine months for a crime of the fourth degree.

47 In imposing a minimum term pursuant to subsection b. of
48 N.J.S.2C:43-6, the sentencing court shall specifically place on the

1 record the aggravating factors set forth in this section which justify
2 the imposition of a minimum term.

3 Unless the preponderance of mitigating factors set forth in
4 subsection b. weighs in favor of a lower term within the limits
5 authorized, sentences imposed pursuant to paragraph (1) of
6 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life
7 imprisonment. Unless the preponderance of aggravating and
8 mitigating factors set forth in subsections a. and b. of this section
9 weighs in favor of a higher or lower term within the limits
10 authorized, sentences imposed pursuant to paragraph (2) of
11 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 50
12 years' imprisonment; sentences imposed pursuant to paragraph (3)
13 of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of
14 15 years' imprisonment; and sentences imposed pursuant to
15 paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a
16 presumptive term of seven years' imprisonment.

17 In imposing a minimum term pursuant to subsection b. of
18 N.J.S.2C:43-7, the sentencing court shall specifically place on the
19 record the aggravating factors set forth in this section which justify
20 the imposition of a minimum term.

21 (2) In cases of convictions for crimes of the first or second
22 degree where the court is clearly convinced that the mitigating
23 factors substantially outweigh the aggravating factors and where the
24 interest of justice demands, the court may sentence the defendant to
25 a term appropriate to a crime of one degree lower than that of the
26 crime for which the defendant was convicted. If the court does
27 impose sentence pursuant to this paragraph, or if the court imposes
28 a noncustodial or probationary sentence upon conviction for a crime
29 of the first or second degree, the sentence shall not become final for
30 10 days in order to permit the appeal of the sentence by the
31 prosecution.

32 g. Imposition of Noncustodial Sentences in Certain Cases. If
33 the court, in considering the aggravating factors set forth in
34 subsection a. of this section, finds the aggravating factor in
35 paragraph (2), (5), (10), or (12) of subsection a. of this section and
36 does not impose a custodial sentence, the court shall specifically
37 place on the record the mitigating factors which justify the
38 imposition of a noncustodial sentence.

39 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
40 11), the presumption of imprisonment as provided in subsection d.
41 of this section shall not preclude the admission of a person to the
42 Intensive Supervision Program, established pursuant to the Rules
43 Governing the Courts of the State of New Jersey.
44 (cf: P.L.2020, c.110, s.1)

45
46 3. (New section) a. A person commits a disorderly persons
47 offense if the ¹**individual** person¹ orally or in writing:

1 (1) knowingly and willfully makes a threat against any ¹【person
2 employed by a health care facility, which is licensed by the
3 Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et
4 seq.)】 health care professional, volunteer working for a health care
5 professional or working at a health care facility, or employee of a
6 health care professional or health care facility¹, with the intent to
7 intimidate, interfere with, or impede the ¹health care professional,
8 volunteer, or employee in the¹ performance of ¹the health care
9 professional's, volunteer's, or employee's performance of¹ official
10 duties; or

11 (2) knowingly sends, delivers, or makes for the purpose of
12 sending or delivering a threat prohibited pursuant to paragraph (1)
13 of this subsection.

14 b. For ¹the¹ purposes of this section:

15 (1) "health care professional" means a person licensed ¹【,】
16 or¹certified ¹【, registered, or otherwise authorized】 to practice a
17 health care profession¹ pursuant to Title 45 or Title 52 of the
18 Revised Statutes ¹【, or by any principal department of the
19 Executive Branch of State government or any entity within any
20 department or any other entity created to license or otherwise
21 regulate a health care profession. "Health care professional" shall
22 include, but shall not be limited to, health care professionals
23 regulated by the following entities: the State Board of Medical
24 Examiners, the New Jersey Board of Nursing, the New Jersey State
25 Board of Dentistry, the New Jersey State Board of Optometrists, the
26 Board of Pharmacy, the State Board of Chiropractic Examiners, the
27 Acupuncture Examining Board, the State Board of Physical
28 Therapy Examiners, the Orthotics and Prosthetics Board of
29 Examiners, the State Board of Psychological Examiners, the State
30 Board of Examiners of Ophthalmic Dispensers and Ophthalmic
31 Technicians, the Audiology and Speech-Language Pathology
32 Advisory Committee, the Occupational Therapy Advisory Council
33 and the Certified Psychoanalysts Advisory Committee】¹.

34 (2) "health care facility" means a ¹【general or special hospital
35 or nursing home licensed by the Department of Health pursuant to
36 P.L.1971, c.136 (C.26:2H-1 et al.), a State or county psychiatric
37 hospital, or a State developmental center】 health care facility
38 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or
39 county psychiatric hospital, a State developmental center, or a
40 health care service firm registered by the Division of Consumer
41 Affairs in the Department of Law and Public Safety pursuant to
42 P.L.1960, c.39 (C.56:8-1 et seq.)¹.

43
44 4. (New section) a. In addition to any fine imposed pursuant to
45 N.J.S.2C:43-3 or any term of imprisonment pursuant to
46 N.J.S.2C:43-6, the court may order any defendant who commits an
47 assault pursuant to N.J.S.2C:12-1 against any ¹【person employed

1 by a health care facility, which is licensed by the Department of
2 Health pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.)**】** health care
3 professional, volunteer working for a health care professional or
4 working at a health care facility, or employee of a health care
5 professional or health care facility¹, while ¹the health care
6 professional, volunteer, or employee is¹ performing official duties
7 to satisfactorily complete an anger management course.

8 b. The court may order a defendant to participate in an anger
9 management course of up to 12 months ¹duration¹.

10 c. A defendant shall pay the enrollment cost of the ordered
11 anger management course.

12 d. A defendant sentenced to an anger management course shall
13 have one year to comply with the court order. Failure to
14 satisfactorily complete the course within one year shall constitute a
15 violation of the order. Any defendant who fails to comply with the
16 court order requiring an anger management course may be subject
17 to an additional penalty of up to \$500.

18 e. The Administrative Office of the Courts shall develop and
19 approve a list of eligible anger management courses that may
20 provide anger management services to any person ordered to
21 participate pursuant to this section.

22 f. The Administrative Office of the Courts shall establish
23 standards and procedures for certification of anger management
24 courses required pursuant to this section.

25
26 5. (New section) a. Notwithstanding the term of imprisonment
27 provided in N.J.S.2C:43-6 or any fine imposed pursuant to
28 N.J.S.2C:43-3, any person convicted of assault, pursuant to
29 N.J.S.2C:12-1, against any ¹**【**person employed by a health care
30 facility, which is licensed by the Department of Health pursuant to
31 P.L.1971, c.136 (C.26:2H-1 et seq.)**】** health care professional,
32 volunteer working for a health care professional or working at a
33 health care facility, or employee of a health care professional or
34 health care facility¹, while ¹the health care professional, volunteer,
35 or employee is¹ performing official duties may be sentenced to
36 community service.

37 b. The court may order the person to perform community
38 service in lieu of part of the person's period of incarceration. The
39 court shall impose a term of community service of up to 30 days.

40 c. The Administrative Office of the Courts shall establish
41 standards and procedures for certification of community service for
42 any person sentenced pursuant to this section.

43
44 6. (New section) a. As used in this section, "health care
45 facility" means ¹**【**a general or special hospital or nursing home
46 licensed by the Department of Health pursuant to P.L.1971, c.136
47 (C.26:2H-1 et al.), a State or county psychiatric hospital, or a State

developmental center] the same as defined in subsection b. of section 3 of P.L. , c. (C.)(pending before the Legislature as this bill)¹.

b. A health care facility shall prominently display a written notice in a conspicuous public location that contains the following or substantially similar statement: “It is a crime to assault a health care ¹[worker] professional, any volunteer working for a health care professional or working at a health care facility, or any employee of a health care professional or working at a health care facility while the health care professional, volunteer, or employee is performing official duties¹. Any person who assaults a health care ¹[worker] professional, volunteer, or employee in violation of this prohibition¹ shall be subject to a fine, imprisonment, or both under the New Jersey Code of Criminal Justice, N.J.S.2C:1-1 et seq.”

c. The Commissioner of Health may adopt rules and regulations, in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to effectuate the provisions of this section.

¹7. (New section) a. A physician responsible for managing a professional physician practice shall prominently display a written notice in a conspicuous public location that contains the following or substantially similar statement: “It is a crime to assault a health care professional, any volunteer working for a health care professional or working at a health care facility, or any employee of a health care professional or a health care facility, while the health care professional, volunteer, or employee is performing official duties. Any person who assaults a health care professional, volunteer, or employee in violation of this prohibition shall be subject to a fine, imprisonment, or both under the New Jersey Code of Criminal Justice, N.J.S.2C:1-1 et seq.”

b. The Board of Medical Examiners may adopt rules and regulations, in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to effectuate the provisions of this section.¹

¹[7.] 8.¹ This act shall take effect immediately.