S T A T E O F N E W Y O R K

2508

2009-2010 Regular Sessions

I N A S S E M B L Y

January 16, 2009

Introduced by M. of A. PRETLOW, GLICK, PERRY, GREENE -- Multi-Sponsored by -- M. of A. CHRISTENSEN, HIKIND, HOOPER, JOHN, ORTIZ -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the crime of prosecutorial misconduct

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding three new sections 195.25, 195.30 and 195.35 to read as follows:

S 195.25 PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE.

A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE THE INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A MISDEMEANOR.

PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE IS A CLASS E FELONY.

S 195.30 PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE.

A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE THE INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A CLASS E, D OR C FELONY.

PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE IS A CLASS B FELONY.

S 195.35 PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE.

A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE THE INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A CLASS B OR A FELONY.

PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE IS A CLASS A FELONY.

S 2. The penal law is amended by adding a new section 70.12 to read as follows:

S 70.12 SENTENCE OF IMPRISONMENT FOR PROSECUTORIAL MISCONDUCT.

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

LBD02165-01-9

1. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE, AS SPECIFIED IN SECTION 195.25 OF THIS CHAPTER, THE TERM OF IMPRISONMENT SHALL BE AT LEAST ONE YEAR AND MUST NOT EXCEED TWO YEARS.

2. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE AS SPECIFIED IN SECTION 195.30 OF THIS CHAPTER, THE TERM OF IMPRISONMENT SHALL BE TWICE THE SENTENCE IMPOSED UPON THE INDIVIDUAL WRONGLY CONVICTED OR THE TERM OF IMPRISONMENT WHICH WOULD HAVE BEEN IMPOSED UPON THE INDIVIDUAL WRONGLY CHARGED.

3. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE, AS SPECIFIED IN SECTION 195.35 OF THIS CHAPTER, THE TERM OF IMPRISONMENT SHALL BE TWICE THE SENTENCE IMPOSED UPON THE INDIVIDUAL WRONGLY CONVICTED OR THE TERM OF IMPRISONMENT WHICH WOULD HAVE BEEN IMPOSED UPON THE INDIVIDUAL WRONGLY CHARGED, IN THE CASE OF LIFE IMPRISONMENT, THE SENTENCE SHALL BE LIFE IMPRISONMENT.

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