

2845

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. PRETLOW, GLICK, PERRY -- Multi-Sponsored by -- M.
of A. HIKIND, HOOPER, 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding three new sections
2 195.25, 195.30 and 195.35 to read as follows:
3 S 195.25 PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE.
4 A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE
5 WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE THE
6 INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A MISDEMEANOR.
7 PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE IS A CLASS E FELONY.
8 S 195.30 PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE.
9 A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE SECOND
10 DEGREE WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE
11 THE INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A CLASS E, D OR C
12 FELONY.
13 PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE IS A CLASS B FELONY.
14 S 195.35 PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE.
15 A PROSECUTOR IS GUILTY OF PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE
16 WHEN HE OR SHE KNOWINGLY WITHHOLDS INFORMATION WHICH WILL PROVE THE
17 INNOCENCE OF A PERSON CHARGED WITH OR CONVICTED OF A CLASS B OR A FELO-
18 NY.
19 PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE IS A CLASS A FELONY.
20 S 2. The penal law is amended by adding a new section 70.12 to read as
21 follows:
22 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.

LBD02658-01-1

1 1. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE THIRD DEGREE,
2 AS SPECIFIED IN SECTION 195.25 OF THIS CHAPTER, THE TERM OF IMPRISONMENT
3 SHALL BE AT LEAST ONE YEAR AND MUST NOT EXCEED TWO YEARS.
4 2. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE SECOND DEGREE
5 AS SPECIFIED IN SECTION 195.30 OF THIS CHAPTER, THE TERM OF IMPRISONMENT
6 SHALL BE TWICE THE SENTENCE IMPOSED UPON THE INDIVIDUAL WRONGLY
7 CONVICTED OR THE TERM OF IMPRISONMENT WHICH WOULD HAVE BEEN IMPOSED UPON
8 THE INDIVIDUAL WRONGLY CHARGED.
9 3. UPON CONVICTION FOR PROSECUTORIAL MISCONDUCT IN THE FIRST DEGREE,
10 AS SPECIFIED IN SECTION 195.35 OF THIS CHAPTER, THE TERM OF IMPRISONMENT
11 SHALL BE TWICE THE SENTENCE IMPOSED UPON THE INDIVIDUAL WRONGLY
12 CONVICTED OR THE TERM OF IMPRISONMENT WHICH WOULD HAVE BEEN IMPOSED UPON
13 THE INDIVIDUAL WRONGLY CHARGED, IN THE CASE OF LIFE IMPRISONMENT, THE
14 SENTENCE SHALL BE LIFE IMPRISONMENT.
15 S 3. This act shall take effect on the first of November next succeed-
16 ing the date on which it shall have become a law.