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

5049--B

2011-2012 Regular Sessions

I N A S S E M B L Y

February 10, 2011

Introduced by M. of A. ABBATE, REILLY, LAVINE, PAULIN, GABRYSZAK, SAYWARD, GALEF -- Multi-Sponsored by -- M. of A. BURLING, MAGEE -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Employees in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to the imposition of a mandatory fine upon certain public servants convicted of a designated felony offense related to his or her official duties; and to amend the penal law and the criminal procedure law, in relation to the crime of official misconduct and to abuse of public trust crimes

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

Section 1. Subdivision 1 of section 80.00 of the penal law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

1. A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding the higher of

a. five thousand dollars; or

b. double the amount of the defendant's gain from the commission of the crime; or

c. if the conviction is for any felony defined in article two hundred twenty or two hundred twenty-one of this chapter, according to the following schedule:

(i) for A-I felonies, one hundred thousand dollars;

(ii) for A-II felonies, fifty thousand dollars;

(iii) for B felonies, thirty thousand dollars;

(iv) for C felonies, fifteen thousand dollars.

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

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When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate to the conduct in which defendant engaged, its impact on any victims, and defendant's economic circumstances, including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support[.]; OR

D. FOR AN ABUSE OF PUBLIC TRUST CRIME, AS DEFINED IN SECTION 196.00 OF THIS CHAPTER, OR ANY OFFENSE FOR WHICH THE OFFENDER'S STATUS AS A PUBLIC SERVANT CONSTITUTES AN ELEMENT OF THE OFFENSE AS ENUMERATED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 196.00 OF THIS CHAPTER, THE COURT, IN ADDITION TO ANY OTHER PENALTY WHICH MAY BE IMPOSED PURSUANT TO LAW, SHALL IMPOSE A FINE IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH A OR B OF THIS SUBDIVISION, WHICHEVER IS GREATER.

S 2. Section 195.00 of the penal law, as amended by chapter 906 of the laws of 1990, is amended to read as follows:

S 195.00 Official misconduct IN THE THIRD DEGREE.

A public servant is guilty of official misconduct IN THE THIRD DEGREE when, with intent to obtain a benefit or deprive another person of a benefit:

1. He OR SHE commits an act relating to his OR HER office but constituting an unauthorized exercise of his OR HER official functions, knowing that such act is unauthorized; or

2. He OR SHE knowingly refrains from performing a duty which is imposed upon him OR HER by law or is clearly inherent in the nature of his OR HER office.

Official misconduct IN THE THIRD DEGREE is a class [A misdemeanor] E FELONY.

S 3. The penal law is amended by adding two new sections 195.01 and 195.02 to read as follows:

S 195.01 OFFICIAL MISCONDUCT IN THE SECOND DEGREE.

A PUBLIC SERVANT IS GUILTY OF OFFICIAL MISCONDUCT IN THE SECOND DEGREE WHEN HE OR SHE COMMITS THE CRIME OF OFFICIAL MISCONDUCT IN THE THIRD DEGREE AND HE OR SHE OBTAINS ANY BENEFIT OR DEPRIVES ANOTHER PERSON OF A BENEFIT VALUED IN EXCESS OF ONE THOUSAND DOLLARS.

OFFICIAL MISCONDUCT IN THE SECOND DEGREE IS A CLASS D FELONY.

S 195.02 OFFICIAL MISCONDUCT IN THE FIRST DEGREE.

A PUBLIC SERVANT IS GUILTY OF OFFICIAL MISCONDUCT IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF OFFICIAL MISCONDUCT IN THE THIRD DEGREE AND HE OR SHE OBTAINS ANY BENEFIT OR DEPRIVES ANOTHER PERSON OF A BENEFIT VALUED IN EXCESS OF THREE THOUSAND DOLLARS.

OFFICIAL MISCONDUCT IN THE FIRST DEGREE IS A CLASS C FELONY.

S 4. The penal law is amended by adding a new article 196 to read as follows:

ARTICLE 196

ABUSE OF PUBLIC TRUST

SECTION 196.00 ABUSE OF PUBLIC TRUST CRIME.

S 196.00 ABUSE OF PUBLIC TRUST CRIME.

1. (A) A PERSON COMMITS AN ABUSE OF PUBLIC TRUST CRIME WHEN HE OR SHE COMMITS A FELONY OFFENSE AND EITHER:

(I) INTENTIONALLY USES HIS OR HER POSITION AS A PUBLIC SERVANT IN A MANNER THAT SIGNIFICANTLY FACILITATES THE COMMISSION OR CONCEALMENT OF THE OFFENSE; OR

(II) ATTEMPTS, CONSPIRES OR SOLICITS ANOTHER TO COMMIT ANY FELONY, AND IN SUCH ATTEMPT, CONSPIRACY OR SOLICITATION INTENTIONALLY USES HIS OR

HER POSITION AS A PUBLIC SERVANT TO SIGNIFICANTLY FACILITATE THE COMMISSION OR CONCEALMENT OF THE OFFENSE.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, AN ABUSE OF PUBLIC TRUST CRIME SHALL NOT INCLUDE ANY OFFENSE FOR WHICH THE OFFENDER'S STATUS AS A PUBLIC SERVANT CONSTITUTES AN ELEMENT OF THE OFFENSE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING PROVISIONS OF THIS CHAPTER: PARAGRAPH (G) OF SUBDIVISION FOUR OF SECTION 135.35 (LABOR TRAFFICKING); SUBDIVISION EIGHT OF SECTION 135.60 (COERCION IN THE SECOND DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 135.65 (COERCION IN THE FIRST DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION 175.40 (ISSUING A FALSE CERTIFICATE); SECTION 195.00 (OFFICIAL MISCONDUCT IN THE THIRD DEGREE); SECTION 195.01 (OFFICIAL MISCONDUCT IN THE SECOND DEGREE); SECTION 195.02 (OFFICIAL MISCONDUCT IN THE FIRST DEGREE); SECTION 200.10 (BRIBE RECEIVING IN THE THIRD DEGREE); SECTION 200.11 (BRIBE RECEIVING IN THE SECOND DEGREE); SECTION 200.12 (BRIBE RECEIVING IN THE FIRST DEGREE); SECTION 200.25 (RECEIVING REWARD FOR OFFICIAL MISCONDUCT IN THE SECOND DEGREE); SECTION 200.27 (RECEIVING REWARD FOR OFFICIAL MISCONDUCT IN THE FIRST DEGREE); SECTION 200.35 (RECEIVING UNLAWFUL GRATUITIES); SECTION 200.50 (BRIBE RECEIVING FOR PUBLIC OFFICE); PARAGRAPH (G) OF SUBDIVISION FIVE OF SECTION 230.34 (SEX TRAFFICKING); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

2. WHEN A PERSON IS CONVICTED OF AN ABUSE OF TRUST CRIME PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE SPECIFIED OFFENSE IS A CLASS C, D OR E FELONY, THE CRIME 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 PURSUANT TO SUBDIVISION ONE OF THIS SECTION 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 PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE SPECIFIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY YEARS.

S 5. Subdivision 4 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five

of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and provided further that in any prosecution under section 130.91 of the penal law, the designated offense shall be the specified offense, as defined in subdivision two of section 130.91 of the penal law, followed by the phrase "as a sexually motivated felony"; AND PROVIDED FURTHER THAT IN ANY PROSECUTION UNDER ARTICLE ONE HUNDRED NINETY-SIX OF THE PENAL LAW, THE DESIGNATED OFFENSE SHALL BE THE DESIGNATED FELONY OFFENSE, AS DEFINED IN SUBDIVISION TWO OF SECTION 196.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS AN ABUSE OF PUBLIC TRUST CRIME"; and

S 6. Subdivision 7 of section 200.50 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(F) IN THE CASE OF AN ABUSE OF PUBLIC TRUST CRIME, AS DEFINED IN SECTION 196.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE DEFENDANT OR DEFENDANTS COMMITTED, OR ATTEMPTED, CONSPIRED OR SOLICITED ANOTHER TO COMMIT, A FELONY AND INTENTIONALLY USED HIS OR HER POSITION AS A PUBLIC SERVANT IN A MANNER THAT SIGNIFICANTLY FACILITATED THE COMMISSION OR CONCEALMENT OF THE OFFENSE; AND

S 7. This act shall take effect on the one hundred twentieth day after it shall have become a law.