

7545

I N S E N A T E

May 9, 2016

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

AN ACT to amend the penal law and the criminal procedure law, in relation to bribery and abuse of public trust

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

1 Section 1. Section 200.03 of the penal law, as amended by section 18
2 of subpart A of part H of chapter 55 of the laws of 2014, is amended to
3 read as follows:
4 S 200.03 Bribery in the second degree.
5 A person is guilty of bribery in the second degree when he confers, or
6 offers or agrees to confer, any benefit valued in excess of [five] ONE
7 thousand dollars upon a public servant [upon an agreement or understand-
8 ing] WITH AN INTENT TO INFLUENCE that such public servant's vote, opin-
9 ion, judgment, action, decision or exercise of discretion as a public
10 servant will thereby be influenced.
11 Bribery in the second degree is a class C felony.
12 S 2. Section 200.04 of the penal law, as amended by section 19 of
13 subpart A of part H of chapter 55 of the laws of 2014, is amended to
14 read as follows:
15 S 200.04 Bribery in the first degree.
16 A person is guilty of bribery in the first degree when the person
17 confers, or offers or agrees to confer: (1) any benefit upon a public
18 servant [upon an agreement or understanding] WITH AN INTENT TO INFLUENCE
19 that such public servant's vote, opinion, judgment, action, decision or
20 exercise of discretion as a public servant will thereby be influenced in
21 the investigation, arrest, detention, prosecution or incarceration of
22 any person for the commission or alleged commission of a class A felony
23 defined in article two hundred twenty of this part or an attempt to
24 commit any such class A felony; or (2) any benefit valued in excess of
25 [one hundred] THREE thousand dollars upon a public servant [upon an
26 agreement or understanding] WITH AN INTENT TO INFLUENCE that such public
27 servant's vote, opinion, judgment, action, decision or exercise of
28 discretion as a public servant will thereby be influenced.

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

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1 Bribery in the first degree is a class B felony.

2 S 3. Section 200.00 of the penal law, as amended by chapter 833 of the
3 laws of 1986, is amended to read as follows:

4 S 200.00 Bribery in the third degree.

5 A person is guilty of bribery in the third degree when he confers, or
6 offers or agrees to confer, any benefit upon a public servant [upon an
7 agreement or understanding] WITH AN INTENT TO INFLUENCE that such public
8 servant's vote, opinion, judgment, action, decision or exercise of
9 discretion as a public servant will thereby be influenced.

10 Bribery in the third degree is a class D felony.

11 S 4. Subdivision 1 of section 80.00 of the penal law, as amended by
12 section 27 of subpart A of part H of chapter 55 of the laws of 2014, is
13 amended to read as follows:

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

16 a. five thousand dollars; or

17 b. double the amount of the defendant's gain from the commission of
18 the crime or, if the defendant is convicted of a crime defined in arti-
19 cle four hundred ninety-six of this chapter, any higher amount not
20 exceeding three times the amount of the defendant's gain from the
21 commission of such offense; or

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

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

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

27 (iii) for B felonies, thirty thousand dollars;

28 (iv) for C felonies, fifteen thousand dollars.

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

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

43 S 5. Section 195.00 of the penal law, as amended by chapter 906 of the
44 laws of 1990, is amended to read as follows:

45 S 195.00 Official misconduct IN THE THIRD DEGREE.

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

49 1. He OR SHE commits an act relating to his OR HER office but consti-
50 tuting an unauthorized exercise of his OR HER official functions, know-
51 ing that such act is unauthorized; or

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

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

1 S 6. The penal law is amended by adding two new sections 195.03 and
2 195.04 to read as follows:

3 S 195.03 OFFICIAL MISCONDUCT IN THE SECOND DEGREE.

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

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

9 S 195.04 OFFICIAL MISCONDUCT IN THE FIRST DEGREE.

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

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

15 S 7. The penal law is amended by adding a new article 196 to read as
16 follows:

17 ARTICLE 196

18 ABUSE OF PUBLIC TRUST

19 SECTION 196.00 ABUSE OF PUBLIC TRUST CRIME.

20 S 196.00 ABUSE OF PUBLIC TRUST CRIME.

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

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

26 (II) ATTEMPTS, CONSPIRES OR SOLICITS ANOTHER TO COMMIT ANY FELONY, AND
27 IN SUCH ATTEMPT, CONSPIRACY OR SOLICITATION INTENTIONALLY USES HIS OR
28 HER POSITION AS A PUBLIC SERVANT TO SIGNIFICANTLY FACILITATE THE COMMIS-
29 SION OR CONCEALMENT OF THE OFFENSE.

30 (B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, AN ABUSE OF
31 PUBLIC TRUST CRIME SHALL NOT INCLUDE ANY OFFENSE FOR WHICH THE
32 OFFENDER'S STATUS AS A PUBLIC SERVANT CONSTITUTES AN ELEMENT OF THE
33 OFFENSE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING PROVISIONS OF THIS
34 CHAPTER: PARAGRAPH (G) OF SUBDIVISION THREE OF SECTION 135.35 (LABOR
35 TRAFFICKING); SUBDIVISION EIGHT OF SECTION 135.60 (COERCION IN THE
36 SECOND DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 135.65
37 (COERCION IN THE FIRST DEGREE); PARAGRAPH (C) OF SUBDIVISION TWO OF
38 SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION 175.40
39 (ISSUING A FALSE CERTIFICATE); SECTION 195.00 (OFFICIAL MISCONDUCT IN
40 THE THIRD DEGREE); SECTION 195.03 (OFFICIAL MISCONDUCT IN THE SECOND
41 DEGREE); SECTION 195.04 (OFFICIAL MISCONDUCT IN THE FIRST DEGREE);
42 SECTION 200.10 (BRIBE RECEIVING IN THE THIRD DEGREE); SECTION 200.11
43 (BRIBE RECEIVING IN THE SECOND DEGREE); SECTION 200.12 (BRIBE RECEIVING
44 IN THE FIRST DEGREE); SECTION 200.25 (RECEIVING REWARD FOR OFFICIAL
45 MISCONDUCT IN THE SECOND DEGREE); SECTION 200.27 (RECEIVING REWARD FOR
46 OFFICIAL MISCONDUCT IN THE FIRST DEGREE); SECTION 200.35 (RECEIVING
47 UNLAWFUL GRATUITIES); SECTION 200.50 (BRIBE RECEIVING FOR PUBLIC
48 OFFICE); PARAGRAPH (G) OF SUBDIVISION FIVE OF SECTION 230.34 (SEX TRAF-
49 FICKING); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING
50 OFFENSES.

51 2. WHEN A PERSON IS CONVICTED OF AN ABUSE OF PUBLIC TRUST CRIME PURSU-
52 ANT TO SUBDIVISION ONE OF THIS SECTION AND THE SPECIFIED OFFENSE IS A
53 CLASS C, D OR E FELONY, THE CRIME SHALL BE DEEMED TO BE ONE CATEGORY
54 HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR ONE CATE-
55 GORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S

1 CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SPECIFIED OFFENSE,
2 WHICHEVER IS APPLICABLE.

3 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
4 CONVICTED OF A CRIME PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE
5 SPECIFIED OFFENSE IS A CLASS B FELONY:

6 (A) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
7 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF
8 THIS CHAPTER;

9 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
10 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

11 (C) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS
12 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

13 (D) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
14 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF
15 THIS CHAPTER; AND

16 (E) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE
17 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS
18 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

19 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
20 CONVICTED OF A CRIME PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THE
21 SPECIFIED OFFENSE IS A CLASS A-I FELONY, THE MINIMUM PERIOD OF THE INDE-
22 TERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY YEARS.

23 S 8. Subdivision 4 of section 200.50 of the criminal procedure law, as
24 amended by section 15 of subpart A of part H of chapter 55 of the laws
25 of 2014, is amended to read as follows:

26 4. A statement in each count that the grand jury, or, where the accu-
27 satory instrument is a superior court information, the district attor-
28 ney, accuses the defendant or defendants of a designated offense,
29 provided that in any prosecution under article four hundred eighty-five
30 of the penal law, the designated offense shall be the specified offense,
31 as defined in subdivision three of section 485.05 of the penal law,
32 followed by the phrase "as a hate crime", and provided further that in
33 any prosecution under section 490.25 of the penal law, the designated
34 offense shall be the specified offense, as defined in subdivision three
35 of section 490.05 of the penal law, followed by the phrase "as a crime
36 of terrorism"; and provided further that in any prosecution under
37 section 130.91 of the penal law, the designated offense shall be the
38 specified offense, as defined in subdivision two of section 130.91 of
39 the penal law, followed by the phrase "as a sexually motivated felony";
40 and provided further that in any prosecution under section 496.06 of the
41 penal law, the designated offense shall be the specified offense, as
42 defined in subdivision two of such section, followed by the phrase "as a
43 public corruption crime"; AND PROVIDED FURTHER THAT IN ANY PROSECUTION
44 UNDER ARTICLE ONE HUNDRED NINETY-SIX OF THE PENAL LAW, THE DESIGNATED
45 OFFENSE SHALL BE THE DESIGNATED FELONY OFFENSE, AS DEFINED IN SUBDIVI-
46 SION TWO OF SECTION 196.00 OF THE PENAL LAW, FOLLOWED BY THE PHRASE "AS
47 AN ABUSE OF PUBLIC TRUST CRIME"; and

48 S 9. Subdivision 7 of section 200.50 of the criminal procedure law is
49 amended by adding a new paragraph (f) to read as follows:

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

56 S 10. This act shall take effect immediately.