

# STATE OF NEW YORK

4572

2019-2020 Regular Sessions

## IN SENATE

March 15, 2019

Introduced by Sen. KAMINSKY -- (at request of the Attorney General) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to presidential  
reprieve, pardon or other form of clemency and previous prosecution

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new  
2 section 40.51 to read as follows:

3 § 40.51 Previous prosecution: presidential reprieve, pardon or other  
4 form of clemency.

5 When a person has been granted a reprieve, pardon or other form of  
6 clemency for an offense pursuant to the authority granted in section two  
7 of article two of the United States constitution, a separate or subse-  
8 quent prosecution of an offense is not barred under this article when  
9 the people demonstrate, by clear and convincing evidence, that:

10 1. (a) such person served in or was employed by the executive branch  
11 of the government of the United States on the executive staff of the  
12 president, in the executive office of the president, or in an acting or  
13 confirmed capacity in a position subject to confirmation by the United  
14 States senate, at a time when the president granting such reprieve,  
15 pardon or other form of clemency served as president or vice-president  
16 of the United States; or (b) such person was directly or indirectly  
17 employed by, or acted as an agent of, the election, transition or re-e-  
18 lection campaign of the president granting such reprieve, pardon or  
19 other form of clemency or any for-profit or not-for-profit entity owned  
20 or controlled by the president granting such reprieve, pardon or other  
21 form of clemency; or

22 2. such person was, at the time the president granted such reprieve,  
23 pardon or other form of clemency, related by consanguinity or affinity

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

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1 within the sixth degree to the president granting such reprieve, pardon  
2 or other form of clemency; or

3 3. such person bears accessorial liability, as defined in section  
4 20.00 of the penal law, or conspiratorial liability, within the meaning  
5 of article one hundred five of the penal law, for such offense with one  
6 or more persons described in subdivision one or two of this section; or

7 4. the president who granted such reprieve, pardon or other form of  
8 clemency to such person (a) was thereby aided in avoiding potential  
9 prosecution or conviction; (b) knowingly obtained a benefit from such  
10 offense; or (c) knowingly obtained a tangible, material benefit from or  
11 on behalf of such person; or

12 5. such person possessed or possesses information material to the  
13 determination of any criminal or civil investigation, enforcement action  
14 or prosecution of the president granting such reprieve, pardon or other  
15 form of clemency, or of one or more persons described in subdivision  
16 one, two or three of this section.

17 § 2. This act shall take effect immediately and shall apply to  
18 offenses committed on or after such date and shall also apply to  
19 offenses committed before such date where the proceedings specified in  
20 subdivision 1 of section 40.30 of the criminal procedure law have not  
21 occurred as of such date.