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

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

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

2. such person was, at the time the president granted such reprieve, pardon or other form of clemency, related by consanguinity or affinity within the sixth degree to the president granting such reprieve, pardon or other form of clemency; or

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

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

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