

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A1729

SPONSOR: Pretlow

TITLE OF BILL:

An act to amend the penal law, in relation to creating the crime of prosecutorial misconduct

PURPOSE OF BILL:

Creates the crime of prosecutorial misconduct.

SUMMARY OF SPECIFIC PROVISIONS:

The penal law is amended by adding the following sections to read as follows:

- 1) Section 195.25 Prosecutorial misconduct in the third degree - A prosecutor is guilty of a prosecutorial misconduct in the third degree when he knowingly withholds information which will prove the innocence of a person charged with or convicted of a misconduct. Prosecutorial misconduct in the third degree is a class E felony.
- 2) Section 195.30 Prosecutorial misconduct in the second degree - prosecutor withholds information that will prove the innocence on a Class 5, D or C felony.
- 3) Section 195.35 Prosecutorial misconduct in the first degree - A prosecutor withholds information that will prove the innocence of a person charged with a class B or A felony. Prosecutorial misconduct in the first degree is a class A felony.

Section 2. The penal law is amended by adding a new section 70.12 to read as follows: Sentence of imprisonment for prosecutorial misconduct. 1) Upon conviction for prosecutorial misconduct in the third degree the term of imprisonment shall be at least one year and must not exceed two years. 2) Upon conviction for prosecutorial misconduct in the second degree the term of imprisonment shall be twice the sentence imposed on the individual wrongly convicted or the term of imprisonment which would have been imposed on the individual wrongly charged. 3) Upon conviction for prosecutorial misconduct in the first degree the term of imprisonment shall be twice the sentence imposed upon the individual wrongly charged, in the case of life imprisonment, the sentence shall be life imprisonment.

JUSTIFICATION:

If it is discovered that a prosecutor in a criminal case willingly withholds exculpatory information that would possibly help in proving a person accused of a crime was innocent, then that prosecutor should be held accountable for his/her actions. By installing steep penalties against withholding information, this legislation will successfully deter this practice. If a prosecutor sends an innocent person to jail by preventing exculpatory information from being heard in order to get a conviction, that prosecutor deserves to be severely sanctioned.

FISCAL IMPLICATIONS: None.

LEGISLATIVE HISTORY:

A3127 2019/2020 referred to codes
A1011 2017/2018 referred to codes
A1448 2015/2016 referred to codes
A.2508 2009/2010 referred to codes.

EFFECTIVE DATE:

This act shall take effect on the first of November, next succeeding the date on which it shall have become a law.

2013 NY Assembly Brody Bills

STATE OF NEW YORK

1729

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. PRETLOW -- 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
Assembly, 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 § 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 § 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 § 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 § 2. The penal law is amended by adding a new section 70.12 to read
as

21 follows:
22 § 70.12 Sentence of imprisonment for prosecutorial misconduct.
23 1. Upon conviction for prosecutorial misconduct in the third
degree,
24 as specified in section 195.25 of this chapter, the term of
imprisonment
25 shall be at least one year and must not exceed two years.

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

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1 2. Upon conviction for prosecutorial misconduct in the second
degree
2 as specified in section 195.30 of this chapter, the term of
imprisonment
3 shall be twice the sentence imposed upon the individual
wrongly
4 convicted or the term of imprisonment which would have been imposed
upon
5 the individual wrongly charged.

6 3. Upon conviction for prosecutorial misconduct in the first
degree,
7 as specified in section 195.35 of this chapter, the term of
imprisonment
8 shall be twice the sentence imposed upon the individual
wrongly
9 convicted or the term of imprisonment which would have been imposed
upon
10 the individual wrongly charged, in the case of life imprisonment,
the
11 sentence shall be life imprisonment.

12 § 3. This act shall take effect on the first of November next
succeed-
13 ing the date on which it shall have become a law.