



APPENDIX

REPORT OF THE NEW YORK STATE WHITE COLLAR CRIME TASK FORCE

An Initiative Of

The District Attorneys Association
of the State of New York



**REPORT OF THE
NEW YORK STATE WHITE COLLAR CRIME TASK FORCE**

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Appendix A

Members & Staff of the Task Force

Appendix A
Members and Staff of the
New York State White Collar Crime Task Force

Co-Chairs

Frank A. Sedita, III
District Attorney
Erie County

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Chief Assistant District Attorney
New York County District Attorney's Office

Members

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Chief Risk Officer
New York State Department of Taxation
(Chair, Tax and Money Laundering Committee)

Owen Heimer
Marsh & McLennan Companies, Inc.
(Chair, Fraud Committee)

Nancy Hoppock
NYU School of Law
Center for the Administration of Criminal Law
(Chair, Anti-Corruption Committee)

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Thomas D. Thacher, II
Thacher Associates LLC

Staff

The following lawyers were formally appointed to the Task Force staff at the outset of the Task Force's formation:

Sally Pritchard, *Chief Counsel*

John Doscher, *Counsel*
(Chair, Elder Fraud Working Group)

Christina Skinner, *Counsel*

Acknowledgments

The following lawyers assisted in the work of the Task Force after its formation; the Task Force is extremely grateful for their work:

Brian Allen
Robert J. DeMarco
Charlotte Fishman
Caitlin J. Halligan
Duncan P. Levin
Elizabeth Loewy
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Marshall D. Trager

In addition, the following members of the DAASNY Legislative Committee assisted in the preparation of the contents of the Appendix:

Lois Raff
Anthony Girese
Morrie Kleinbart

The Task Force gratefully acknowledges the assistance of John Hughes, a student at Columbia Law School.

The Task Force also appreciates the assistance of Michael Green, Executive Deputy Commissioner of the New York State Division of Criminal Justice Services, Dean Mauro, Criminal Justice Policy Analyst at DCJS, and Robyn Pangi, Director of Legislative Affairs, New York County District Attorney's Office.

The Task Force is grateful for the sponsorship of Zuckerman Spaeder LLP, as well as the generous hospitality of King & Spalding LLP, Sullivan & Cromwell LLP, and the New York State Bar Association.

Appendix B

Materials Received by the Task Force



July 10, 2013

Daniel R. Alonso, Co-Chair
Frank A. Sedita, III, Co-Chair
New York State White Collar Crime Task Force
c/o New York County District Attorney's Office
One Hogan Place
New York, NY 10013

Re: Proposed Amendment to CPL 190.30(8)

Dear Messrs. Alonso and Sedita:

Google Inc. (Google) is pleased to offer its support for the White Collar Crime Task Force's recommendation to apply the certification procedure of CPL 190.30(8) to all business records introduced before the grand jury, including business records related to the contents of communications.

As the Task Force has noted, business records are admissible in all federal court proceedings via declaration under Fed. R. Evid. 803(6) and 902(11), and have been for over a decade. *See, e.g., Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 2539 (2009); *U.S. v. Yeley-Davis*, 632 F.3d 673, 677-81 (10th Cir. 2011). Most states have also adopted similar rules for the authentication and admission of business records at trial and before the grand jury. New York's unusual requirement that a records custodian personally appear to authenticate these records, a formality that is almost always uncontested and typically requires mere seconds of testimony, does little to enhance the truth-seeking process at great expense to the public fisc.

Google has a dedicated team responsible for handling legal demands that run the gamut from law enforcement emergencies to routine civil and criminal demands for records. Google's team takes the privacy of user information seriously and carefully reviews each demand for disclosure. Similarly, Google understands the need for a timely response to valid legal process from public safety agencies. Each time a team member is required to spend two days (or more in some instances given the unpredictable nature of trial proceedings) traveling across the country for the mundane task of authenticating records, it means resources are diverted from more important functions.

The Task Force's proposed amendment to CPL 190.30(8) goes a long way toward alleviating these burdens on the public and service providers. Although Google would prefer to see enactment of procedures similar to the Federal Rules for all proceedings in New York, both before the grand jury and at trial, the proposed amendment is an important step in the right direction. Google fully supports the Task Force's proposed amendment to CPL 190.30(8).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard P. Salgado".

Richard P. Salgado
Director, Law Enforcement & Information Security

July 10, 2013

New York State White Collar Crime Task Force
Daniel R. Alonso, the Chief Assistant District Attorney of New York County
The Honorable Frank A. Sedita, III, District Attorney of Erie County.
3 Columbia Place, Albany NY 12210

Dear Chairmen Alonso and Sedita:

We appreciate the White Collar Crime Task Force's willingness to explore legislative changes to the state's criminal and procedure statutes to allow all business records to be admissible in the grand jury by sworn certification rather than by live witness. We support these changes and believe they will be a much-needed update to current law.

As the Task Force has noted, all business records are admissible in all federal court proceedings via declaration under Fed. R. Evid. 803(6) and 902(11), and have been for over a decade. Most states have also adopted similar rules for the authentication and admission of business records both at trial and before the grand jury.

Currently New York State Criminal Procedure Law 190.30(8) allows state prosecutors to introduce some business records into grand jury hearings via a business record affidavit, but fails to allow other online records to be entered through this same process. Broadening the set of business records that can be presented through an affidavit would not impair the ability of grand juries to evaluate evidence in any way. It would also conserve state resources by alleviating the need to reimburse travel costs of record custodians, which in the case of some out of state providers takes multiple travel days travel for a few minutes of ministerial testimony. Even at trial that is almost always uncontested.

In addition, the proposed change would help reduce the burden placed on service providers whose records custodians are part of dedicated teams responsible for handling all legal requests. Removing team members from daily operations for travel can strain their ability to timely process requests, some of which require immediate attention and involve emergencies.

We believe the current proposal is a step in the right direction and we fully support it. For the same reasons, we also encourage the Task Force to look at amending the evidentiary rules for authentication and admission of content at trial.

Again, thank you for taking up this important matter and we urge the Task Force to move forward with implementing smart changes to New York's Criminal Procedure Law.

Sincerely,

A handwritten signature in blue ink, appearing to read "William J. Leavelle". The signature is fluid and cursive, with the first name "William" and last name "Leavelle" clearly distinguishable.

Facebook

AOL

Google

The Internet Alliance

NetChoice

The State Privacy and Security Coalition

Yahoo!

THOMAS P. DINAPOLI
STATE COMPTROLLER



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DEPUTY COUNSEL

February 13, 2013

Daniel R. Alonso, Co-Chair
Honorable Frank A. Sedita, III, Co-Chair
White Collar Crime Task Force
District Attorneys Association
of the State of New York
3 Columbia Place
Albany, NY 12210

Dear Messrs. Alonso and Sedita:

Thank you for your letter to Comptroller DiNapoli affording the Comptroller the opportunity to submit recommendations to the New York State District Attorneys Association's White Collar Crime Task Force. The Comptroller has asked me to respond on his behalf in my capacity as head of the Comptroller's Investigations Unit, the branch of this Office which investigates and coordinates fraud examinations.

Under the New York State Constitution and State law, the Comptroller is vested with a broad duty to examine the use of public funds and detect and deter fraud at all levels of State government. The Comptroller's fraud examinations have resulted in the recoupment of millions of dollars in public moneys, the conviction of many defendants for misappropriation of public resources, and the strengthening of internal controls to deter further misappropriations. Based upon this experience and the many examples in the last several years of public officials violating their fiduciary duties and committing crimes, the Comptroller has submitted a legislative package to increase the penalties for those who violate the public trust and misuse their positions for their personal benefit. A copy of the Comptroller's proposal and an accompanying memorandum accompany this letter.

Recognizing the myriad and unforeseeable ways in which public positions of trust can be abused either to commit or conceal criminal activity, the Comptroller's proposed bill (A.3629) creates a new article of the Penal Law, entitled "Abuse of Public Trust." Under this Article, a prosecutor would be vested with the ability to enhance the potential penalties against a public servant who abuses his or her position by charging the defendant with an Abuse of Public Trust Offense, in addition to the substantive penal law violations. If convicted of such an offense, the level of the underlying crime of conviction would be elevated one category for sentencing purposes. Further noting the financial motivations behind most crimes committed by public officials, the Comptroller has also recommended a mandatory fine be imposed on those convicted of abusing their public position.

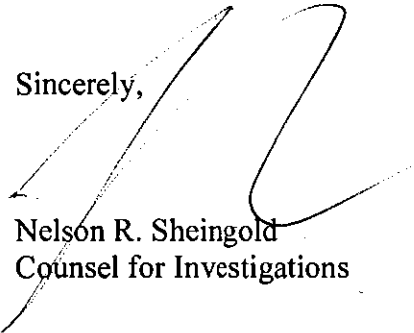
Daniel R. Alonso
Frank A. Sedita, III
February 13, 2013
Page 2

In addition, the Comptroller recognizes that the penalties for Official Misconduct, Penal Law § 195.00, are inadequate to address the types of abuse which the State has encountered. Therefore, the Comptroller has recommended that two new sections be added to this Article, creating second degree and first degree Official Misconduct offenses depending on the amount of benefit conferred as a result of the public servant's misconduct.

We believe that enactment of these recommendations would aid in deterring misconduct by public officials and foster public confidence in its elected and appointed officials, and submit our proposed bill to the Task Force for consideration.

Thank you again for the opportunity to submit suggestions to the Task Force. Please feel free to contact me at (518) 474-0588 if you would like to discuss our submission. I look forward to working with you in the future.

Sincerely,



Nelson R. Sheingold
Counsel for Investigations

Enclosure

A3629 Abbate No Same as
State Comptroller # 11
Penal Law

TITLE.....Provides for the imposition of mandatory fine upon certain public officials convicted of a
designated felony offense related to his or her official duties

01/28/13 referred to governmental employees

STATE OF NEW YORK

3629

2013-2014 Regular Sessions

IN ASSEMBLY

January 28, 2013

Introduced by M. of A. ABBATE -- (at request of the State Comptroller)
-- read once and referred to the Committee on Governmental Employees

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:

1 Section 1. Subdivision 1 of section 80.00 of the penal law, as
2 amended by chapter 338 of the laws of 1989, is amended to read as
3 follows:
4 1. A sentence to pay a fine for a felony shall be a sentence to pay an
5 amount, fixed by the court, not exceeding the higher of
6 a. five thousand dollars; or
7 b. double the amount of the defendant's gain from the commission of
8 the crime; or
9 c. if the conviction is for any felony defined in article two hundred
10 twenty or two hundred twenty-one of this chapter, according to the
11 following schedule:
12 (i) for A-I felonies, one hundred thousand dollars;
13 (ii) for A-II felonies, fifty thousand dollars;
14 (iii) for B felonies, thirty thousand dollars;
15 (iv) for C felonies, fifteen thousand dollars.
16 When imposing a fine pursuant to the provisions of this paragraph, the
17 court shall consider the profit gained by defendant's conduct, whether
18 the amount of the fine is disproportionate to the conduct in which
19 defendant engaged, its impact on any victims, and defendant's economic
20 circumstances, including the defendant's ability to pay, the effect of
21 the fine upon his or her immediate family or any other persons to whom
22 the defendant owes an obligation of support[-]; or

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

LBD02569-01-3

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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.

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

§ 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.

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

§ 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.

§ 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.

§ 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.

§ 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

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1 second degree); paragraph (c) of subdivision two of section 135.65
2 (coercion in the first degree); paragraph (c) of subdivision two of
3 section 155.40 (grand larceny in the second degree); section 175.40
4 (issuing a false certificate); section 195.00 (official misconduct in
5 the third degree); section 195.01 (official misconduct in the second
6 degree); section 195.02 (official misconduct in the first degree);
7 section 200.10 (bribe receiving in the third degree); section 200.11
8 (bribe receiving in the second degree); section 200.12 (bribe receiving
9 in the first degree); section 200.25 (receiving reward for official
10 misconduct in the second degree); section 200.27 (receiving reward for
11 official misconduct in the first degree); section 200.35 (receiving
12 unlawful gratuities); section 200.50 (bribe receiving for public
13 office); paragraph (g) of subdivision five of section 230.34 (sex traf-
14 ficking); or any attempt or conspiracy to commit any of the foregoing
15 offenses.

16 2. When a person is convicted of an abuse of trust crime pursuant to
17 subdivision one of this section and the specified offense is a class C,
18 D or E felony, the crime shall be deemed to be one category higher than
19 the specified offense the defendant committed, or one category higher
20 than the offense level applicable to the defendant's conviction for an
21 attempt or conspiracy to commit a specified offense, whichever is appli-
22 cable.

23 3. Notwithstanding any other provision of law, when a person is
24 convicted of a crime pursuant to subdivision one of this section and the
25 specified offense is a class B felony:

26 (a) the maximum term of the indeterminate sentence must be at least
27 six years if the defendant is sentenced pursuant to section 70.00 of
28 this chapter;

29 (b) the term of the determinate sentence must be at least eight years
30 if the defendant is sentenced pursuant to section 70.02 of this chapter;

31 (c) the term of the determinate sentence must be at least twelve years
32 if the defendant is sentenced pursuant to section 70.04 of this chapter;

33 (d) the maximum term of the indeterminate sentence must be at least
34 four years if the defendant is sentenced pursuant to section 70.05 of
35 this chapter; and

36 (e) the maximum term of the indeterminate sentence or the term of the
37 determinate sentence must be at least ten years if the defendant is
38 sentenced pursuant to section 70.06 of this chapter.

39 4. Notwithstanding any other provision of law, when a person is
40 convicted of a crime pursuant to subdivision one of this section and the
41 specified offense is a class A-1 felony, the minimum period of the inde-
42 terminate sentence shall be not less than twenty years.

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

45 4. A statement in each count that the grand jury, or, where the accu-
46 satory instrument is a superior court information, the district attor-
47 ney, accuses the defendant or defendants of a designated offense,
48 provided that in any prosecution under article four hundred eighty-five
49 of the penal law, the designated offense shall be the specified offense,
50 as defined in subdivision three of section 485.05 of the penal law,
51 followed by the phrase "as a hate crime", and provided further that in
52 any prosecution under section 490.25 of the penal law, the designated
53 offense shall be the specified offense, as defined in subdivision three
54 of section 490.05 of the penal law, followed by the phrase "as a crime
55 of terrorism"; and provided further that in any prosecution under
56 section 130.91 of the penal law, the designated offense shall be the

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1 specified offense, as defined in subdivision two of section 130.91 of
2 the penal law, followed by the phrase "as a sexually motivated felony";
3 and provided further that in any prosecution under article one hundred
4 ninety-six of the penal law, the designated offense shall be the desig-
5 nated felony offense, as defined in subdivision two of section 196.00 of
6 the penal law, followed by the phrase "as an abuse of public trust
7 crime"; and

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

10 (f) in the case of an abuse of public trust crime, as defined in
11 section 196.00 of the penal law, specifies, as applicable, that the
12 defendant or defendants committed, or attempted, conspired or solicited
13 another to commit, a felony and intentionally used his or her position
14 as a public servant in a manner that significantly facilitated the
15 commission or concealment of the offense; and

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

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

BILL NUMBER: A3629

SPONSOR: Abbate

TITLE OF BILL: 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

PURPOSE: This bill increases the penalties imposed on any public servant who commits a crime in abuse of the public trust by using his or her office to commit, facilitate or conceal criminal acts.

SUMMARY OF PROVISIONS: Section 1 of this bill amends Subdivision 1 of Section 80.00 of the Penal Law to mandate that, in addition to any other sanction, a fine be imposed upon any public servant who abuses the public trust, the amount of which is based upon the gain received or imparted by the guilty public servant.

Section 2 of this bill amends Section 195.00 of the Penal Law to rename and reclassify the current crime of "Official Misconduct" as "Official Misconduct in the Third Degree." A person convicted of violating this Section will now be guilty of a Class E Felony rather than a Class A Misdemeanor.

Section 3 of this bill adds two new Sections, 195.01 and 195.02, to the Penal Law:

Section 195.01 of the Penal Law establishes the crime of "Official Misconduct in the Second Degree," a Class D Felony. 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 \$1,000.

Section 195.02 of the Penal Law establishes the crime of "Official Misconduct in the First Degree," a Class C Felony. 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 \$3,000.

Section 4 of this bill creates a new Article 196 of the Penal Law, titled "Abuse of Public Trust" Pursuant to this Article, if a public servant commits a crime in abuse of public trust, by either intentionally using his or her position as a public servant in a manner that significantly facilitates the commission or concealment of a felony offense, or by attempting, conspiring or soliciting 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, then the public servant faces an enhanced punishment. Specifically, the level of felony will be elevated one category higher than normally associated with the specified offense the defendant committed for a Class C, D or E Felony, and a defendant who is convicted of a Class A-I or B Felony will face enhanced sentencing.

Sections 5 and 6 of this bill amend Subdivisions 4 and 7 of Section 200.50 of the Criminal Procedure Law with respect to the language that must be included in an indictment charging a defendant with the crime of abuse of public trust.

Section 7 of this bill provides for an effective date of the one-hundred twentieth day after it shall, have become a law.

PRIOR LEGISLATIVE HISTORY:

S. 3185-B and A. 5049-B of 2011-2017

JUSTIFICATION: When public servants participate in criminal conduct related to the performance of or the failure to perform their official duties and responsibilities, they have exploited their office, thereby diminishing the public's trust in government. Public servants who commit a designated felony offense in order to secure financial advantage for themselves or others should not be entitled to the benefits derived from the abuse of public office and should suffer a financial penalty.

This bill provides for enhanced criminal penalties for any public servant who abuses his or her office by using such office to commit or to facilitate the commission or concealment of a crime, and who thereby violates the duty owed to the public and concomitantly undermines the public's confidence in government.

Current law has proved to be woefully inadequate to deter and punish those who misuse or abuse their public office for personal gain. The law must be strengthened to reflect more clearly the gravity of these criminal breaches of the public trust, to punish such actions and to prevent their recurrence. With this legislation, these goals are accomplished by increasing the criminal penalties not only for official misconduct but for any crime committed by a public servant who uses his or her official status to further his or her personal interest at the expense of the public's trust in the integrity of government.

The Comptroller urges passage of this legislation.

BUDGET IMPLICATIONS: This bill has no significant fiscal impact.

EFFECTIVE DATE: This bill would take effect on the one-hundred twentieth day after it shall have become a law:

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK



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* PAST PRESIDENT OF DAASNY

PRESIDENT
CYRUS R. VANCE, JR.
NEW YORK COUNTY

June 11, 2013

The Honorable Sheldon Silver
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable Dean G. Skelos
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

The Honorable Jeffrey D. Klein
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 913
Albany, NY 12247

Re: Governor's Program Bill #3: Public Trust Act

Dear Speaker Silver, Majority Coalition Leader Skelos, and Majority Coalition Leader Klein:

On behalf of the District Attorneys Association of the State of New York (DAASNY), a voluntary organization comprised of the 62 elected District Attorneys in our State and the Special Narcotics Prosecutor of the City of New York, we write in support of Governor's Program Bill #3, which would enact provisions of the Public Trust Act (the "Act").

Public servants control funding streams, public works projects, health and safety, and myriad policies that impact the lives of every New Yorker. Taken together, the well-reasoned measures in the Act will hold individuals accountable for egregious violations of the public trust. If we cannot hold public servants accountable for their crimes or protect the integrity of the public, we lose the trust of the citizenry and the integrity of our democracy.

The Act addresses a number of areas where relatively weak state laws have allowed behavior that corrupts and defrauds our state and local governments to go unchecked. Strengthening our state laws in this area would send a clear message that this kind of criminality will not be tolerated at any level across the state. We highlight the most significant of the Act's several important improvements in existing law:

First, the Act improves the existing bribery and bribe receiving statutes in important ways. Although the current bribery laws purport to treat offers to bribe as seriously as completed bribes, the Court of Appeals has interpreted these statutes in a very stringent fashion, requir-

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WEBSITE: DAASNY.ORG

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

ing either a mutual agreement between the parties or at least an understanding that the public servant will in fact be influenced. *People v. Tran*, 80 N.Y.2d 170, 176 (1992). This reality has made it more difficult to prosecute those who offer bribes to our public servants, and is in tension with the intent of the Legislature when the law was enacted. *See id.* at 181 (Simons, J., dissenting) ("The Legislature could hardly have intended that citizens are free to offer cash to public officials just so long as the officials do nothing to prompt the offer."). In addition to transforming the bribery statutes into a strong tool, the Act also eliminates an obvious anomaly by making the intent necessary for public bribery statutes consistent with that for commercial bribery, sports bribery, and labor bribery, all of which simply require an intent to influence the individual involved. Additionally, the Act gradates bribery more strongly to punish larger bribes more seriously, beginning with a D felony and rising to a B felony for bribing or bribe receiving in excess of \$10,000.

Second, the Act strongly targets official misconduct by enhancing the penalty for violating the existing PL §195.00 (Official Misconduct) from an A misdemeanor to an E felony for violations of the statute that do not result in the actual obtaining or depriving of a benefit, or where the benefit is not capable of valuation. It also creates the new crimes of Official Misconduct in the Second Degree, a D felony, and Official Misconduct in the First Degree, a C felony, where the benefit gained from such misconduct is valued in excess of \$1,000 and \$3,000, respectively. By treating this kind of misconduct seriously for the first time, this aspect of the Act would greatly benefit anti-corruption efforts.

Third, the Act repeals the ineffectual PL §195.20, Defrauding the Government, and replaces it with the new crime of Corrupting the Government. This new charge would apply to ongoing, systematic schemes to defraud one or more government entities, regardless of whether the perpetrator is a public official. Four degrees of this crime, ranging from an E felony to a B felony, would apply based upon monetary gain. This provision is extremely important in treating frauds against the public seriously, and is a centerpiece of the legislation.

Fourth, the Act creates a new class of crimes called Public Corruption, which increases penalties by one degree for specific existing crimes – larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering – in cases where the victim is a public entity. Like the proposed Corrupting the Government statute, Public Corruption would apply regardless of whether the perpetrator was a public official or a person targeting a public entity.

Fifth, the Act rethinks the penalties attendant to certain violations. It increases the maximum level of fines that can be levied to three times the amount of the defendant's gain for the crime of corrupting the government. It bars an individual convicted of any of the bribery, official misconduct, or public corruption crimes from registering as a lobbyist or serving in civil office. And it disqualifies individual and corporate offenders from bidding on and obtaining state contracts when convicted of crimes set forth in Public Trust Act.

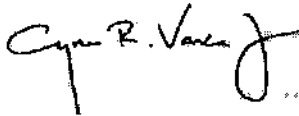
Sixth, the Act creates a class A misdemeanor for those who fail to report to a district attorney a bribe or attempted bribe. One of the difficulties with prosecuting public corruption is the paucity of witnesses willing to come forward to report these activities. This provision, which builds on the existing duty for certain state officials contained in Executive Law §55, is therefore a welcome addition to the law.

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Finally, the Act changes the standard from automatic transactional to automatic use immunity in narrow instances in which a witness testifies before a grand jury investigating government fraud or misconduct in public office. This means that the witness, who may or may not also be part of the criminal transaction under investigation or any other criminal transaction, could still be prosecuted for his or her role if prosecutors develop evidence that is neither derived directly nor indirectly from the evidence given by the witness. This is consistent with the Constitutional standard used in federal court and the overwhelming majority of other states for all crimes, although the change proposed in the Act would be much narrower in scope.

For all these reasons, DAASNY strongly supports the Public Trust Act and looks forward to seeing this bill enacted into law.


Sincerely,



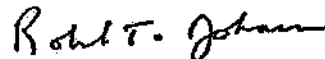
Cyrus R. Vance, Jr.
District Attorney, New York County
President, DAASNY



Kathleen M. Rice
District Attorney, Nassau County
President-Elect, DAASNY



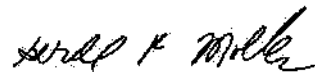
Hon. David Soares
Albany County District Attorney



Hon. Robert T. Johnson
Bronx County District Attorney

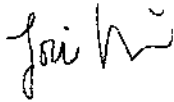


Hon. Keith A. Slep
Allegany County District Attorney



Hon. Gerald F. Mollen
Broome County District Attorney

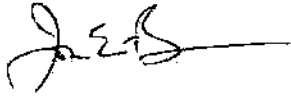
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Hon. Lori Rieman
Cattaraugus County District Attorney

/s/

Hon. Richard D. Northup
Delaware County District Attorney



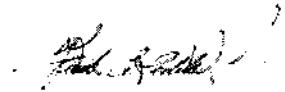
Hon. Jon E. Budelmann
Cayuga County District Attorney



Hon. William V. Grady
Dutchess County District Attorney



Hon. David W. Foley
Chautauqua County District Attorney



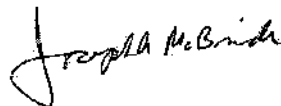
Hon. Frank A. Sedita, III
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Chemung County District Attorney



Hon. Kristy L. Sprague
Essex County District Attorney



Hon. Joseph A. McBride
Chenango County District Attorney



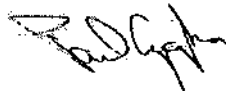
Hon. Derek P. Champagne
Franklin County District Attorney



Hon. Andrew J. Wylie
Clinton County District Attorney



Hon. Louise K. Sira
Fulton County District Attorney



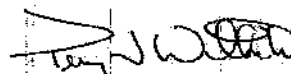
Hon. Paul Czajka
Columbia County District Attorney



Hon. Lawrence Friedman
Genesee County District Attorney



Hon. Mark D. Suben
Cortland County District Attorney

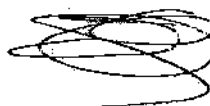


Hon. Terry J. Wilhelm
Greene County District Attorney

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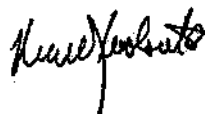
Hon. Marsha King Purdue
Hamilton County District Attorney



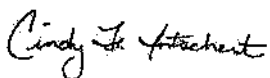
Hon. James E. Conboy
Montgomery County District Attorney



Hon. Jeffrey Carpenter
Herkimer County District Attorney



Hon. Michael J. Violante
Niagara County District Attorney



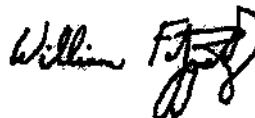
Hon. Cindy F. Intschert
Jefferson County District Attorney



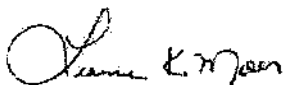
Hon. Scott D. McNamara
Oneida County District Attorney



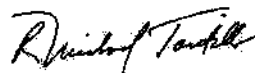
Hon. Charles J. Hynes
Kings County District Attorney



Hon. William J. Fitzpatrick
Onondaga County District Attorney



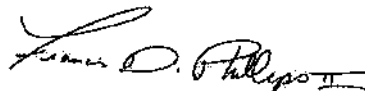
Hon. Leanne K. Moser
Lewis County District Attorney



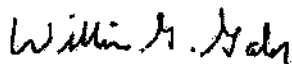
Hon. R. Michael Tantillo
Ontario County District Attorney



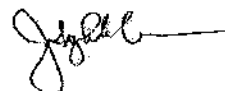
Hon. Gregory J. McCaffrey
Livingston County District Attorney



Hon. Francis D. Phillips, II
Orange County District Attorney



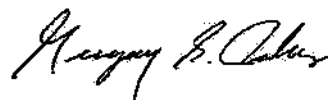
Hon. William G. Gabor
Madison County District Attorney



Hon. Joseph V. Cardone
Orleans County District Attorney

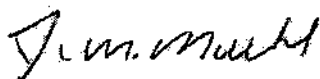


Hon. Sandra Doorley
Monroe County District Attorney

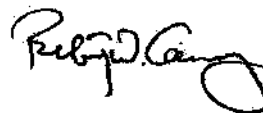


Hon. Gregory S. Oakes
Oswego County District Attorney

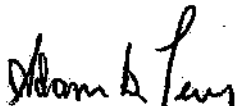
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Hon. John M. Muel
Otsego County District Attorney



Hon. Robert M. Carney
Schenectady County District Attorney



Hon. Adam B. Levy
Putnam County District Attorney

/s/

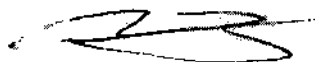
Hon. James Sackett
Schoharie County District Attorney



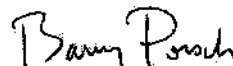
Hon. Richard A. Brown
Queens County District Attorney



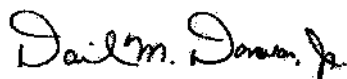
Hon. Joseph G. Fazzary
Schuyler County District Attorney



Hon. Richard J. McNally, Jr.
Rensselaer County District Attorney



Hon. Barry Porsch
Seneca County District Attorney



Hon. Daniel M. Donovan, Jr.
Richmond County District Attorney



Hon. Brooks Baker
Steuben County District Attorney



Hon. Thomas P. Zugibe
Rockland County District Attorney



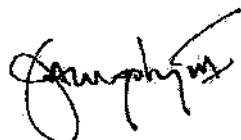
Hon. Thomas J. Spota
Suffolk County District Attorney



Hon. Nicole M. Duvé
St. Lawrence County District Attorney



Hon. James Farrell
Sullivan County District Attorney

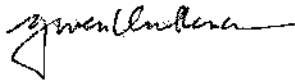


Hon. James A. Murphy III
Saratoga County District Attorney

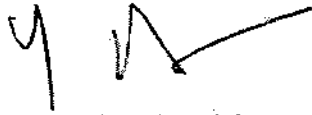


Hon. Irene Graven
Tioga County Acting District Attorney

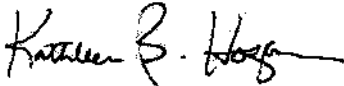
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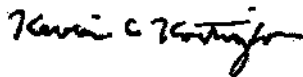
Hon. Gwen Wilkinson
Tompkins County District Attorney



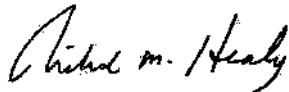
Hon. D. Holley Carnright
Ulster County District Attorney



Hon. Kathleen B. Hogan
Warren County District Attorney



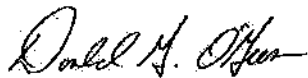
Hon. Kevin Kortright
Washington County District Attorney



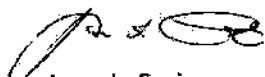
Hon. Richard M. Healy
Wayne County District Attorney



Hon. Janet DiFiore
Westchester County District Attorney



Hon. Donald O'Geen
Wyoming County District Attorney



Hon. Jason L. Cook
Yates County District Attorney

cc: Governor Andrew M. Cuomo

STRUCTURING

Daniel Wager
SVP, Head of Global Enhanced Due Diligence
TD Bank
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The Federal Statute

Title 31 United States Code

Sec. 5324. Structuring transactions to evade reporting requirement prohibited

- (a) Domestic Coin and Currency Transactions Involving Financial Institutions. - No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508 –
- (1) **cause or attempt to cause a domestic financial institution to fail to file a report** required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;
- (2) **cause or attempt to cause a domestic financial institution to file a report** required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91- 508, **that contains a material omission or misstatement of fact**; or
- (3) **structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.**
- (b) Domestic Coin and Currency **Transactions Involving Nonfinancial Trades or Businesses.** - No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section –
- (1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;
- (2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or
- (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.
- (c) International Monetary Instrument Transactions. - No person shall, for the purpose of evading the reporting requirements of section 5316 -
- (1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report; (2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or (3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.
- (d) Criminal Penalty. - (1) In general. - Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both. (2) Enhanced penalty for aggravated cases. - Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both. .

Title 31 United States Code, section 5313(a) provides for the general CTR reporting requirement, implementing regs set threshold as over \$10,000 currently

Title 31 United States Code, section 5325 sets recordkeeping requirement for sales of money orders, traveler's checks and other instruments.

Title 31 United States Code, section 5331 sets the recordkeeping requirements for non-financial institution transactions (Form 8300 transactions)

Some Common Types of Structured Transactions

- Cash withdrawn in a structured manner to pay workers off the books (tax fraud, Unemployment Insurance Fraud, Union Benefit Plan frauds)
- Proceeds of unlicensed MSB activities deposited in a structured manner to avoid detection
- Withdrawal of cash in a structured manner to support unlicensed check cashing activity
- Structured deposits into accounts at US branches, withdrawn by ATM in Mexico or Colombia
- Structured deposits from nail salons, hair braiding salons, massage parlors which may constitute proceeds of sex trafficking or servitude, also tax avoidance
- Business receipts paid in cash or converted to cash at a check casher. Structured into accounts in order to pay bills not payable in cash. (Tax avoidance)
- The deposit of currency smuggled into the United States without declaration
- Withdrawal of cash in a structured manner to use for illicit purposes, most commonly prostitution, bribery, or gambling
- Licit funds intended for licit use structured due to fear of CTR (immigrant communities in particular)

Some Ways The Federal Structuring Charge Is Used

- As a predicate (supported by transactional analysis) for search and seizure warrants, particularly in matters when investigation has not revealed the source of funds
- As a superceding or plea charge in money laundering investigations
- As an alternative to more complicated tax charges
- Used by investigators in developing sources or cooperating defendants
- As a plea charge in a wide range of financial investigations due to the range of sentencing options the charge presents, and the utility of the charge in both civil and criminal arenas
- ...or simply as the catalyst for many financial investigations due to the sheer volume of structuring leads available through BSA reporting

How Frequently Is It Reported?

Section 1 - Suspicious Activity Report Form TD F 90-22.47
Suspicious Activity Report by Depository Institutions

Exhibit 4: Number of Suspicious Activity Report Filings by Characterization of Suspicious Activity* in Descending Order
January 1, 2002 through December 31, 2011

Anecdotaly, as many as half of these may be 'pure' structuring

Rank	Suspicious Activity Type	Filings (Overall)	Percentage (Overall)
1	BSA/Structuring/Money Laundering	3,121,332	47.15%
2	Other	649,092	9.81%
3	Check Fraud	618,491	9.34%
4	Mortgage Loan Fraud	444,105	6.71%
5	Credit Card Fraud	300,499	4.54%
6	Counterfeit Check	258,579	3.91%
7	Identity Theft**	238,851	3.61%
8	False Statement	212,420	3.21%
9	Check Kiting	205,608	3.11%
10	Consumer Loan Fraud	142,570	2.15%
11	Wire Transfer Fraud	94,126	1.42%
12	Defalcation/Embezzlement	63,928	Less than 1%
13	Misuse of Position or Self Dealing	47,203	Less than 1%
14	Debit Card Fraud	42,556	Less than 1%
15	Unknown/Blank	39,454	Less than 1%
16	Mysterious Disappearance	35,787	Less than 1%
17	Commercial Loan Fraud	28,648	Less than 1%
18	Counterfeit Credit/Debit Card	24,105	Less than 1%
19	Counterfeit Instrument (Other)	22,377	Less than 1%
20	Computer Intrusion	20,447	Less than 1%
21	Terrorist Financing**	6,234	Less than 1%
22	Bribery/Gratuity	3,525	Less than 1%

*Some Suspicious Activity Reports may list multiple suspicious activities.

Source: FinCEN public reporting

Section 1 - Suspicious Activity Report Form TD F 90-22.47
Suspicious Activity Report by Depository Institutions

Exhibit 8: Characterization of Suspicious Activity by State & Territory by Year*
January 1, 2002 through December 31, 2011

*This exhibit does not include Suspicious Activity Reports where the State is Unknown/Blank (or) where the Characterization of Suspicious Activity is Unknown/Blank (or) both.

Note: Suspicious Activity Report statistical data is continuously updated as additional reports are filed and processed. For this reason, there may be minor discrepancies between the statistical figures contained in various portions of this report or in previous reports.

State/Territory	Characterization of Suspicious Activity																				
	<i>BSA/Structuring/Money Laundering</i>	<i>Bribery/Gratuity</i>	<i>Check Fraud</i>	<i>Check Kiting</i>	<i>Commercial Loan Fraud</i>	<i>Computer Intrusion</i>	<i>Consumer Loan Fraud</i>	<i>Counterfeit Check</i>	<i>Counterfeit Credit/Debit Card</i>	<i>Counterfeit Instrument (Other)</i>	<i>Credit Card Fraud</i>	<i>Debit Card Fraud</i>	<i>Defalcation/Embezzlement</i>	<i>False Statement</i>	<i>Misuse of Position or Self Dealing</i>	<i>Mortgage Loan Fraud</i>	<i>Mysterious Disappearance</i>	<i>Wire Transfer Fraud</i>	<i>Terrorist Financing</i>	<i>Identity Theft</i>	<i>Other</i>
New York																					
2002	21,939	57	2,439	261	139	11	185	1,459	43	125	477	61	391	207	133	232	113	436	-	-	2,648
2003	21,593	46	2,507	310	96	48	187	1,471	34	161	707	65	390	197	111	348	136	482	43	64	2,567
2004	25,802	228	3,024	338	77	61	127	1,678	122	144	1,707	92	456	219	183	1,372	138	1,006	322	564	4,187
2005	42,424	247	4,756	511	156	57	151	2,824	179	291	1,805	128	326	271	251	540	183	935	269	737	4,571
2006	41,724	39	5,353	627	194	52	193	3,484	135	276	1,389	138	400	308	317	746	188	814	110	567	4,368
2007	50,655	30	5,426	603	320	79	321	2,946	89	230	604	198	425	640	331	965	209	1,033	100	722	4,584
2008	50,768	23	5,507	589	275	52	388	3,167	113	148	590	224	421	1,578	327	2,227	270	1,251	106	812	5,224
2009	46,327	24	6,162	624	154	106	245	3,437	35	135	272	233	384	1,330	296	1,585	326	1,433	142	914	5,954
2010	55,402	25	7,522	627	126	86	271	3,620	69	180	873	387	339	1,280	246	1,768	264	1,561	152	935	5,442
2011	62,909	21	7,688	476	80	149	302	3,105	113	158	1,468	469	359	1,741	274	2,658	277	1,825	107	1,031	6,385
Total	419,543	740	50,384	4,966	1,617	701	2,370	27,191	932	1,848	9,892	1,995	3,891	7,771	2,469	12,441	2,104	10,776	1,351	6,346	45,930

Source: FinCEN public reporting

Section 2 - FinCEN Form 109**Suspicious Activity Report by Money Services Business (SAR-MSB)****Exhibit 4: Number of SAR-MSB Filings by Character of Suspicious Activity
in Descending Order***

October 1, 2002 through December 31, 2011

Rank	Character of Suspicious Activity	Filings (Overall)	Percentage (Overall)
1	Unknown/Blank	1,701,748	25.11%
2	Comes in frequently and purchases less than \$3,000	1,511,758	22.31%
3	Alters transaction to avoid completion of funds transfer record or money order or traveler's check record (\$3,000 or more)	1,449,285	21.38%
4	Two or more individuals working together	784,549	11.58%
5	Same individual(s) using multiple locations over a short time period	611,569	9.02%
6	Alters transaction to avoid filing a CTR form (over \$10,000)	438,913	6.48%
7	Changes spelling or arrangement of name	122,721	1.81%
8	Individual(s) using multiple or false identification documents	105,341	1.55%
9	Two or more individuals using the similar/same identification	45,564	Less than 1%
10	Offers a bribe in the form of a tip/gratuity.	4,619	Less than 1%
11	Exchanges small bills for large bills or vice versa**	1,306	Less than 1%

*Some SAR-MSBs may list multiple suspicious activities.

**FinCEN Form 109 (formerly TD F 90-22.56), which replaced the original SAR-MSB form, became effective on March 31, 2007. Form 109 added "Box 10" (Exchanges small bills for large bills or vice versa) to Part II, Field 19.

Note: Suspicious Activity Report statistical data is continuously updated as additional reports are filed and processed. For this reason, there may be minor discrepancies between the statistical figures contained in the various portions of this report or in previous reports.

Source: FinCEN public reporting

Section 2 - FinCEN Form 109

Suspicious Activity Report by Money Services Businesses (SAR-MSB)

Exhibit 7: SAR-MSB Filings by Character of Suspicious Activity by State & Territory by Year*

October 1, 2002 through December 31, 2011

Note: Suspicious Activity Report statistical data is continuously updated as additional reports are filed and processed. For this reason, there may be minor discrepancies between the statistical figures contained in the various portions of this report or in previous reports.

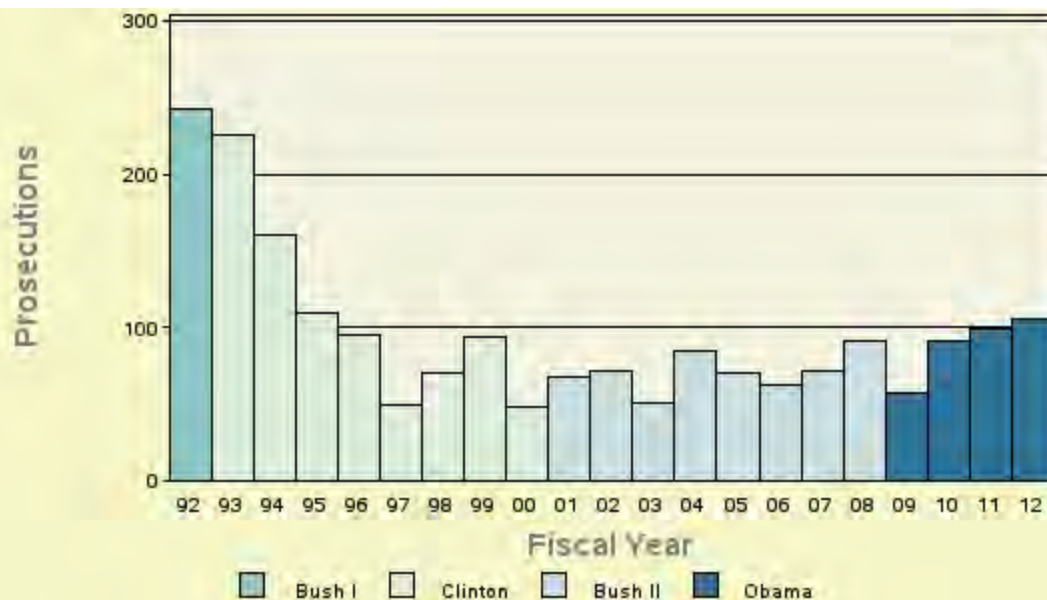
*This exhibit does not include SAR-MSBs where the State is Unknown/Blank (or) where the Character of Suspicious Activity is Unknown/Blank (or) both multiple selling and/or paying business locations may have been reported. Numeric discrepancies between the total number of filings (Exhibit 1) and the combined number of filings of states and/or territories (Exhibit 8) result from Part III on the SAR-MSB form, which allows for multiple transaction locations. Therefore, since one Document Control Number may reflect multiple state filing locations, the total number of filings is higher in Exhibit 2. In order to represent the entire sphere of money services businesses reporting locations, FinCEN is now making available the number of filings reported overseas, which may change certain state filing information previously reported in *The SAR Activity Review- By the Numbers*, Issues 1-4.

State/Territory	Character of Suspicious Activity									
	<i>Alters transaction to avoid completion of funds transfer record or money order or traveler's check record (\$3,000 or more)</i>	<i>Alters transaction to avoid filing a CTR form (\$10,000 or more)</i>	<i>Comes in frequently and purchases less than \$3,000</i>	<i>Changes spelling or arrangement of name</i>	<i>Individual(s) using multiple or false identification documents</i>	<i>Two or more individuals using the similar/same identification</i>	<i>Two or more individuals working together</i>	<i>Same individual(s) using multiple locations over a short period of time</i>	<i>Offers a bribe in the form of a tip/gratuity</i>	<i>Exchanges small bills for large bills or vice versa</i>
New York										
2002	171	109	121	23	12	19	542	205	3	-
2003	12,149	2,824	9,384	779	1,532	320	6,750	4,435	28	-
2004	16,344	3,766	15,045	1,771	1,587	1,021	10,420	6,830	40	-
2005	20,927	7,946	22,305	4,033	1,492	644	15,003	6,741	65	-
2006	29,880	11,247	29,945	2,925	1,730	1,057	18,137	11,570	66	-
2007	27,435	14,213	26,105	2,791	1,733	1,309	16,367	9,640	45	26
2008	29,164	15,535	24,018	859	1,295	1,121	18,985	13,943	41	37
2009	33,482	14,480	26,056	851	1,869	778	22,416	17,262	56	19
2010	34,466	15,740	21,067	746	962	920	27,121	20,979	19	16
2011	28,121	7,469	24,781	905	782	662	17,147	15,359	32	21
Total	232,139	93,329	198,827	15,683	12,994	7,851	152,888	106,964	395	119

How Frequently Is It Used?

Federal Prosecutions for FY 2012

Lead Charge: 31 USC 5324 - Structuring transactions to evade reporting requirements



Top 10 Districts

Judicial District	Count	Rank
Virg, E	12	1
W Virg, N	6	2
Texas, W	5	3
Ark, E	4	4
Cal, E	4	4
Fla, S	4	4
La, E	4	4
Maryland	4	4
N Car, W	4	4
Cal, C	3	10
Conn	3	10
Maine	3	10
N. Y., E	3	10

Source: Analysis of FOIA documents by Syracuse University
Clearinghouse (TRAC)

Some Considerations

- Do you want to include casinos and wagering establishments?
 - Remember- Launderers/criminals often *want* to have a CTR generated at the 'cash out' stage (goal is to purchase chips without CTR reporting, then cash out to create record of 'winnings').
 - Remember to consider omission clause or other language to cover instances where someone 'buys' the winnings of another person...
- Consider Money Services Businesses
 - CTR reporting applies
 - Structuring of transactions to avoid identification requirement of funds transfer recordkeeping regulations is unique to MSBs, where ID and log entry is required for transactions \$3000.00 or over.
 - MSB client may purchase multiple \$2500 money orders in multiple transactions- perhaps at different stores or from different cashiers
 - Client may use multiple 'straw purchasers' to buy money orders with cash below the \$3k threshold, but when processed MSB notices all made payable to common payee and files SAR-M.

Some Considerations, continued

- Remember, financial institutions analyze cash activity in the 'back room' and will aggregate transactions that are linked by account, signatory or transactor. The customer/transactor is not knowledgeable of the filing in this case.
 - So, someone may make five separate \$2500 cash deposits into the same account over the course of a day at five separate branches of the same bank. At the end of the day the bank's systems will identify the transactions as aggregating to over \$10k and auto-file a CTR. The client/launderer *does not know* of this filing, and he will likely think he continues to be successfully structuring. In this way, a CTR is not exculpatory in a structuring case.
- Will you include falsifications/failures to file IRS form 8300?
- Conspiracy?
- Forfeiture?
- Don't ignore the border (CMIR)

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Reference Materials and Further Reading



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November 22, 2010

PRESS RELEASE

Richard S. Hartunian, United States Attorney for the Northern District of New York, James R. Burns, Assistant Special-Agent-in-Charge of the Albany District Office of the Drug Enforcement Agency, and Charles R. Pine, Special-Agent-in-Charge of the New York Office of the Internal Revenue Service Criminal Investigation Division, announced that **NARDINO N. RITCHIE**, 37, of Staatsburg, New York, was sentenced in Utica, New York, on November 19, 2010 by United States District Judge David N. Hurd, to 48 months imprisonment for Conspiracy to Commit Structuring, in violation of 18 U.S.C. §§ 371, 2 and 31 U.S.C. § 5324(b)(3) and Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i), 2. In addition to the term of imprisonment, **RITCHIE** was ordered to pay a \$30,000 fine, serve a three-year period of supervised release, and pay \$200 in special assessments. **RITCHIE** was also ordered to forfeit a car and a truck as part of his sentence. **RITCHIE** avoided forfeiture of his home by paying \$250,000 to the United States. The United States had previously forfeited a car and approximately \$263,996.36 in currency seized during execution of search warrants.

As part of his guilty plea, **RITCHIE** admitted:

From early 2005 through approximately April 2007, **RITCHIE** possessed with intent to distribute between approximately 700 and 1,000 kilograms of marijuana, which was delivered to him by others at his residence located at 20 Chaucer Road, Staatsburgh, New York and elsewhere.

During 2006 and 2007, **RITCHIE** used the proceeds from his marijuana distribution business, including United States currency, to purchase a commercial building located at 239 Ulster Avenue, Saugerties, New York, a 2007 Toyota Camry, and a 2007 Toyota Tundra. **RITCHIE** knew that these transactions were designed to disguise the nature, source, ownership, and control of the proceeds of his marijuana distribution business.

In addition, **RITCHIE** conspired with others to structure these transactions to avoid, as required by law, having them reported to the Internal Revenue Service. For example, in connection with the purchase of the commercial building, **RITCHIE**, using co-conspirators as nominees, purchased 27 postal money orders from 9 different post offices on a single day in amounts less than \$3,000 to evade the transaction reporting requirements.

The investigation was conducted by the Drug Enforcement Agency and Internal Revenue Service Criminal Investigation Division. The case was prosecuted by the United States Attorney's Office for the Northern District of New York.

CONTACT: Assistant United States Attorney ELIZABETH C. COOMBE
518-431-0247



Department of Justice

United States Attorney Richard S. Hartunian
Northern District of New York

FOR IMMEDIATE RELEASE

January 4, 2012

[Syracuse, New York]

<http://www.usdoj.gov/usao/nyn>

"Rosalie Jacobs Sentenced For Structuring \$2,634,189.55 in Currency Transactions"

RICHARD S. HARTUNIAN, United States Attorney for the Northern District of New York, announces that **ROSALIE JACOBS**, age 62, Hogansburg, New York, was sentenced today in U.S. District Court in Utica for her role in a conspiracy to structure currency transactions, in violation of 18 U.S.C. § 371. **JACOBS** was sentenced to five years probation, 12 months of home confinement, and was ordered to forfeit to the United States \$2,634,189.55.¹

As part of her plea, **JACOBS** admitted that she conspired with others to structure a series of cash deposits of U.S. Currency in less than \$10,000 increments to avoid federal reporting requirements. During the relevant 13 month period, **JACOBS** ran a business named Jacobs Tobacco on the Akwesasne Indian Reserve and received payments for tobacco products in U.S. Currency. During the relevant time period, **JACOBS** was aware that any cash deposit into a domestic financial institution in excess of \$10,000 caused the financial institution in question to generate a report of said transaction, called a Currency Transaction Report, pursuant to Title 31, United States Code, Section 5313(a). In an effort to avoid such reporting requirements, **JACOBS** caused \$2,634,189.55 to be deposited in accounts held at two financial institutions: Seacomm Federal Credit Union and Community Bank, both located in Massena, New York, with each deposit being intentionally in an amount less than \$10,000. For each transaction, **JACOBS** or one of her employees packaged the cash in separate bags at Jacobs Tobacco and then gave it to a person, who was instructed to make the deposits in the aforementioned banks.

The prosecution of **JACOBS** was spearheaded by agents from the Internal Revenue Service in Syracuse, New York.

Further inquiries can be directed to Assistant U.S. Attorney John M. Katko at 315-374-3605.

¹ **JACOBS** has already paid \$500,000 of the forfeiture amount ordered and will pay the remaining balance off over the next year four years.

Bank Secrecy Act Records Link Gambling Ring to Structuring at Casinos

Arrests of more than two dozen people associated with an organized crime-controlled sports-betting ring was made possible, in part, because law enforcement officials were able to track some of the subjects' suspicious financial transactions through review of BSA data.

According to police, the ring handled several million dollars a month and its operators paid "tributes" to organized crime figures.

These arrests, including several organized crime associates who directed the operations and had previous gambling arrests, are part of a series of crackdowns on sports-betting rings with links to established organized crime groups. When patrons lose bets in sports betting, they have to pay immediately or face substantial interest rates on future payments, a practice that amounts to loan sharking.

One of the arrested subjects had previously attracted the attention of investigators due to a history of large cash transactions at casinos. In fact, two casinos filed SARs documenting structuring of some of those transactions. In a period of approximately four years, the subject had been responsible for an estimated 80 casino transactions that generated CTRs totaling millions of dollars. Many of these transactions indicate money coming from the casino, and investigators are examining these transactions to determine their relationship, if any, to the sports-betting ring.

Two of the suspects' transactions caused SARs to be filed three months apart by casinos in separate states. Both SARs indicated that the subject tried to exchange chips for money in an attempt to avoid currency reporting requirements. One casino noted in the narrative that the action was highly unusual because the subject was a known customer whose activities had previously required the filing of CTRs by a casino. The other casino thought the subject's conduct was so extraordinary that in addition to filing a SAR, they sent a letter to the subject barring the subject from the casino.

Other BSA records filed on the subject include several bank CTRs, a Currency and Monetary Instruments Report, and a Form 8300 that reported a transaction in currency aggregating over \$10,000. The suspect is being investigated because the suspect is not believed by law enforcement to be in a position to have the amounts of money reported in BSA filings.

(Investigating Agency: State Police)

[Published in The SAR Activity Review – Trends, Tips & Issues, Issue 10, May 2006]

Source: FinCEN http://www.fincen.gov/law_enforcement/ss/html/015.html



Liquor store run by Supreme Court nominee's family settles with U.S. authorities over \$2M in deposits

Published: Sunday, January 29, 2012, 11:00 AM Updated: Sunday, January 29, 2012, 11:32 AM



By [Christopher Baxter/Statehouse Bureau](#)

A wine and liquor store run by the family of state Supreme Court nominee Phillip Kwon forfeited nearly \$160,000 to federal authorities last month to settle civil charges that more than \$2 million was deposited into the business's bank account illegally, court records show.

The case, filed in June in U.S. District Court, Eastern District of New York, alleged that on 222 occasions from April 2010 to February 2011, cash deposits of slightly less than \$10,000 were placed in the business's checking account to avoid government scrutiny.

Under federal law, banks are required to report cash transactions in excess of \$10,000 to help law-enforcement officials track large sums of money that may be tied to criminal activity.

Breaking large sums into smaller amounts to avoid detection by a bank, a practice called "structuring," is illegal and is often done to conceal the movement of money — either to evade taxes or to funnel cash for illicit purposes.

No one was charged criminally in the case, and court documents did not give a reason for the deposits. Phillip Kwon was not named in the case.

The business, KCP Wines & Liquor Corp. of Mount Vernon, N.Y., is owned by Phillip Kwon's mother, Jin Soon, corporation records show. His wife, Sung Hui "Chris" Kwon, earned \$50,000 to \$100,000 from her



Bob Scarrino/The Star-Ledger

Phillip Kwon, who was nominated to the New Jersey Supreme Court last week, is shown in this file photo. A liquor store owned by Kwon's family was investigated by federal authorities over \$2 million in suspicious deposits, but a \$160,000 settlement was reached in which the family admitted no "liability."

Additional Cases

<http://www.justice.gov/usao/nys/pressreleases/June10/mullahygarrypleaandthomasarrestpr.pdf>

<http://www.justice.gov/usao/nys/pressreleases/April09/nicholsonjamesindictmentpr.pdf>

<http://www.justice.gov/usao/nys/pressconference/zemlyanskyremarks.html>

<http://www.justice.gov/usao/nye/pr/2010/2010oct14c.html>

<http://www.justice.gov/usao/nye/pr/2007/2007Feb07.html>

NJ Structuring Statute

NJ Statutes - NJSA 2C:21-25

2C:21-25 Money laundering, illegal investment, crime.

NJSA 2C:21-25

A person is guilty of a crime if the person:

- a. transports or possesses property known or which a reasonable person would believe to be derived from criminal activity; or
 - b. engages in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity
 - (1) with the intent to facilitate or promote the criminal activity; or
 - (2) knowing that the transaction is designed in whole or in part:
 - (a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or
 - (b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States; or
 - c. directs, organizes, finances, plans, manages, supervises, or controls the transportation of or transactions in property known or which a reasonable person would believe to be derived from criminal activity.
 - d. For the purposes of this act, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner. The phrase "in any manner" includes the breaking down of a single sum of currency exceeding the transaction reporting requirement into smaller sums, including sums at or below the transaction reporting requirement, or the conduct of a transaction, or series of currency transactions, including transactions at or below the transaction reporting requirement. The transaction or transactions need not exceed the transaction reporting threshold at any single financial institution on any single day in order to demonstrate a violation of subparagraph (b) of paragraph (2) of subsection b. of this section.
 - e. A person is guilty of a crime if, with the purpose to evade a transaction reporting requirement of this State or of 31 U.S.C. s.5311 et seq. or 31 C.F.R. s.103 et seq., or any rules or regulations adopted under those chapters and sections, he:
 - (1) causes or attempts to cause a financial institution, including a foreign or domestic money transmitter or an authorized delegate thereof, casino, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to fail to file a report; or
 - (2) causes or attempts to cause a financial institution, including a foreign or domestic money transmitter or an authorized delegate thereof, casino, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to file a report that contains a material omission or misstatement of fact; or
 - (3) structures or assists in structuring, or attempts to structure or assist in structuring any transaction with one or more financial institutions, including foreign or domestic money transmitters or an authorized delegate thereof, casinos, check cashers, persons engaged in a trade or business or any other individuals or entities required by State or federal law to file a report regarding currency transactions or suspicious transactions. "Structure" or "structuring" means that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by State or federal law. "In any manner" includes, but is not limited to, the breaking down into smaller sums of a single sum of currency meeting or exceeding that which is necessary to trigger a currency reporting requirement or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this paragraph.
- L.1994,c.121,s.3; amended 1999, c.25, s.3; 2002, c.26, s.14.

US Attorney's Manual Sample Jury Instructions on Structuring

- **2183 Jury Instruction—Elements of 31 U.S.C. § 5324(a)(3)**

- NOTE: For violations committed between January 27, 1987 and October 27, 1992, 31 U.S.C. § 5324(3) is charged. For violations committed after October 28, 1992, 31 U.S.C. § 5324(a)(3) is charged.
- The essential elements which must be proven beyond a reasonable doubt, in order to prove the offense charged in Count _____, which is a violation of [§ 5324(3)] [§ 5324(a)(3)][FN1], are the following:
- FN1. If appropriate, add title 31, U.S.C. § 5322(b) instruction.
- FIRST, that the defendant had knowledge of the currency transaction reporting requirements;
- SECOND, that the defendant knowingly and willfully [structured] or [assisted in structuring] or [attempted to structure] or [attempted to assist in structuring] a currency transaction;
- THIRD, that the purpose of the structured [or attempted] transaction was to evade the currency transaction reporting requirements of § 5313(a);
- FOURTH, that the defendant knew that structuring was unlawful; and
- FIFTH, that the structured transaction(s) involved one or more domestic financial institutions.
- You may find the defendant guilty of violating [§ 5324(3)] [§ 5324(a)(3)] whether or not the domestic financial institutions(s) filed or failed to file a true and accurate CTR. You may also find the requisite knowledge on defendant's part by drawing reasonable inferences from the evidence of defendant's conduct. In other words, if you find beyond a reasonable doubt that the defendant structured a transaction in currency with one or more financial institutions, that the defendant did so for the purpose of evading the transaction report requirement, and that defendant knew that structuring was unlawful, then you should find the defendant(s) guilty as charged, regardless of whether the domestic financial institution failed to file a true and accurate CTR. If you do not so find, then you should find the defendant not guilty.
- Title 31, U.S.C. [§ 5324(3)] [§ 5324(a)(3)]; *Ratzlaf v. United States*, 510 U.S. 135 (1994).

Appendix C
Procedural Reforms
Proposed Legislative Language

Appendix C
Procedural Reform
Proposed Legislative Language

Section 190.30(8)(a) of the criminal procedure law is amended, and new subdivisions 3(h) and 4-a are added to read as follows:

§ 190.30 Grand jury; rules of evidence.

3. A written or oral statement, under oath, by a person attending to one or more of the following matters may be received in such grand jury proceeding as evidence of the facts stated therein:

(h) that a person's ownership of, or possessory right in, personal identifying information, as defined in penal law section 190.77(1), or a personal identification number, as defined in penal law section 190.77(2)(b) as any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person, and the defendant's lack of superior or equal right to use or possession thereof.

4-a. Whenever the district attorney has reason to believe that a witness, other than a witness who waives immunity pursuant to section 190.40, including a defendant testifying on his or her own behalf pursuant to section 190.50(5), is located either out-of-state or more than one hundred miles from the grand jury proceeding, the person may provide live testimony by closed circuit video or videoconferencing in the same manner as if the witness had testified in person. The audiovisual technology used pursuant to this section shall seek to ensure that the communication be reasonably secure from interception or eavesdropping by anyone other than the persons communicating, and must ensure that the witness may be clearly heard, seen and examined.

(a) The testimony of the witness shall be:

(i) Taken by a certified videographer who is in the physical presence of the witness. The certified videographer shall sign a written declaration which states that the witness does not possess any notes or other materials to assist in the witness's testimony;

(ii) Recorded and preserved through the use of audiovisual recording technology; and

(iii) Transcribed by a certified court reporter.

(b) Before giving testimony, the witness shall be sworn and sign a written declaration, which acknowledges that the witness is alone in the room where the testimony is being taken, that, to his or her knowledge, no one other than the certified videographer is hearing his or her testimony, that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury and contempt, and that the witness consents to such jurisdiction.

(c) The original recorded testimony of the witness must be delivered to the certified court reporter.

~~8(a) A business record may be received in such grand jury proceedings as evidence of the following facts and similar facts stated therein:~~

~~(i) a person's use of, subscription to and charges and payments for communication equipment and services including but not limited to equipment or services provided by telephone companies and internet service providers, but not including recorded conversations or images communicated thereby; and~~

~~(ii) financial transactions, and a person's ownership or possessory interest in any account, at a bank, insurance company, brokerage, exchange or banking organization as defined in section two of the banking law. All business records as defined in CPLR 4518(a),¹ and technology law section 302² and 306³ may be received in such grand jury proceedings as evidence of the facts stated therein:~~

¹ CPLR 4518. Business records. (a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. An electronic record, as defined in section one hundred two of the state technology law, used or stored as such a memorandum or record, shall be admissible in a tangible exhibit that is a true and accurate representation of such electronic record. The court may consider the method or manner by which the electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

² Article III ELECTRONIC SIGNATURES AND RECORDS ACT § 302. Definitions. For the purpose of this article: "Electronic" shall mean of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

1. "Electronic record" shall mean information, evidencing any act, transaction, occurrence, event, or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.

Section 20.60(1) of the criminal procedure law is amended to read as follows:

§ 20.60 Geographical jurisdiction of offenses; communications and transportation of property between jurisdictions.

1. An oral or written statement made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunication, mail or any other method of communication is deemed to be made in each such jurisdiction. For purposes of this subdivision, such statement shall include testimony given pursuant to subdivision 4-a of section 190.30.

Section 50.10(1) of the criminal procedure law is amended to read as follows:

§ 50.10 Compulsion of evidence by offer of immunity; definitions of terms.

The following definitions are applicable to this article:

1. “Immunity.” A person who has been a witness in a legal proceeding and ~~who cannot, except as otherwise provided in this subdivision, be convicted of any offense or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he gave evidence therein,~~ neither the evidence given by that witness nor any evidence derived directly or indirectly therefrom may be used against the witness in the same or any other criminal proceeding, possesses “immunity.” A person who possesses such immunity may nevertheless be convicted of perjury as a result of having given false testimony in such legal proceeding, and may be convicted of or adjudged in contempt as a result of having contumaciously refused to give evidence therein, and the evidence given by the person at the proceeding at

-
2. “Electronic signature” shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.
 3. “Person” shall mean a natural person, corporation, trust, estate, partnership, incorporated or unincorporated association or any other legal entity, and also includes any department, agency, authority, or instrumentality of the state or its political subdivisions.
 4. “Governmental entity” shall mean any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity or officer of the state having statewide authority, except the state legislature, and any political subdivision of the state.

³ § 306. Admissibility into evidence. In any legal proceeding where the provisions of the civil practice law and rules are applicable, an electronic record or electronic signature may be admitted into evidence pursuant to the provisions of article forty-five of the civil practice law and rules including, but not limited to section four thousand five hundred thirty-nine of such law and rules.

which the person possessed immunity may be used against such person in any such prosecution for perjury or prosecution or judgment for contempt.

Section 170.30(1)(b) of the criminal procedure law is amended, and a new subdivision 4 is added to read as follows:

§ 170.30(1)(b) Motion to dismiss information, simplified information, prosecutor's information or misdemeanor complaint.

1. After arraignment upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any court thereof upon the ground that:

(b) ~~The defendant has received immunity from prosecution for the offense charged, pursuant to sections 50.20 and 190.40~~ Allegations in the information, simplified information, prosecutor's information or misdemeanor complaint are based on evidence protected by immunity as defined in subdivision one of section 50.10 of this chapter; or

4. Where the defendant establishes in his or her motion that immunity has been conferred on him or her, the people must then establish, by a preponderance of the evidence, that such evidence was not derived, directly or indirectly, from the evidence as to which such immunity was conferred. A motion seeking relief on this ground shall not be entertained before a motion made pursuant to CPL section 710.20(8), seeking suppression of potential evidence as to the use of which the defendant possesses immunity, has been resolved. Upon grant of such a motion, the court must dismiss the instrument; otherwise, the court must deny the motion to dismiss.

Section 210.35 of the criminal procedure law is amended by adding a new subdivision 4-a to read as follows:

§ 210.35 Motion to dismiss indictment; defective grand jury proceeding.

4-a. Evidence protected by use immunity was used to obtain the indictment. A motion seeking relief on this ground shall not be entertained before a motion made pursuant to section 710.20(8) of the criminal procedure law, seeking suppression of potential evidence as to the use of which the defendant possesses immunity, has been resolved. Upon grant of such a motion, the court must dismiss the indictment; otherwise, the court must deny the motion to dismiss; or

The opening paragraph and subdivisions 6 and 7 of section 710.20 of the criminal procedure law are amended and a new subdivision 8 is added to read as follows:

§ 710.20 Motion to suppress evidence; in general; grounds for.

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him or her in a criminal action, or (b) claims that improper identification testimony may be offered against him or her in a criminal action, or (c) claims that evidence as to the use of which he or she possesses immunity, as defined in subdivision one of section 50.10 of this chapter, may be offered against him or her in a criminal action, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness; or

7. Consists of information obtained by means of a pen register or trap and trace device installed or used in violation of the provisions of article seven hundred five of this chapter; or

8. Consists of potential evidence as to the use of which the defendant possesses immunity. Where the defendant establishes that immunity has been conferred on him or her, the people must then establish, by a preponderance of the evidence, that such evidence was not derived, directly or indirectly, from the evidence as to which immunity was conferred.

Section 60.22 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

§ 60.22 Rules of evidence; corroboration of accomplice testimony.

4. For purposes of this section, “corroborative evidence” includes evidence from one or more other accomplices.

Appendix D
Fraud
Proposed Legislative Language

Appendix D
Fraud
Proposed Legislative Language

Sections 155.00, 155.05 and 155.20 of the penal law are amended to read as follows:

§ 155.00 Larceny; definitions of terms.

The following definitions are applicable to this title:

1. "Property." Property means any money, personal property, real property, computer data, computer program, personal identifying information, secret scientific material, thing in action, evidence of debt or contract, or any article, substance or thing of value, including any gas, steam, water or electricity, which is provided for a charge or compensation.
2. "Obtain." Obtain includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another. With regard to personal identifying information, computer data or computer program, obtain includes duplicating, recording, copying, downloading, uploading or printing out the information, data, or program, or obtaining a physical object containing such information. With regard to service, obtain includes, but is not limited to, using or accessing a service.
3. "Deprive." To deprive another of property means (a) to withhold it or cause it to be withheld from him or her permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him or her, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property. When the property is personal identifying information, computer data or computer program, to deprive another of it means to obtain it or cause a third person to obtain it under such circumstances that a substantial portion of the economic benefit or value of having control over it or authority over its use is lost to an owner. To deprive another of service is to use or access a service or cause a third person to use or access a service under such circumstances that some of the economic benefit or value of having control or authority over providing the service is lost to an owner.
4. "Appropriate." To appropriate property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person. When the property is personal identifying information, computer data or computer program of another, to appropriate it to

oneself or a third person means to obtain it under such circumstances as to acquire the ability to use it or dispose of it to the economic benefit of oneself or a third person or to the economic detriment or damage of an owner. To appropriate a service provided by another to oneself or a third person means to use or access the service under such circumstances as to acquire the ability to use it to the economic benefit of oneself or a third person or to the economic detriment or damage of an owner.

5. "Owner." When property or service is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession ~~thereof~~ of the property or a right to provide the service superior to that of the taker, obtainer or withholder. A person who has obtained possession of property or service by theft or other illegal means shall be deemed to have a right of possession of the property or a right to provide the service superior to that of a person who takes, obtains or withholds it from him by larcenous means. A joint or common owner of property or service shall not be deemed to have a right of possession of property or a right to provide service thereto superior to that of any other joint or common owner thereof. In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

6. "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

7. "Personal identifying information" means a person's date of birth, driver's license number, social security number, personal identification number, financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, taxpayer identification number, computer system password, signature or copy of a signature, electronic signature, unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person, telephone calling card number, mobile identification number or code, electronic serial number or personal identification number, or any other name, number, code or information that may be used alone or in conjunction with other such information to assume the identity of another person or access finan-

cial resources or credit of another person, or any physical object containing such information, such as a printout or other written material, driver's license or other identity card, credit card, debit card, public benefit card, automated teller or other transactional card, or computer, hard drive, or other data storage device. In this subdivision, "person" has all the meanings set forth in section 10.00(7); "electronic signature" has the meaning provided in section 302(3) of the state technology law; "credit card" and "debit card" have the meanings provided in section 511 of the general business law; "public benefit card" means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or a social services district as defined in subdivision seven of section two of the social services law which entitles a person to obtain public assistance benefits under a local, state or federal program administered by the state, its political subdivisions or social services districts.

8. "Service" includes, but is not limited to, ~~labor, professional services,~~ a computer service, transportation service, telecommunications service, cable or satellite television service, microwave transmission service, the supplying of service pursuant to a public or governmental benefit program, including housing and medical care, the supplying of service pursuant to an insurance policy or program, the supply of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument which evidences a right to receive a service is not in itself service but constitutes property within the meaning of subdivision one.

9. ~~"Cable television service" means any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.~~

9. "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by computer, cause the computer to process data or direct the computer to perform one or more computer operations or both and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.

10. "Computer data" means a representation of information, knowledge, facts, concepts or instructions which are being processed, or have been processed in a computer and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.

§ 155.05 Larceny; defined.

1. A person steals property and commits larceny when, with intent to deprive another of property or a service or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property or service from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property or a service, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, obtaining property by false pretenses;

(b) By acquiring lost property. A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in section 190.05, or by obtaining property or service by using or presenting a form of payment or personal identifying information the actor knows he or she is not authorized to use or knows is expired or forged or otherwise not valid;

(d) By false promise. A person obtains property or a service by false promise when, pursuant to a scheme to defraud, he obtains property or a service of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise could not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion. A person obtains property or a service by extortion when he compels or induces another person to deliver such property to himself or to a third person or provide such service by means of instilling in him a fear that, if

the property is not so delivered, or service not so provided, the actor or another will:

- (i) Cause physical injury to some person in the future; or
 - (ii) Cause damage to property; or
 - (iii) Engage in other conduct constituting a crime; or
 - (iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or
 - (v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
 - (vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
 - (vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
 - (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships;
- (f) By theft of service. Theft of service means either: (i) using or accessing a service in a manner that otherwise requires payment and intentionally failing to pay for such use or access by either tampering without authority with a delivery, payment, or measurement device or mechanism, or by entering or leaving premises where the service is provided by stealth or by evading a physical barrier, or (ii) using or accessing a service in a manner that otherwise requires payment or the presentation of personal identifying information and using or presenting a form of payment or personal identifying information the actor knows he or she is not authorized to use or knows is expired or forged or otherwise not valid.

§ 155.20 Larceny; value of stolen property and service.

For the purposes of this title, the value of property and service shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property or service at the time and place of the crime, or, if such cannot be satisfactorily ascertained: (i) with regard to property, the cost of replacement of the property within a reasonable time after the crime; or (ii) with regard to service, the cost of providing the service at the time of the crime.

2. The value of computer data or computer program is the replacement cost or the market value at the time and place of the crime, whichever is greater.

3. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(b) The value of a ticket or equivalent instrument which evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon the value shall be deemed the price of such ticket or equivalent instrument which the issuer charges the general public.

(c) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

4. Where the property consists of gas, steam, water or electricity, which is provided for charge or compensation, and with respect to service, the value shall be the value of the property or service stolen in any consecutive twelve-month period.

5. When the value of property or service cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions one and two of this section, the value shall be deemed to be an amount less than two hundred fifty dollars.

The penal law is amended by adding a new section 155.23 to read as follows:

§ 155.23 Petit Theft of Service.

A person is guilty of petit theft of service when he steals a service.

Petit theft of service is a class B misdemeanor.

Sections 155.25, 155.30, 155.35, 155.40 and 155.42 of the penal law are amended to read as follows:

§ 155.25 Petit larceny.

A person is guilty of petit larceny when he:

1. steals property, or
2. steals a service and the value of the service exceeds five hundred dollars.

Petit larceny is a class A misdemeanor.

§ 155.30 Grand Larceny in the fourth degree.

A person is guilty of grand larceny in the fourth degree when he steals property or a service and when:

1. The value of the property or service exceeds one thousand dollars; or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of secret scientific material; or
4. The property consists of personal identifying information; or
5. The property, regardless of its nature and value, is taken from the person of another; or
6. The property or service, regardless of its nature and value, is obtained by extortion; or
7. The property consists of one or more firearms, rifles or shotguns, as such terms are defined in section 265.00 of this chapter; or
8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in section one hundred twenty-five of

the vehicle and traffic law, other than a motorcycle, as defined in section one hundred twenty-three of such law; or

9. The property consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of property which: (a) has a value of at least one hundred dollars; and (b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law.

10. The property consists of anhydrous ammonia or liquefied ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquefied ammonia gas to manufacture methamphetamine.

Grand larceny in the fourth degree is a class E felony.

§ 155.35 Grand larceny in the third degree.

A person is guilty of grand larceny in the third degree when he or she steals property or a service and:

1. when the value of the property or service exceeds three thousand dollars, or
2. the property is an automated teller machine or the contents of an automated teller machine, or
3. the property is personal identifying information concerning twenty-five or more persons.

Grand larceny in the third degree is a class D felony.

§ 155.40 Grand larceny in the second degree.

A person is guilty of grand larceny in the second degree when he steals property or a service and when:

1. The value of the property or service exceeds fifty thousand dollars; or
2. The property or service, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

3. the property is personal identifying information concerning one hundred or more persons.

Grand larceny in the second degree is a class C felony.

§ 155.42 Grand larceny in the first degree.

A person is guilty of grand larceny in the first degree when he steals property or a service and when

1. the value of the property or service exceeds one million dollars; or
2. the property is personal identifying information concerning one thousand or more persons.

Grand larceny in the first degree is a class B felony.

Sections 190.60 and 190.65 of the penal law are repealed, and new sections 190.60, 190.61, 190.62, 190.63, 190.64, and 190.65 are added to read as follows:

§ 190.60 Scheme to defraud defined.

1. A person engages in a scheme to defraud when he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud at least one person or to obtain property or service from at least one person by false or fraudulent pretenses, representations or promises, and so obtains property or service from at least one person.

2. Property, service, computer data and computer program shall have the meanings set forth in section 155.00 of this chapter.

3. In any prosecution of a scheme to defraud, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property or service, but it shall not be necessary to prove the identity of any other intended victim, provided that in a prosecution of a scheme to defraud pursuant to section 190.62(3), it shall be necessary to prove the identity of at least one such vulnerable elderly person.

§ 190.61 Scheme to defraud in the fifth degree.

A person is guilty of a scheme to defraud in the fifth degree when he or she engages in a scheme to defraud.

Scheme to defraud in the fifth degree is a class A misdemeanor.

§ 190.62 Scheme to defraud in the fourth degree.

A person is guilty of a scheme to defraud in the fourth degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from ten or more persons; or
2. the value of the property or service obtained exceeds one thousand dollars; or
3. intends to obtain and does obtain property or service from at least one vulnerable elderly person as defined in section 260.31(3) of this chapter.

Scheme to defraud in the fourth degree is a class E Felony.

§ 190.63 Scheme to defraud in the third degree.

A person is guilty of a scheme to defraud in the third degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from twenty-five or more persons; or
2. the value of the property or service obtained exceeds three thousand dollars.

Scheme to defraud in the third degree is a class D Felony.

§ 190.64 Scheme to defraud in the second degree.

A person is guilty of a scheme to defraud in the second degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from one hundred or more persons; or
2. the value of the property or service obtained exceeds fifty thousand dollars.

Scheme to defraud in the second degree is a class C Felony.

§ 190.65 Scheme to defraud in the first degree.

A person is guilty of a scheme to defraud in the first degree when he or she engages in a scheme to defraud, and

1. intends to obtain property or service from one thousand or more persons;
or

2. the value of the property or service obtained exceeds one million dollars.

Scheme to defraud in the first degree is a class B Felony.

Section 165.74 of the penal law is repealed and new sections 165.74 and 165.75 are added, and sections 165.71, 165.72, and 165.73 of the penal law are amended to read as follows:

§ 165.71 Trademark counterfeiting in the ~~third~~ fourth degree. A person is guilty of trademark counterfeiting in the ~~third~~ fourth degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods.

Trademark counterfeiting in the ~~third~~ fourth degree is a class A misdemeanor.

§ 165.72 Trademark counterfeiting in the ~~second~~ third degree. A person is guilty of trademark counterfeiting in the ~~second~~ third degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, and the retail value of all such goods bearing or intended to bear counterfeit trademarks exceeds one thousand dollars or the total numbers of all such goods bearing counterfeit trademarks exceeds 200.

Trademark counterfeiting in the ~~second~~ third degree is a class E felony.

§ 165.73 Trademark counterfeiting in the ~~first~~ second degree. A person is guilty of trademark counterfeiting in the ~~first~~ second degree when, with the intent to deceive or defraud some other person, or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, and the retail value of all such goods bearing or intended to bear counterfeit trademarks exceeds ~~one hundred thousand dollars~~ twenty-five thousand dollars or the total numbers of all such goods bearing counterfeit trademarks exceeds 2,000.

Trademark counterfeiting in the ~~first~~ second degree is a class ~~E~~ D felony.

§ 165.74 Trademark counterfeiting in the first degree. A person is guilty of trademark counterfeiting in the first degree when, with the intent to deceive or defraud some other person, or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, and the retail value of all such goods bearing or intended to bear counterfeit trademarks exceeds one hundred thousand dollars or the total numbers of all such goods bearing counterfeit trademarks exceeds 10,000.

Trademark counterfeiting in the first degree is a class C felony.

~~§ 165.74~~ **165.75 Seizure and destruction of goods bearing counterfeit trademarks.** Any goods manufactured, sold, offered for sale, distributed or produced in violation of this article may be seized by any police officer. The magistrate must, upon written application of defendant, within forty-eight hours after arraignment of the defendant, determine whether probable cause exists to believe that the goods had been manufactured, sold, offered for sale, distributed or produced in violation of this article, and upon a finding that probable cause exists to believe that the goods had been manufactured, sold, offered for sale, distributed, or produced in violation of this article, the court shall authorize such articles up to the relevant statutory threshold to be retained as evidence pending the trial of the defendant. Upon conviction of the defendant, the articles in respect whereof the defendant stands convicted shall be destroyed. All counterfeit goods which exceed the statutory threshold may be destroyed prior to trial provided defendant is given written notice and a seven day period upon which to inspect those goods to be destroyed. Destruction shall not include auction, sale or distribution of the items in their original form unless the trademark holder requests, in writing, that the counterfeit goods be turned over to him or her.

Appendix E
Cybercrime & Identity Theft
Proposed Legislative Language

Appendix E
Cybercrime and Identity Theft
Proposed Legislative Language

Sections 190.81 and 190.82 are repealed, sections 190.78, 190.79 and 190.80 of the penal law are amended, and new sections 190.81 and 190.82 are added to read as follows:

§ 190.78 Identity theft in the ~~third~~fifth degree.

A person is guilty of identity theft in the ~~third~~fifth degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person or causes financial loss to such person or to another person or persons; or
2. commits a class A misdemeanor or higher level crime.

Identity theft in the ~~third~~fifth degree is a class A misdemeanor.

§ 190.79 Identity theft in the ~~second~~fourth degree.

A person is guilty of ~~identify~~ identity theft in the ~~second~~fourth degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:
 - a. obtains goods, money, property or services or uses credit in the name of such other person ~~or causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred dollars; or~~
 - b. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred dollars; or
 - c. commits or attempts to commit a felony or acts as an accessory to the commission of a felony; or

d. commits the crime of identity theft in the ~~third-fifth~~ degree as defined in section 190.78 of this article and has been previously convicted within the last five years of identity theft in the ~~third-fifth~~ degree as defined in section 190.78, identity theft in the ~~second fourth~~ degree as defined in this section, identity theft in the ~~first third~~ degree as defined in section 190.80, identity theft in the second degree as defined in section 190.81, identity theft in the first degree as defined in section 190.82, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful criminal possession of a skimmer device in the second degree as defined in section 190.85, unlawful criminal possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, ~~or~~ grand larceny in the first degree as defined in section 155.42, forgery in the third degree as defined in section 170.05, forgery in the second degree as defined in section 170.10, forgery in the first degree as defined in section 170.15, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, or criminal possession of a forged instrument in the first degree as defined in section 170.30 of this chapter; or

2. he or she knowingly and with intent to defraud assumes the identity of three or more persons by presenting himself or herself as those persons, or by acting as those persons, or by using personal identifying information of any of those persons, and thereby obtains goods, money, property or services or uses credit in the name of at least one such persons, or causes financial loss to at least one such person, or to another person or persons.

Identity theft in the ~~second fourth~~ degree is a class E felony.

§ 190.80 Identity theft in the ~~first~~ third degree.

A person is guilty of identity theft in the ~~first~~ third degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

a. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or

b. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds two thousand dollars; or

c. commits or attempts to commit a class D felony or higher level crime or acts as an accessory to the commission of a class D or higher level felony; or

d. commits the crime of identity theft in the fourth degree as defined in section 190.79 of this article and has been previously convicted within the last five years of identity theft in the ~~third-fifth~~ degree as defined in section 190.78, identity theft in the ~~second-fourth~~ degree as defined in section 190.79, identity theft in the ~~first-third~~ degree as defined in this section, identity theft in the second degree as defined in section 190.81, identity theft in the first degree as defined in section 190.82, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful criminal possession of a skimmer device in the second degree as defined in section 190.85, unlawful criminal possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, or grand larceny in the first degree as defined in section 155.42, forgery in the third degree as defined in section 170.05, forgery in the second degree as defined in section 170.10, forgery in the first degree as defined in section 170.15, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, or criminal possession of a forged instrument in the first degree as defined in section 170.30 of this chapter; or

2. assumes the identity of ten or more persons by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtains goods, money, property or services or uses credit in the name of at least one such persons, or causes financial loss to at least one such person, or to another person or persons.

Identity theft in the ~~first~~ third degree is a class D felony.

§ 190.81 Identity theft in the second degree.

A person is guilty of identity theft in the second degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:
 - a. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds twenty-five thousand dollars; or
 - b. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds twenty-five thousand dollars; or
 - c. commits or attempts to commit a class C felony or higher level crime or acts as an accessory in the commission of a class C or higher level felony; or
 - d. commits the crime of identity theft in the third degree as defined in section 190.80 of this article and has been previously convicted within the last five years of identity theft in the fifth degree as defined in section 190.78, identity theft in the fourth degree as defined in section 190.70, identity theft in the third degree as defined in section 190.80, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 190.82, criminal possession of a skimmer device in the second degree as defined in section 190.85, criminal possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, ~~or~~ grand larceny in the first degree as defined in section 155.42, forgery in the third degree as defined in section 170.05, forgery in the second degree as defined in section 170.10, forgery in the first degree as defined in section 170.15, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, or criminal possession of a forged instrument in the first degree as defined in section 170.30 of this chapter; or

2. assumes the identity of twenty-five or more persons by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtains goods, money, property or services or uses credit in the name of at least one such persons, or causes financial loss to at least one such person, or to another person or persons.

Identity theft in the second degree is a class C felony.

§ 190.82 Identity theft in the first degree.

A person is guilty of identity theft in the first degree when:

1. he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

a. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds five hundred thousand dollars; or

b. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred thousand dollars; or

c. commits or attempts to commit a class B felony or higher level crime or acts as an accessory in the commission of a class B or higher level felony; or

d. commits the crime of identity theft in the second degree as defined in section 190.81 of this article and has been previously convicted within the last five years identity theft in the fifth degree as defined in section 190.78, identity theft in the fourth degree as defined in section 190.79, identity theft in the third degree as defined in section 190.80, identity theft in the second degree as defined in section 190.81, identity theft in the first degree as defined in section 190.82, criminal possession of a skimmer device in the second degree as defined in section 190.85, criminal possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, or grand larceny in the first degree as defined in section 155.42, forgery in the third degree as defined in section 170.05, forgery in the second degree as defined in section 170.10, forgery

in the first degree as defined in section 170.15, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, or criminal possession of a forged instrument in the first degree as defined in section 170.30 of this chapter:

2. assumes the identity of one hundred or more persons by presenting himself or herself as those other persons, or by acting as those other persons, or by using personal identifying information of those other persons, and thereby obtains goods, money, property or services or uses credit in the name of at least one such persons, or causes financial loss to at least one such person, or to another person or persons.

Identity theft in the first degree is a class B felony.

Section 190.83 of the penal law is repealed, and a new section 190.83 is added to read as follows:

§ 190.83 Aggravated identity theft in the second degree.

A person is guilty of aggravated identity theft in the second degree when he or she commits Identity Theft in the Fifth Degree as defined in section 190.78 and knows that such other person is:

1. a vulnerable elderly person as defined in section 260.31(3); or
2. an incompetent or physically disabled person as defined in section 260.31(4).

Aggravated identity theft in the second degree is a class E felony.

Section 190.80-a of the penal law is redesignated as 190.84:

§ ~~190.80-a~~ 190.84 Aggravated identity theft in the first degree.

A person is guilty of aggravated identity theft in the first degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and knows that such person is a member of the armed forces, and knows that such member is presently deployed outside of the continental United States and:

1. thereby obtains goods, money, property or services or uses credit in the name of such member of the armed forces in an aggregate amount that exceeds five hundred dollars;
2. or thereby causes financial loss to such member of the armed forces in an aggregate amount that exceeds five hundred dollars.

Aggravated identity theft in the first degree is a class D felony.

Sections 190.85 and 190.86 of the penal law are amended to read as follows:

§ 190.85 ~~Unlawful~~ Criminal possession of a skimmer device in the second degree.

1. A person is guilty of ~~unlawful~~ criminal possession of a skimmer device in the second degree when he or she possesses a skimmer device with the intent that such device be used in furtherance of the commission of the crime of identity theft ~~or unlawful possession of personal identification information as defined in this article~~, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, grand larceny in the first degree as defined in section 155.42, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, or criminal possession of stolen property in the first degree as defined in section 165.54.

2. For purposes of this article, “skimmer device” means a device designed or adapted to obtain personal identifying information from a credit card, debit card, public benefit card, access card or device, or other card or device that contains personal identifying information.

~~Unlawful~~ Criminal possession of a skimmer device in the second degree is a class ~~A misdemeanor~~ D felony.

§ 190.86 ~~Unlawful Criminal~~ possession of a skimmer device in the first degree.

A person is guilty of ~~unlawful criminal~~ possession of a skimmer device in the first degree when he or she commits the crime of ~~unlawful criminal~~ possession of a skimmer device in the second degree and he or she has been previously convicted within the last five years of identity theft in the ~~second~~ fourth degree as defined in section 190.79, identity theft in the ~~first~~ third degree as defined in this section, identity theft in the second degree as defined in section 190.81, identity theft in the first degree as defined in section 190.82, ~~unlawful criminal~~ possession of a skimmer device in the second degree as defined in section 190.85, ~~unlawful criminal~~ possession of a skimmer device in the first degree as defined in this section, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40, grand larceny in the first degree as defined in section 155.42, forgery in the third degree as defined in section 170.05, forgery in the second degree as defined in section 170.10, forgery in the first degree as defined in section 170.15, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter.

~~Unlawful Criminal~~ possession of a skimmer device in the first degree is class ~~E~~ C Felony.

Section 460.10 of the penal law is amended as follows:

§ 460.10 Definitions.

1. “Criminal act” means conduct constituting any of the following crimes, or conspiracy or attempt to commit any of the following felonies:

- (a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion;

sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; sections 190.79, 190.80, 190.81, 190.82, relating to identity theft, sections 190.83 and 190.84 relating to aggravated identity theft; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and . . .

Sections 156.00, 156.20, 156.25, 156.26 and 156.27 of the penal law are amended to read as follows:

§ 156.00 Offenses involving computers; definition of terms.

5. “Computer material” is property and means any computer data or computer program which

(a) contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals. This term shall not apply to the gaining access to or duplication solely of the medical history or medical treatment records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated; or

(b) contains records maintained by the state or any political subdivision thereof or any governmental instrumentality within the state which contains any information concerning a person, as defined in subdivision seven of section 10.00 of this chapter, which because of name, number, symbol, mark or other identifier, can be used to identify the person and which is otherwise prohibited by law from being disclosed. This term shall not apply to the gaining access to or duplication solely of records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated; or

(c) is not and is not intended to be available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his, her or their consent and which ~~accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.~~ persons other than those rightly in possession, know or should know that said material is not intended to be available to them.

§ 156.20 Computer tampering in the ~~fourth~~ fifth degree.

A person is guilty of computer tampering in the ~~fourth~~ fifth degree when he or she uses, causes to be used, or accesses a computer, computer service, or computer network without authorization and he or she intentionally alters in any manner or destroys computer data or a computer program of another person.

Computer tampering in the ~~fourth~~ fifth degree is a class A misdemeanor.

§ 156.25 Computer tampering in the ~~third~~ fourth degree.

A person is guilty of computer tampering in the ~~third~~ fourth degree when he or she commits the crime of computer tampering in the ~~fourth~~ fifth degree and:

1. he or she does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he or she has been previously convicted of any crime under this article or subdivision eleven of section 165.15 of this chapter; or
3. he or she intentionally alters in any manner or destroys computer material; or

4. he or she intentionally alters in any manner or destroys computer data or a computer program and thereby causes damages in an aggregate amount exceeding one thousand dollars.

Computer tampering in the ~~third~~ fourth degree is a class E felony.

§ 156.26 Computer tampering in the ~~second~~ third degree.

A person is guilty of computer tampering in the ~~second~~ third degree when he or she commits the crime of computer tampering in the ~~fourth~~ fifth degree and he or she intentionally alters in any manner or destroys:

1. computer data or a computer program and thereby causes damages in an aggregate amount exceeding three thousand dollars; or
2. computer material that contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals and as a result of such alteration or destruction adversely effects further medical treatment of said individual or individuals.

Computer tampering in the ~~second~~ third degree is a class D felony.

§ 156.27 Computer tampering in the ~~first~~ second degree.

A person is guilty of computer tampering in the ~~first~~ second degree when he or she commits the crime of computer tampering in the ~~fourth~~ fifth degree and he or she intentionally alters in any manner or destroys computer data or a computer program and thereby causes damages in an aggregate amount exceeding fifty thousand dollars.

Computer tampering in the ~~first~~ second degree is a class C felony.

The penal law is amended by adding a new section 156.28 to read as follows:

§ 156.28 Computer Tampering in the First Degree.

A person is guilty of computer tampering in the first degree when he or she commits the crime of computer tampering in the fifth degree and he or she intentionally alters in any manner or destroys computer data or a computer program and thereby causes damages in an aggregate amount of one million dollars or more.

Computer tampering in the first degree is a class B felony.

Appendix F
Elder Fraud
Proposed Legislative Language

**Appendix F
Elder Fraud
Proposed Legislative Language**

Section 155.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

§ 155.00 Larceny; defined.

10. “Mentally disabled” means that a person suffers from a mental disease, defect or condition which renders him or her incapable of appraising the nature of the conduct constituting the taking, obtaining or withholding of his or her property.

The first paragraph of section 155.10 of the penal law is redesignated as subdivision 1 and a new subdivision 2 is added to read as follows:

§ 155.10 Larceny; no defense.

1. The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 200.05, are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

2. It is no defense to a prosecution for larceny that the defendant obtained consent to take, withhold, or obtain property, where such consent was obtained from a person who the defendant knew or had reason to know was mentally disabled.

Subdivision 3 of section 4504 of the civil practice law and rules is amended by adding a new subsection (e) to read as follows:

(a) Confidential information privileged. Unless the patient waives the privilege, a person authorized to practice medicine, registered professional nursing, licensed practical nursing, dentistry, podiatry or chiropractic shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity. The relationship of a physician and patient shall exist between a medical corporation, as defined in article forty-four of the public health law, a professional service corporation organized under article fifteen of the business corporation law to practice medicine, a university faculty practice corporation organized under section fourteen hundred twelve of the not-for-profit corporation law to practice medicine or dentistry, and the patients to whom they respectively render professional medical services.

A patient who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this subdivision. For purposes of this subdivision:

1. "person" shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and

2. "insurance benefits" shall include payments under a self-insured plan.

- (b) Identification by dentist; crime committed against patient under sixteen. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, podiatrist, chiropractor or nurse shall be required to disclose information indicating that a patient who is under the age of sixteen years has been the victim of a crime.

- (c) Mental or physical condition of deceased patient. A physician or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subdivision (a), except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:

1. by the personal representative, or the surviving spouse, or the next of kin of the decedent; or

2. in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or

3. if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next kin or any other party in interest.

- (d) Proof of negligence; unauthorized practice of medicine. In any action for damages for personal injuries or death against a person not authorized to practice medicine under article 131 of the education law for any act or acts constituting the practice of medicine, when such act or acts were a competent producing proximate or contributing cause of such injuries or

death, the fact that such person practiced medicine without being so authorized shall be deemed prima facie evidence of negligence.

(e) Mental condition of a victim. Upon receipt of a grand jury subpoena issued pursuant to section 610.20(2) of the criminal procedure law and endorsed by a judge of a superior court, a medical provider must, as indicated in this subsection, provide to the grand jury the medical records of the person named in the subpoena. A judge of a superior court shall endorse such a grand jury subpoena upon an ex parte sworn showing by a district attorney, or other prosecutor where appropriate, establishing (a) that there is reasonable cause to believe that the person in question is a mentally disabled person, and (b) that there is reasonable cause to believe that the person in question has been the victim of financial exploitation. A person is “mentally disabled” for purposes of this subsection when that person suffers from a mental disease, defect or condition which renders him or her incapable of appraising the nature of the conduct constituting the financial exploitation. Upon receipt of such an endorsed subpoena a medical provider, including but not limited to a physician, psychologist or nurse, shall be required to disclose information relating to the mental or cognitive condition of the person in question that the medical provider acquired in attending the person in a professional capacity, and which was necessary to enable him or her to act in that capacity.

Section 660.20(2) of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

§ 660.20 Examination of witnesses conditionally; grounds for order.

2. Will not be amenable or responsive to legal process or available as a witness at a time when his testimony will be sought, either because he is:

(a) About to leave the state and not return for a substantial period of time; or

(b) Physically ill or incapacitated; or

(c) of advanced age which, for the purposes of this subsection shall mean a person who has attained the age of 75 years.

Section 190.25(3)(h) of the criminal procedure law is amended to read as follows:

§ 190.25 Grand jury; proceedings and operation in general.

3. Except as provided in subdivision three-a of this section, during the deliberation and voting of a grand jury, only the grand jurors may be present in the grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to witnesses, may, as the occasion requires, also be present:

(h) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness twelve years old or younger, or a social worker or informal caregiver, as provided in section 206(2) of the elder law,⁴ for a vulnerable elderly person as provided in section 260.31(3) of the penal law,⁵ who is called to give evidence in a grand jury proceeding concerning a crime defined in article one hundred twenty-one, article one hundred thirty, article two hundred sixty, section 120.10, 125.10, 125.25, 125.26, 125.27, 255.25, 255.26 or 255.27 of the penal law provided that the district attorney consents. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceeding and shall first take an oath before the grand jury that he or she will keep secret all matters before such grand jury within his or her knowledge.

Section 155.05(2)(d) of the penal law is amended to read as follows:

§ 155.05 Larceny; defined.

(d) By false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another, by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, he does not believe that the third person intends to engage in such conduct.

⁴ Elder Law Section 206(2)(a) provides: “‘Informal caregiver’ shall mean the family member or other natural person who normally provides the daily care or supervision of a frail or disabled person, or any family member or other natural person who contributes to and is involved in the caretaking responsibilities for such frail or disabled person. Such informal caregiver may, but need not, reside in the same household as the frail or disabled person.”

⁵ Penal Law Section 260.31(3) provides: “‘Vulnerable elderly person’ means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.

In any prosecution for larceny based on a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed; provided that partial performance of such promise does not, by itself, preclude a reasonable jury from making such finding from all the facts and circumstances.

Appendix G
Anti-Corruption
Proposed Legislative Language

Appendix G
Anti-Corruption
Proposed Legislative Language

Sections 200.00, 200.03, 200.04 and 200.11 of the penal law are amended to read as follows:

§ 200.00 Bribery in the third degree.

A person is guilty of bribery in the third degree when he or she confers, or offers or agrees to confer, any benefit upon a public servant ~~upon an agreement or understanding that~~ with the intent to influence such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant ~~will thereby be influenced.~~

Bribery in the third degree is a class D felony.

§ 200.03 Bribery in the second degree.

A person is guilty of bribery in the second degree when he or she confers, or offers or agrees to confer, any benefit valued in excess of ~~ten~~ five thousand dollars upon a public servant ~~upon an agreement or understanding that~~ with the intent to influence such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant ~~will thereby be influenced.~~

Bribery in the second degree is a class C felony.

§ 200.04 Bribery in the first degree.

A person is guilty of bribery in the first degree when he or she confers, or offers or agrees to confer, any benefit upon a public servant ~~upon an agreement or understanding that~~ with the intent to influence such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant ~~will thereby be influenced~~ in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or an attempt to commit any such class A felony.

Bribery in the first degree is a class B felony.

§ 200.11 Bribe receiving in the second degree.

A public servant is guilty of bribe receiving in the second degree when he or she solicits, accepts or agrees to accept any benefit valued in excess of ~~ten~~ five thousand dollars from another person upon an agreement or understanding that his or her vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the second degree is a class C felony.

The first paragraph of section 200.05 of the penal law is redesignated as subdivision 1 and a new subdivision 2 is added to read as follows:

§ 200.05 Bribery; defense.

In any prosecution for bribery:

1. It is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

2. It is also a defense that the benefit that the defendant conferred, or offered or agreed to confer, upon the public servant was a legitimate campaign contribution, unless such contribution was made upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant would thereby be influenced.

Sections 180.03 and 180.08 of the penal law are amended to read as follows:

§ 180.03 Commercial bribing in the first degree.

A person is guilty of commercial bribing in the first degree when he or she confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his or her conduct in relation to his or her employer's or principal's affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars ~~and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.~~

Commercial bribing in the first degree is a class E felony.

§ 180.08 Commercial bribe receiving in the first degree.

An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his or her employer or principal, he or she solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his or her conduct in relation to his or her employer's or principal's affairs, and when the value of the benefit solicited, accepted or agreed to be accepted exceeds one thousand dollars ~~and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.~~

Commercial bribe receiving in the first degree is a class E felony.

The penal law is amended to add new sections 195.30 and 195.35 to read as follows:

§ 195.30 Undisclosed self-dealing in the second degree.

A person is guilty of undisclosed self-dealing in the second-degree when, being a public servant, he or she intentionally engages in conduct or a course of conduct in his or her official capacity in connection with the award of a public contract or public grant or other effort to obtain or retain public business or public funds that is intended to confer an undisclosed benefit on himself, herself or a relative, and thereby obtains or attempts to obtain a benefit for himself, herself or a relative with a value in excess of \$3,000. A benefit is disclosed if its existence is made known prior to the alleged wrongful conduct to either (i) the relevant state or local ethics commission or (ii) the official responsible for the public servant's appointment to his or her position, provided that person is not a participant in the alleged wrongful conduct.

Undisclosed self-dealing in the second degree is a class D felony.

§ 195.35 Undisclosed self-dealing in the first degree.

A person is guilty of undisclosed self-dealing in the first degree when, being a public servant, he or she intentionally engages in conduct or a course of conduct in his or her official capacity in connection with the award of a public contract or public grant or other effort to obtain or retain public business or public funds that is intended to confer an undisclosed benefit on himself, herself or a relative, and thereby obtains or attempts to obtain a benefit for himself, herself or a relative with a value in excess of \$10,000. A benefit is disclosed if its existence is made known prior to the alleged wrongful conduct to either (i) the relevant state or local ethics commission or (ii) the official responsible for the public servant's appointment to his or her position, provided that person is not a participant in the alleged wrongful conduct.

Undisclosed self-dealing in the first degree is a class C felony.

For purposes of sections 195.30 and 195.35 of the penal law:

“Relative” shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling.⁶

Section 195.00 of the penal law is amended to read as follows:

§ 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.
3. Official misconduct in the third degree is a class A misdemeanor.

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

§ 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 E felony.

⁶ This definition comes from the New York City Charter. *See* RULES OF THE CITY OF NEW YORK, tit. 53, § 1-01.

§ 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 D felony.

The penal law is amended by adding a new section 196.00 to read as follows:

§ 196.00 Abuse of public trust.

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 public 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.

Section 200.50(4) of the criminal procedure law is amended to read as follows:

§ 200.50 Indictment; form and content.

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

Section 200.50(7) of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

§ 200.50 Indictment; form and content.

(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

Appendix H
Tax & Money Laundering
Proposed Legislative Language

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Tax and Money Laundering
Proposed Legislative Language

Section 470.00 of the penal law is amended by adding a new subdivision 11 to read as follows:

§ 470.00 Definitions.

11. "Structures." For purposes of section 470.30 and 470.31, a person structures a transaction when, with the intent to evade any reporting requirement under the New York State Banking Law or 31 U.S.C. §§ 5311 through 5326, or any regulation prescribed thereunder, he or she conducts or attempts to conduct one or more related transactions in currency, in any amount, with one or more financial institutions, on one or more days. Structuring includes, but is not limited to, the breaking down of a single sum of currency exceeding ten thousand dollars into smaller sums, including sums at or below ten thousand dollars, or the conduct of a transaction, or series of currency transactions, including transactions at or below ten thousand dollars. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution or on any single day in order to constitute structuring.

The penal law is amended by adding two new sections 470.30 and 470.31 to read as follows:

§ 470.30 Structuring in the second degree.

A person is guilty of structuring in the second degree when, with the intent to evade any reporting requirement under the New York State Banking Law or 31 U.S.C. §§ 5311 through 5326, or any regulation prescribed thereunder, he or she structures one or more transactions.

Structuring in the second degree is a class E felony.

§ 470.31 Structuring in the first degree.

A person is guilty of structuring in the first degree when he or she commits the crime of structuring in the second degree and: (1) the conduct is committed with an intent to commit another crime or to aid or conceal the commission of another crime; or (2) the aggregate value of the currency reported or the currency that should have been reported exceeds \$100,000 in any twelve-month period.

Structuring in the first degree is a class D felony.

Section 470.00 of the penal law is amended by adding two new subdivisions 12 and 13 to read as follows:

§ 470.00 Definitions.

12. “Monetary transaction” means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected, except that “monetary transaction” shall not include any transaction involving bona fide payments to attorneys for legal services.

13. “Property derived from specified criminal conduct” means any property constituting, or derived from, proceeds of specified criminal conduct, and need not exclusively constitute or be derived from proceeds of specified criminal conduct.

The penal law is amended by adding two new sections 470.33 and 470.34 to read as follows:

§ 470.33 Criminal Monetary Transaction in the Second Degree

A person is guilty of engaging in a criminal monetary transaction in the second degree when he or she knowingly engages or attempts to engage in a monetary transaction in property derived from criminal conduct with a value greater than \$20,000 and the property is derived from specified criminal conduct.

Criminal monetary transaction in the second degree is a class E felony.

§ 470.34 Criminal Monetary Transaction in the First Degree

A person is guilty of engaging in a criminal monetary transaction in the first degree when he or she knowingly engages or attempts to engage in a monetary transaction in property derived from criminal conduct with a value greater than \$60,000 and the property is derived from specified criminal conduct.

Criminal monetary transaction in the first degree is a class D felony.

Section 470.03 of the penal law is amended by redesignating subdivision 3 as subdivision 4 and adding a new subdivision 3 to read as follows:

§ 470.03 Money laundering; aggregation of value; other matters.

3. For purposes of 470.33 and 470.34, monetary transactions may be considered together and the value of the property derived from specified criminal conduct may be aggregated, provided that the monetary transactions are all part of a single “criminal transaction” as defined in subdivision two of section 40.10 of the criminal procedure law.

~~34.~~ Nothing in sections 470.05, 470.21, 470.22, 470.23 and 470.24; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.10; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.15; or paragraph (b) of subdivision one and paragraph (b) of subdivision two of section 470.20; or section 470.33 or section 470.34 of this article shall make it unlawful to return funds held in escrow.

Subdivision 2 of section 470.25 of the penal law is renumbered and a new subdivision 2 is added to read as follows:

§ 470.25 Money laundering and criminal monetary transactions; fines.

1. Any person convicted of a violation of section 470.05, 470.10, 470.15, or 470.20 of this article may be sentenced to pay a fine not in excess of two times the value of the monetary instruments which are the proceeds of specified criminal conduct. When a fine is imposed pursuant to this subdivision, the court shall make a finding as to the value of such monetary instrument or instruments. If the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the fine is disproportionate to the conduct in which he engaged, its impact on victims, as well as the economic circumstances of the convicted person, including the effect of the imposition of such a fine upon his immediate family.

2. Any person convicted of a violation of section 470.33, or 470.34 of this article may be sentenced to pay a fine not in excess of two times the value of the monetary transaction which is the proceeds of specified criminal conduct. When a fine is imposed pursuant to this subdivision, the court shall make a finding as to the value of such monetary transaction. If the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the

fine is disproportionate to the conduct in which he engaged, its impact on victims, as well as the economic circumstances of the convicted person, including the effect of the imposition of such a fine upon his immediate family.

~~23.~~ The imposition of a fine pursuant to subdivision one of this section or paragraph b of subdivision one of section 80.00 of this chapter, shall preclude the imposition of any other order or judgment of forfeiture or fine based upon the same criminal conduct.

Section 460.10(1) of the penal law is amended as follows:

§ 460.10 Definitions.

1. “Criminal act” means conduct constituting any of the following crimes, or conspiracy or attempt to commit any of the following felonies:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section

230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; ~~and~~ sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; sections 470.31 and 470.31 relating to structuring; and sections 470.33 and 470.34 relating to criminal monetary transactions; or

Section 195.20 of the penal law is amended to read as follows:

§ 195.20 Defrauding the government in the fourth degree.

A person is guilty of defrauding the government in the fourth degree when, ~~being a public servant or party officer,~~ he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; ~~and/or~~

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under subsections (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in ex-

cess of one thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under subsection (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds one thousand dollars.

Defrauding the government in the fourth degree is a class E felony.

The penal law is amended by adding three new sections 195.22, 195.25 and 195.27 to read as follows:

§ 195.22 Defrauding the government in the third degree.

A person is guilty of defrauding the government in the third degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under subsections (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of ten thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under subsection (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds ten thousand dollars.

Defrauding the government in the third degree is a class D felony.

§ 195.25 Defrauding the government in the second degree.

A person is guilty of defrauding the government in the second degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under subsections (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of twenty-five thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under subsection (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds twenty-five thousand dollars.

Defrauding the government in the second degree is a class C felony.

§ 195.27 Defrauding the government in the first degree.

A person is guilty of defrauding the government in the first degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under subsections (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of two hundred fifty thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under subsection (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds two hundred fifty thousand dollars.

Defrauding the government in the first degree is a class B felony.

Section 1807 of the tax law is amended to read as follows:

§ 1807 Aggregation. For purposes of this article, the payments due and not paid under a single article of this chapter pursuant to a common scheme or plan or due and not paid, ~~within one year,~~ may be charged in a single count, and the amount of underpaid tax liability thereby incurred may be aggregated in that single count.

Section 697(e) of the tax law is amended by adding a new paragraph 3-b to read as follows:

§ 697(e) General powers of tax commission.

(3-b) Notwithstanding the provisions of paragraph one of this subsection, or any other law to the contrary, an officer or employee of the Department of Taxation and Finance so designated by the Commissioner may disclose tax returns or tax return information in response to a subpoena *duces tecum* issued by a grand jury pursuant to the Criminal Procedure Law of the State of New York duly served upon the Department of Taxation and Finance and an order of the court that empanelled such grand jury determining, based on a written application submitted under oath or penalty of perjury, that: (i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and (iii) the return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

Section 20.40(2)(c) of the criminal procedure law is amended to read as follows:

§ 20.40(2)(c) Geographical jurisdiction of offenses; jurisdiction of counties.

(c) Such conduct had, or was likely to have, a particular effect upon such county or a political subdivision or part thereof, ~~or on a city of which such county is a part, whether or not such conduct also had effects on other counties or on the state as a whole; and was performed with intent that it would, or with knowledge that it was likely to, have such particular effect therein provided that, if such conduct had or was likely to have such particular effect upon the state as a whole, then there shall be proper jurisdiction in the county of Albany in addition to any counties particularly affected;~~

Appendix I
Sentencing Chart & Proposed Gradations

Appendix I Sentencing Chart & Proposed Gradations

New York State Sentencing For Non-Violent Crimes (Assuming no Prior Felony Conviction)

Class	Lowest Sentence	Highest Sentence
E felony	No mandatory incarceration	1 ½ to 4
D felony	No mandatory incarceration	2 ½ to 7
C felony	No mandatory incarceration	5 to 15
B felony	1 to 3	8 ½ to 25

Larceny, Penal Law Article 155

	Current Gradation	Proposed Gradation
A misdemeanor	Any property	Service exceeding \$500 or any property
E felony	Exceeds \$1,000	Exceeds \$1,000 or is PII*
D felony	Exceeds \$3,000	Exceeds \$3,000 or 25 or more victims' PII
C felony	Exceeds \$50,000	Exceeds \$50,000 or 100 or more victims' PII
B felony	Exceeds \$1 million	Exceeds \$1 million or 1,000 or more victims' PII

Scheme to Defraud, Penal Law Article 190

	Current Gradation	Proposed Gradation
E felony	Exceeds \$1,000 or 10 or more intended victims	No change
D felony	N/A	Exceeds \$3,000 or 25 or more intended victims
C felony	N/A	Exceeds \$50,000 or 100 or more intended victims
B felony	N/A	Exceeds \$1 million or 1,000 or more intended victims

Trademark Counterfeiting, Penal Law Article 165

	Current Gradation	Proposed Gradation
E felony	Exceeds \$1,000	Exceeds \$1,000 or 200 items
D felony	N/A	Exceeds \$25,000 or 2,000 items
C felony	Exceeds \$100,000	Exceeds \$100,000 or 10,000 items

Identity Theft, Penal Law Article 190

	Current Gradation	Proposed Gradation
E felony	Exceeds \$500	Exceeds \$500 or 3 or more identities
D felony	Exceeds \$2,000	Exceeds \$2,000 or 10 or more identities
C felony	N/A	Exceeds \$25,000 or 25 or more identities
B felony	N/A	Exceeds \$500,000 or 100 or more identities

* PII stands for personal identifying information.

Computer Tampering, Penal Law Article 156

	Current Gradation	Proposed Gradation
E felony	Exceeds \$1,000 in damage	No change
D felony	Exceeds \$3,000 in damage	No change
C felony	Exceeds \$50,000 in damage	No change
B felony	N/A	Exceeds \$1 million in damage

Bribery in the Second Degree, Penal Law Article 200

	Current Gradation	Proposed Gradation
D felony	Benefit in any amount	No change
C felony	Benefit exceeds \$10,000	Benefit exceeds \$5,000

Bribe Receiving in the Second Degree, Penal Law Article 200

	Current Gradation	Proposed Gradation
D felony	Benefit in any amount	No change
C felony	Exceeds \$10,000	Exceeds \$5,000

Defrauding the Government, Penal Law Article 195

	Current Gradation	Proposed Gradation
E felony	Exceeds \$1,000	No change
D felony	N/A	Exceeds \$10,000
C felony	N/A	Exceeds \$25,000
B felony	N/A	Exceeds \$250,000