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Andrew M. Cuomo - Governor

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Governor Cuomo Proposes New Class of Public Corruption Crimes

Public Trust Act Would Establish a New Class of Public Corruption Crimes, Tough New Penalties on Offenders, Require Public Officials to Report Bribery

Albany, NY (April 9, 2013)

Governor Andrew M. Cuomo today announced new legislation, the Public Trust Act, which would create a new class of public corruption crimes and enhance New York prosecutors' ability to crack down on public corruption across the state.

Currently, the laws defining public corruption in New York are obsolete and far less effective than federal statutes for prosecuting individuals who commit public corruption crimes. The Public Trust Act announced by the Governor today would establish a new class of public corruption crimes and expand the current definitions of public corruption offenses to enable prosecutors to hold accountable those who violate public trust. The law would also impose tougher jail sentences on individuals that misuse public funds and permanently bar those convicted of public corruption offenses from holding any elected or civil office, lobbying, contracting, receiving state funding, or doing business with the state, directly or through an organization.

"Preventing public corruption is essential to ensuring that government works and can effectively keep the public's trust," Governor Cuomo said. "The Public Trust Act recognizes that crimes of public corruption should be treated more seriously than other white-collar crimes because when they break the law, they also break the public trust that the people have placed in government. When I was elected, I made a promise to New Yorkers to bring integrity back to state government and to restore the trust of the people. We have made too much progress in rebuilding this government to turn back. This legislation will continue our work to restore public trust by giving every district attorney in our state the tools they need to root out and punish all forms of public corruption at every level of government."

The new class of Public Corruption Crimes would include the following crimes: bribing a public servant, corrupting the government, and failing to report a bribe or a bribe attempt.

I. New Crimes for Violating Public Trust

Bribery of a Public Servant: The proposed legislation would expand the current state bribery statute to give prosecutors additional tools to convict offenders. Under current state law, a prosecutor has to prove that there was a corrupt agreement or understanding between the person paying the bribe and the person receiving the bribe. This is not required under federal law and is an unduly heavy burden. Under the new Public Servant Bribery provision, a prosecutor would only have to prove that the person paying the bribe "intended" to influence the public official or that the person receiving it intended to be so influenced, bringing state law in line with the federal standard. Bribery penalties would be increased, lowering the threshold for a Class C felony from \$10,000 to \$5,000, the amount of money used to bribe, and to \$10,000 and above for a Class B felony.

Corrupting the Government: The proposed legislation would hold accountable anyone – whether or not they are a public official – who is found to have engaged in defrauding the government. The legislation also enhances penalties for all offenders convicted of defrauding the government through the crime of Corrupting the Government. Under the new law, anybody, whether acting in concert with a public servant or not, who engages in a course of conduct to defraud a state or local government would be guilty of a crime ranging from the fourth degree (class E felony) to the first degree (class B felony), depending on the amount defrauded.

Failure to Report Public Corruption: The proposed legislation would for the first time make it a misdemeanor for any public official or employee to fail to report bribery.

II. Tough New Penalties for Misuse of Taxpayer Dollars

New Penalties for Public Corruption: The proposed legislation would create new penalties for offenses such as any kind of fraud, theft, or money laundering offense involving state or local government property. This means an offender would face a higher penalty if the act was committed against the government. The sentence would be one level higher than for the underlying offense. For example, if the underlying

offense (e.g. larceny) was a class D felony, then the involvement of state or local government property would increase the sentence to the class C felony. The specific existing crimes affected are those defined by the following provisions of the Penal Law:

- petit larceny
- grand larceny
- unauthorized use of a computer
- unauthorized use of a vehicle
- money laundering

Increased Penalties for Official Misconduct: Under current law, Official Misconduct is a misdemeanor. The proposed legislation creates three new degrees of Official Misconduct: a Class E felony (maximum penalty 4 years), Class D felony (maximum penalty 7 years) and Class C felony (maximum penalty 15 years).

III. Lifetime Ban from Government

The new class of felony public corruption crimes would impose additional penalties, apart from jail sentences and criminal fines, including:

- Permanently barring all those convicted of public corruption felonies from holding any elected or civil office, serving as a registered lobbyist, or doing business with the state, including through any organization they run
- Barring individuals from bidding on or obtaining state contracts
- Barring individuals from receiving numerous tax credits
- Prohibiting individuals from serving as a Medicaid, employment insurance or workers' compensation provider
- Gives Judges the option of requiring payment of up to three times the amount of the profit or gain made from an illegal transaction
- Creating an automatic set off for any fines or other penalties imposed against any State tax refund

Fixing the Statute of Limitations: Under the proposed legislation, the same tolling or suspension of the statute of limitations of five years after leaving office will apply to both public servants and those persons acting in concert with a public servant to commit misconduct in public office. Currently, the statute of limitations for public officials is in effect for five years after they have left office, but not those acting in concert who are not themselves public officials.

Additional Tools for Prosecutors: For the first time, a witness who testifies before a grand jury investigating fraud on the government or official misconduct will receive only "use" immunity, not "transactional" immunity for statements that witness may give under oath. This means that the witness, who may or may not also be part of the criminal transaction under investigation, may still be prosecuted for his or her role if the prosecutor develops evidence other than, and independent of, the evidence given by the witness. This important tool in fighting crime conforms New York practice with federal practice in this area.

Manhattan District Attorney Cyrus R. Vance, Jr., President of the District Attorneys Association of the State of New York, said, "Just as the public needs confidence in the fairness of our criminal justice system, we also need to have faith that the men and women entrusted to do the public's work are doing so honestly. Since taking office, I have advocated for laws that give state prosecutors more tools to investigate and prosecute corruption at all levels of government. The Governor's proposals do that. The bill allows prosecutors to pursue the new crime of defrauding the government, and seek tougher penalties for those who offer or accept bribes or commit crimes against public entities. I thank Governor Cuomo for moving on this important legislation."

Nassau County District Attorney Kathleen M. Rice said, "Prosecutors need better tools to hold public officials accountable when they betray the public's trust. Governor Cuomo's proposal provides a much-needed overhaul to New York's public corruption laws so we can better investigate and prosecute those who defraud the taxpayers, while strengthening the penalties for those who abuse their office. I commend the Governor for proposing this important legislation to improve our ability to fight public corruption at every level of government."

Staten Island District Attorney Daniel M. Donovan Jr. said, "I thank Gov. Cuomo for not only recognizing difficulties in prosecuting public corruption cases, but for offering up common sense solutions to level stiffer penalties and close loopholes. As prosecutors we are tasked with prosecuting criminals, and that sometimes includes those who betray the very people who elected them. The governor's Public Trust Act will help us regain the public's trust."

Bronx District Attorney Robert T. Johnson said, "I strongly agree with Governor Cuomo that it is time to put an end to the dirty dealers among our elected officials and I thank the governor for aggressively moving us toward that goal with today's announcement."

Kings County District Attorney Charles J. Hynes said, "As a District Attorney who successfully prosecuted the deputy assembly speaker and Kings County party chairman Clarence Norman, three judges and State Assemblywoman Diane Gordon, I welcome any expansion of legislation that contributes to the fight against public corruption. Tougher jail sentences, lifetime bans from public service, making it a crime not to report a bribe are all measures that address the core issues of our current laws which are not as effective as federal statutes. In addition changing the immunity granted to someone testifying in public corruption cases from transactional to use immunity will expand the opportunity and power to prosecute those who would use the grand jury subpoena as a shield to prosecution. I applaud Gov. Cuomo's leadership in this effort, I wholeheartedly support him and look forward to working with him in the future to see to it that Public Trust Act becomes law."

Queens District Attorney Richard A. Brown said, "We welcome these important new tools that Governor Cuomo is proposing today. They will

strengthen our laws and make it possible for prosecutors to more effectively investigate and prosecute public corruption."

Monroe County District Attorney Sandra Doorley said, "For too long, outdated laws in New York State have limited prosecutors' ability to root out public corruption. These common sense proposals will combat the corruption and graft that has diminished the confidence that everyday citizens have in their government. I applaud Governor Cuomo for sending a clear, hard-line message to those who would dare consider betraying the public trust."

Onondaga County District Attorney William J. Fitzpatrick said, "This legislation gives prosecutors the tools we need to effectively ferret out and aggressively prosecute public corruption. The Governor clearly understands that in order to clean up corruption on all levels of government, we needed comprehensive reform and changes to the New York Penal law. My fellow District Attorneys and I applaud Governor Cuomo's proactive approach on this issue and we greatly appreciate the fact that he and his staff requested our input to ensure that this law was useful, effective and meaningful."

Broome County District Attorney Gerald F. Mollen said, "The Governor's proposals are an important step forward in updating our criminal justice system so as to allow prosecutors to be able to attack public corruption. Respect for democracy and our laws should be the first line of defense against public corruption, but basic investigation and prosecution tools should be the last line. These proposals begin to help reinforce that last line of defense."

Franklin County District Attorney Derek Champagne said, "Government corruption has no place in New York State, and I commend Governor Cuomo for taking action today to put in place new, strengthened laws that will help District Attorneys statewide to crack down on those that violate the public's trust. Prosecutors need effective, up to date tools to punish those that engage in public corruption and the Public Trust Act will be a major help in our efforts to root out illegal behavior among public officials. I thank the Governor for taking the lead with this new legislation."

Rockland County District Attorney Zugibe said, "Public officials are entrusted with making decisions that are in the best of their constituents. But, all too often, we find compromised lawmakers undermining the public's confidence by concocting devious schemes to unjustly enrich themselves and engaging in illicit behaviors. The Public Trust Act will give prosecutors a new weapon in the ongoing battle to root out self-serving public officials at all levels of government. Public servants who allow greed to cloud their judgment must be held accountable for their misdeeds."

Albany County District Attorney David Soares said, "I applaud Governor Cuomo for his courage and efforts to assist District Attorney's across New York State to prosecute those charged with violations of public integrity. These updates in our state laws are long overdue and these proposals reflect the reality of public official corruption. These laws will enhance our criminal justice system and deter those who would consider abusing the public trust."

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