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Heffernan, S. Moore, Morrison, Ramone

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 203

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFICIAL MISCONDUCT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1211, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1211. Official misconduct; class A misdemeanor, class G, F, D, B felony.

(a) A public servant is guilty of official misconduct when, intending to obtain a personal benefit or to cause harm to another person, the public servant knowingly does any of the following:

(1) Commits an act constituting an unauthorized exercise of official functions, knowing that the act is unauthorized.

(2) Refrains from performing a ~~duty, or~~ duty or breaches a duty which is imposed by law or is clearly inherent in the nature of the office.

(3) Performs official functions in a way intended to benefit the public servant's own property or financial interests under circumstances in which the public servant's actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions.

(4) Performs official functions in a way intended to practice discrimination on the basis of race, religion, color, disability, sexual orientation, sex, age, gender identity, national origin, or ancestry.

(5) Uses or relies ~~upon their~~ on the public servant's position of trust or authority to engage in criminal conduct.

~~Official misconduct is a class A misdemeanor.~~

(b) Official misconduct ~~shall be~~ is punished as follows:

(1) For a violation of ~~either paragraph (a)(1) or (a)(2) of this section the offense shall be~~ section, a class A misdemeanor.

(2) For a violation of paragraph (a)(3), (a)(4), or (a)(5) of this ~~section the offense shall be~~ section, a class G felony.

(3) ~~Official misconduct is a~~ A sentence is enhanced for a violation of paragraphs (a)(1) through (a)(5) of this section as follows:

a. ~~A class F felony where~~ felony, if the value of the personal benefit received, or the harm caused, is \$1,500 or more, but less than \$50,000.

b. ~~(4) Official misconduct is a~~ A class D felony where felony, if the value of the personal benefit received, or the harm caused, is \$50,000 or more, but less than \$100,000.

c. ~~(5) Official misconduct is a~~ A class B felony where felony, if the value of the personal benefit received, or the harm caused, is \$100,000 or more.

d. ~~(6) Official misconduct is a~~ A class F felony where felony, if the harm caused is physical injury, or the public servant engages in conduct constituting an offense which that is punishable as an unclassified misdemeanor, a class B misdemeanor, or a class A misdemeanor.

e. ~~(7) Official misconduct is a~~ A class D felony where felony, if the harm caused is serious physical injury, or the public servant engages in conduct constituting an offense which that is punishable as a class G felony, a class F felony, or a class E felony.

f. ~~(8) Official misconduct shall be~~ One grade higher than the underlying offense where offense, if the public servant engages in conduct constituting an offense which that is punishable as a class D felony or a class C felony.

g. ~~(9) Official misconduct shall be a~~ A class A felony where felony, if the public servant engages in conduct constituting an offense which that is punishable as a class B felony or a class A felony, or where if the harm caused is death.

(c) The Superior Court has exclusive jurisdiction over a violation of this section.

SYNOPSIS

Senate Bill 67, from the first session of the 152nd General Assembly, updated the crime of official misconduct. Senate Bill 67 intended to change the penalty for official misconduct from a class A misdemeanor to a graded system, where the penalty is commensurate to the gravity of the misconduct. This Act makes the following modifications to ensure legislative intent is achieved:

(1) The original penalty in § 1211 was not stricken by SB 67. Therefore, it remains in Code as an impermissible floating paragraph under paragraph (a)(5) of § 1211. Despite the addition of the new graded penalty system in SB 67, the floating paragraph states that official misconduct is punishable as a class A misdemeanor. This Act deletes the floating paragraph so that § 1211 is correctly interpreted as imposing a graded penalty system.

(2) Paragraph (b)(3) of § 1211 adds “but less than \$50,000.” to the end of the description of what constitutes a class F felony. Otherwise, there would be overlap between what dollar amount of harm caused or value received constitutes a class F felony, a class D felony, and a class B felony.

(3) Restructures subsection (b) by adding introductory language to clarify when enhanced sentences apply.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator S. McBride