



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE**

**A.1945
S.93-A**

**M. of A. Cruz
Sen. Kaminsky**

AN ACT to amend the Public Officers Law, and prohibit persons from holding civil office when convicted of certain felonies.

THIS BILL IS APPROVED

The Government Ethics and State Affairs Committee of the New York City Bar Association supports the enactment of A.1945/S.93-A,¹ which would expand the prohibition on elective office-holding to cover individuals convicted of certain public corruption crimes under federal law.

As it stands now, Section 3 of the Public Officers Law (“POL”)² prohibits individuals convicted of certain felonies set forth in the New York State Penal Law from holding elective office. As these felonies all sound in public corruption and abuse of office, Section 3 of the POL is clearly and reasonably tailored to avoid precluding a wide swath of individuals from holding public office based simply on a prior felony conviction. The current law, however, fails to address individuals convicted of federal public corruption or abuse of office crimes. The Committee believes that this is a significant shortcoming in the POL.

First, the practical effect of this elective office-holding ban is minimal due to the nature of public corruption prosecutions in New York State. As this Committee explored in a November 2020 program,³ public corruption prosecutions in New York, particularly of state officials, are often undertaken by the federal government. As a result, many of the public corruption convictions handed down in New York are predicated on violations of federal law, and thus fall outside of the scope of the ban as currently provided for in POL Section 3.

¹ See A.1945, available at: <https://www.nysenate.gov/legislation/bills/2021/A1945>, and S.93-A, available at: <https://www.nysenate.gov/legislation/bills/2021/s93/amendment/a>.

² See Public Officers Law § 3, available at: <https://codes.findlaw.com/ny/public-officers-law/pbo-sect-3.html>.

³ See Current Issues in Public Corruption Law (On Demand), originally held on Nov. 16, 2020, available at: <https://services.nycbar.org/EventDetail?EventKey=OND111620&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Second, the current iteration of POL Section 3 produces arbitrary and unjust results, as demonstrated in the April 2021 decision in *Fonvil v. Jasmin*.⁴ Arising out of a dispute between two former elected officials running for mayor of a New York village, *Fonvil* turned on whether Mr. Fonvil, who had previously been found guilty of violating several of the state public corruption statutes, and Ms. Jasmin, who had similarly been convicted of public corruption, but under federal statutes, were precluded from standing for election. Each candidate invoked POL Section 3 to challenge the other's eligibility to run for—and serve in—public office. The court ultimately found that Mr. Fonvil was precluded from holding public office. By contrast, and despite her conviction for strikingly similar violations of the public trust, Ms. Jasmin was allowed to stand for election simply because she was convicted of public corruption under federal law.

It is this Committee's position that the court's conclusion in *Fonvil*, which was necessitated by the plain language of POL Section 3, clearly illustrates the need for revision of the statute. By amending Section 3 to include federal public corruption statutes, A1945/S93A achieves a more reasonable public office-holding prohibition, while remaining true to the POL's clear intent to preclude from public office those who have previously violated the public trust.

The Committee further notes this legislation is consistent with recent developments in New York City municipal government, wherein the City Council enacted a law prohibiting individuals convicted of either state or federal public corruption crimes from holding local elective office.⁵

Finally, the City Bar is deeply committed to efforts and measures to facilitate post-conviction community reentry. We believe that the proposed legislation, by narrowly targeting individuals convicted of serious violations of the public trust and prohibiting those individuals from holding public office, remains consistent with our post-conviction community reentry priorities.

For all of these reasons, the City Bar supports the enactment of A.1945/S.93-A.⁶

Government Ethics & State Affairs Committee
Edward L. Murray, Chair

September 2021

Contact

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org
Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

⁴ See *Matter of Fonvil v. Jasmin*, 2021 Slip Op 21106 (Rockland Co., Apr. 14, 2021), available at: <https://law.justia.com/cases/new-york/other-courts/2021/2021-ny-slip-op-21106.html>.

⁵ See *Disqualification of persons from holding an elected city office for certain felony convictions*, New York City Council, Int. 0374-2018, Law No. 2021/015 (enacted Feb. 25, 2021), available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3332128&GUID=DE86FE77-545D-4E39-9C86-93CF369F9FB6&Options=Advanced&Search>.

⁶ This Report was prepared for the Committee by Benjamin J. Smith.