S T A T E O F N E W Y O R K

7953

2009-2010 Regular Sessions

I N A S S E M B L Y

April 29, 2009

Introduced by M. of A. LENTOL -- (at request of the Division of Probation and Correctional Alternatives) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in relation to restitution and reparation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 5 of section 420.10 of the criminal procedure law, as separately amended by chapters 233 and 506 of the laws of 1985, the second undesignated paragraph as amended by chapter 618 of the laws of 1992, is amended to read as follows:

5. Application for resentence. In any case where the defendant is unable to pay a fine[,] OR MAKE PAYMENT OF restitution or reparation imposed by the court, he OR SHE may at any time apply to the court for resentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation it must:

(a) Adjust the terms of payment; or

(b) Lower the amount of the fine[, restitution or reparation]; or

(c) Where the sentence consists of probation or imprisonment and a fine[, restitution or reparation], revoke the portion of the sentence imposing the fine[, restitution or reparation]; or

(d) Revoke the entire sentence imposed and resentence the defendant. Upon such resentence the court may impose any sentence it originally could have imposed, except that the amount of any fine[, restitution or reparation] imposed may not be in excess of the amount the defendant is able to pay AND RESTITUTION OR REPARATION SHALL CONTINUE. IN NO EVENT SHALL A DEFENDANT BE INCARCERATED BECAUSE HE OR SHE IS UNABLE TO PAY RESTITUTION OR REPARATION AS ORDERED THROUGH NO FAULT OF HIS OR HER OWN OR IF THE DEFENDANT HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH THE RESTITUTION OR REPARATION ORDER.

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

LBD07399-07-9

In any case where the defendant applies for resentencing with respect to any condition of the sentence relating to PAYMENT OF restitution or reparation the court must order that notice of such application and a reasonable opportunity to be heard be given to the person or persons given notice pursuant to subdivision one of this section. If the court grants the defendant's application by changing the original order for restitution or reparation in any manner, the court must place the reasons therefor on the record.

For the purposes of this subdivision, the court shall not determine that the defendant is unable to pay the fine, OR MAKE PAYMENT OF restitution or reparation ordered solely because of such defendant's incarceration but shall consider all the defendant's sources of income including, but not limited to, moneys in the possession of an inmate at the time of his admission into such facility, funds earned by him in a work release program as defined in subdivision four of section one hundred fifty of the correction law, funds earned by him as provided for in section one hundred eighty-seven of the correction law and any other funds received by him or on his behalf and deposited with the superintendent or the municipal official of the facility where the person is confined.

S 2. Subdivision 6 of section 420.10 of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RESTITUTION ORDER IMPOSED AS PART OF ANY DISPOSITION AUTHORIZED BY THIS CHAPTER AND THE PENAL LAW, SHALL REMAIN IN EFFECT UNTIL THE AMOUNT OF MONIES OWED TO THE VICTIM IS FULLY SATISFIED UNLESS THE UNDERLYING CONVICTION WITH RESPECT TO THE DISPOSITION HAS BEEN REVERSED OR VACATED, EXCEPT ANY VACATURE OF A CONVICTION PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THIS CHAPTER. WHENEVER ANY DISPOSITION IS REVOKED AND A DEFENDANT IS RESENTENCED OR WHERE A DISPOSITION IS OTHERWISE TERMINATED PURSUANT TO SECTION 410.90 OF THIS CHAPTER, THE DEFENDANT SHALL NOT BE RELIEVED OF HIS OR HER RESPONSIBILITY TO COMPLY WITH ANY RESTITUTION ORDER PREVIOUSLY IMPOSED BY A COURT OF COMPETENT JURISDICTION THAT APPLIES TO THE DEFENDANT UNTIL THE RESTITUTION ORDER IS FULLY SATISFIED. THESE PROVISIONS SHALL APPLY TO ANY INMATE RELEASED PURSUANT TO SECTION 70.40 OF THE PENAL LAW OR SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW, OR ANY INDIVIDUAL WHO HAS COMPLETED HIS OR HER DISPOSITION. NOTHING IN THIS SECTION SHALL PROHIBIT THE INTERCEPTION OF TAX RETURNS, LOTTERY EARNINGS OR ANY JUDGMENT AWARDED TO THE DEFENDANT OR INDIVIDUAL TO SATISFY THE AMOUNT OF RESTITUTION OWED TO THE VICTIM OF AN OFFENSE, EXCEPT ANY CHILD SUPPORT OBLIGATIONS AS AUTHORIZED BY A COURT WHICH ARE OWED BY THE DEFENDANT OR INDIVIDUAL AND ARE IN ARREARS. IN NO EVENT SHALL A DEFENDANT BE INCARCERATED BECAUSE HE OR SHE IS UNABLE TO PAY RESTITUTION AS ORDERED THROUGH NO FAULT OF HIS OR HER OWN OR IF THE DEFENDANT HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH A RESTITUTION ORDER.

S 3. Section 60.27 of the penal law is amended by adding two new subdivisions 2-a and 2-b to read as follows:

2-A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RESTITUTION ORDER IMPOSED AS PART OF ANY DISPOSITION AUTHORIZED BY THE CRIMINAL PROCEDURE LAW AND THIS CHAPTER, SHALL REMAIN IN EFFECT UNTIL THE AMOUNT OF MONIES OWED TO THE VICTIM IS FULLY SATISFIED UNLESS THE UNDERLYING CONVICTION WITH RESPECT TO THE DISPOSITION HAS BEEN REVERSED OR VACATED, EXCEPT ANY VACATURE OF A CONVICTION PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW. WHENEVER ANY DISPOSITION IS REVOKED AND A DEFENDANT IS RESENTENCED OR WHERE A DISPOSITION IS OTHERWISE TERMINATED PURSUANT TO SECTION 410.90 OF THE CRIMINAL PROCEDURE LAW, THE DEFENDANT

SHALL BE REQUIRED TO COMPLY WITH ANY RESTITUTION ORDER PREVIOUSLY IMPOSED BY A COURT OF COMPETENT JURISDICTION THAT APPLIES TO THE DEFENDANT UNTIL THE RESTITUTION ORDER IS FULLY SATISFIED. THESE PROVISIONS SHALL APPLY TO ANY INMATE RELEASED PURSUANT TO SECTION 70.40 OF THIS TITLE OR SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW OR ANY INDIVIDUAL WHO HAS COMPLETED HIS OR HER DISPOSITION. NOTHING IN THIS SECTION SHALL PROHIBIT THE INTERCEPTION OF TAX RETURNS, LOTTERY EARNINGS OR ANY JUDGMENT AWARDED TO THE DEFENDANT OR INDIVIDUAL TO SATISFY THE AMOUNT OF RESTITUTION OWED, EXCEPT ANY CHILD SUPPORT OBLIGATIONS AS AUTHORIZED BY A COURT WHICH ARE OWED BY THE DEFENDANT OR INDIVIDUAL AND ARE IN ARREARS. IN NO EVENT SHALL A DEFENDANT BE INCARCERATED BECAUSE HE OR SHE IS UNABLE TO PAY RESTITUTION AS ORDERED THROUGH NO FAULT OF HIS OR HER OWN OR IF THE DEFENDANT HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH A RESTITUTION ORDER.

2-B. THE COURT SHALL TRANSMIT A COPY OF ANY RESTITUTION ORDER IMPOSED BY A CRIMINAL COURT TO THE CRIME VICTIMS BOARD.

S 4. Paragraph (g) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 618 of the laws of 1992, is amended to read as follows:

(g) Make restitution of the fruits of his or her offense or make reparation, [in an amount he can afford to pay,] for the actual out-of-pocket loss caused thereby. When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, the manner of performance[, specifically state the date when restitution is to be paid in full prior to the expiration of the sentence of probation] and may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after the restitution and reparation part of a sentence of probation or conditional discharge has been satisfied. The court shall provide that in the event the person to whom restitution or reparation is to be made dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

S 5. This act shall take effect on the sixtieth day after it shall have become a law.