

7160

2009-2010 Regular Sessions

I N A S S E M B L Y

March 25, 2009

Introduced by M. of A. KOON, FIELDS, CASTRO, LANCMAN, GABRYSZAK, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. REILLY, SWEENEY, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the civil practice law and rules, in relation to requiring restitution or reparation for all crimes and providing additional methods of enforcement

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

1 Section 1. Subdivision 1 of section 60.27 of the penal law, as amended
2 by chapter 279 of the laws of 2008, is amended to read as follows:
3 1. In addition to any of the dispositions authorized by this article,
4 the court shall [consider restitution or reparation to the victim of the
5 crime and may] require restitution or reparation as part of the sentence
6 imposed upon a person convicted of an offense, and after providing the
7 district attorney with an opportunity to be heard in accordance with the
8 provisions of this subdivision, require the defendant to make restitu-
9 tion of the fruits of his or her offense or reparation for the actual
10 out-of-pocket loss caused thereby and, in the case of a violation of
11 section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any
12 costs or losses incurred due to any adverse action taken against the
13 victim. The district attorney shall where appropriate, advise the court
14 at or before the time of sentencing that the victim seeks restitution or
15 reparation, the extent of injury or economic loss or damage of the
16 victim, and the amount of restitution or reparation sought by the victim
17 in accordance with his or her responsibilities under subdivision two of
18 section 390.50 of the criminal procedure law and article twenty-three of
19 the executive law. The court shall hear and consider the information
20 presented by the district attorney in this regard. In that event, or
21 when the victim impact statement reports that the victim seeks restitu-
22 tion or reparation, the court shall require[, unless the interests of
23 justice dictate otherwise], in addition to any of the dispositions

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

LBD02001-01-9

1 authorized by this article that the defendant make restitution of the
2 fruits of the offense and reparation for the actual out-of-pocket loss
3 and, in the case of a violation of section 190.78, 190.79, 190.80,
4 190.82 or 190.83 of this chapter, any costs or losses incurred due to
5 any adverse action, caused thereby to the victim. [In the event that
6 restitution or reparation are not ordered, the court shall clearly state
7 its reasons on the record.] Adverse action as used in this subdivision
8 shall mean and include actual loss incurred by the victim, including an
9 amount equal to the value of the time reasonably spent by the victim
10 attempting to remediate the harm incurred by the victim from the
11 offense, and the consequential financial losses from such action.

12 S 2. Subdivision 2 of section 60.27 of the penal law, as amended by
13 chapter 618 of the laws of 1992, is amended to read as follows:

14 2. [Whenever the court requires restitution or reparation to be made,
15 the] FOR EVERY OFFENSE court must make a finding as to the dollar amount
16 of the fruits of the offense and the actual out-of-pocket loss to the
17 victim caused by the offense. In making this finding, the court must
18 consider any victim impact statement provided to the court. If the
19 record does not contain sufficient evidence to support such finding or
20 upon request by the defendant, the court must conduct a hearing upon the
21 issue in accordance with the procedure set forth in section 400.30 of
22 the criminal procedure law.

23 S 3. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,
24 as amended by chapter 619 of the laws of 2002, is amended to read as
25 follows:

26 (b) the term "victim" shall include the victim of the offense, the
27 representative of a crime victim as defined in subdivision six of
28 section six hundred twenty-one of the executive law, an individual whose
29 identity was assumed or whose personal identifying information was used
30 in violation of section 190.78, 190.79 or 190.80 of this chapter, THE
31 PARENT OR PARENTS OF A VICTIM OF A HOMICIDE OFFENSE, or any person who
32 has suffered a financial loss as a direct result of the acts of a
33 defendant in violation of section 190.78, 190.79, 190.80, 190.82 or
34 190.83 of this chapter, a good samaritan as defined in section six
35 hundred twenty-one of the executive law and the crime victims' board or
36 other governmental agency that has received an application for or has
37 provided financial assistance or compensation to the victim.

38 S 4. Paragraph (b) of subdivision 6 of section 420.10 of the criminal
39 procedure law, as amended by chapter 618 of the laws of 1992, is amended
40 to read as follows:

41 (b) The district attorney [may, in his or her discretion, and must],
42 upon order of the court, SHALL institute proceedings to collect such
43 fine, restitution or reparation INCLUDING, BUT NOT LIMITED TO, THE
44 RETENTION OF A COLLECTION AGENCY PREVIOUSLY APPROVED BY THE COURT IN
45 ACCORDANCE WITH THE GUIDELINES ESTABLISHED BY THE OFFICE OF COURT ADMIN-
46 ISTRATION.

47 S 5. Subdivision 6 of section 420.10 of the criminal procedure law is
48 amended by adding a new paragraph (c) to read as follows:

49 (C) THE COURT MAY MAKE AN INCOME DEDUCTION ORDER FOR RESTITUTION OR
50 REPARATION ENFORCEMENT UNDER SECTION FIFTY-TWO HUNDRED FORTY-TWO OF THE
51 CIVIL PRACTICE LAW AND RULES.

52 S 6. The section heading of section 5241 of the civil practice law and
53 rules, as added by chapter 809 of the laws of 1985, is amended to read
54 as follows:

55 Income execution for support, RESTITUTION OR REPARATION enforcement.

1 S 7. Subdivision (a) of section 5241 of the civil practice law and
2 rules is amended by adding a new paragraph 1-a to read as follows:

3 1-A. "ORDER OF RESTITUTION OR REPARATION" MEANS ANY ORDER OF A COURT
4 REQUIRING, AS PART OF A SENTENCE IMPOSED UPON A PERSON CONVICTED OF AN
5 OFFENSE, A DEFENDANT TO MAKE RESTITUTION OF THE FRUITS OF HIS OFFENSE OR
6 REPARATION FOR THE LOSS OR DAMAGE CAUSED THEREBY.

7 S 8. Paragraphs 2, 3, 7 and 8 of subdivision (a) of section 5241 of
8 the civil practice law and rules, as added by chapter 809 of the laws of
9 1985, are amended to read as follows:

10 2. "Debtor" means any person directed to make payments by an order of
11 support, RESTITUTION OR REPARATION.

12 3. "Creditor" means any person entitled to enforce an order of
13 support, including a support collection unit OR AN ORDER OF RESTITUTION
14 OR REPARATION.

15 7. "Default" means the failure of a debtor to remit to a creditor
16 three payments on the date due in the full amount directed by [the] AN
17 order of support, RESTITUTION OR REPARATION or the accumulation of
18 arrears equal to or greater than the amount directed to be paid for one
19 month, whichever first occurs.

20 8. "Mistake of fact" means an error in the amount of current support,
21 RESTITUTION OR REPARATION or arrears or in the identity of the debtor or
22 that the order of support, RESTITUTION OR REPARATION does not exist or
23 has been vacated.

24 S 9. Paragraph 1 of subdivision (b) of section 5241 of the civil prac-
25 tice law and rules, as amended by chapter 59 of the laws of 1993, is
26 amended to read as follows:

27 (1) When a debtor is in default, an execution for support enforcement
28 may be issued by the support collection unit, or by the sheriff, the
29 clerk of THE court or the attorney for the creditor as an officer of the
30 court. WHEN A DEBTOR IS IN DEFAULT, AN EXECUTION FOR RESTITUTION OR
31 REPARATION ENFORCEMENT MAY BE ISSUED BY THE SHERIFF, THE CLERK OF THE
32 COURT OR THE ATTORNEY FOR THE CREDITOR AS AN OFFICER OF THE COURT. Where
33 a debtor is receiving or will receive income, an execution for
34 deductions therefrom in amounts not to exceed the limits set forth in
35 subdivision (g) of this section may be served upon an employer or income
36 payor after notice to the debtor. The amount of the deductions to be
37 withheld shall be sufficient to ensure compliance with the direction in
38 the order of support, RESTITUTION OR REPARATION and shall include an
39 additional amount to be applied to the reduction of arrears. The credi-
40 tor may amend the execution before or after service upon the employer or
41 income payor to reflect additional arrears or payments made by the
42 debtor after notice pursuant to subdivision (d) of this section, or to
43 conform the execution to the facts found upon a determination made
44 pursuant to subdivision (e) of this section.

45 S 10. The subdivision heading, the opening paragraph and subparagraph
46 (ii) of paragraph 1 of subdivision (c) of section 5241 of the civil
47 practice law and rules, the subdivision heading as amended by chapter 59
48 of the laws of 1993 and the opening paragraph and subparagraph (ii) of
49 paragraph 1 as amended by chapter 214 of the laws of 1998, are amended
50 to read as follows:

51 Execution for support, RESTITUTION OR REPARATION enforcement; form.

52 The income execution shall contain the caption of the order of
53 support, RESTITUTION OR REPARATION and specify the date that the order
54 of support, RESTITUTION OR REPARATION was entered, the court in which it
55 was entered, the amount of the periodic payments directed, the amount of

1 arrears, the nature of the default and the names of the debtor and cred-
2 itor. In addition, the income execution shall include:

3 (ii) the amount of the deductions to be made therefrom on account of
4 current support, RESTITUTION OR REPARATION and the amount to be applied
5 to the reduction of arrears;

6 S 11. Subdivision (e) of section 5241 of the civil practice law and
7 rules, as amended by chapter 94 of the laws of 2008, is amended to read
8 as follows:

9 (e) Determination of mistake of fact. Where the execution has been
10 issued by the support collection unit, the debtor may assert a mistake
11 of fact and shall have an opportunity to make a submission in support of
12 the objection within fifteen days from service of a copy thereof. Ther-
13 eafter, the agency shall determine the merits of the objection, and
14 shall notify the debtor of its determination within forty-five days
15 after notice to the debtor as provided in subdivision (d) of this
16 section. If the objection is disallowed, the debtor shall be notified
17 that the income execution will be served on the employer or income
18 payor, and of the time that deductions will begin. Where the income
19 execution has been issued by an attorney as officer of the court, or by
20 the sheriff, or by the clerk of the court, the debtor may assert a
21 mistake of fact within fifteen days from service of a copy thereof by
22 application to the supreme court or to the family court having jurisdic-
23 tion in accordance with section four hundred sixty-one of the family
24 court act. If application is made to the family court, such application
25 shall be by petition on notice to the creditor and it shall be heard and
26 determined in accordance with the provisions of section four hundred
27 thirty-nine of the family court act, and a determination thereof shall
28 be made, and the debtor notified thereof within forty-five days of the
29 application. If application is made to the supreme court such applica-
30 tion shall be by order to show cause or motion on notice to the creditor
31 in the action in which the order or judgement sought to be enforced was
32 entered and a determination thereof shall be made, and the debtor noti-
33 fied thereof within forty-five days of the application. WHERE THE
34 INCOME EXECUTION HAS BEEN ISSUED BY AN ATTORNEY AS OFFICER OF THE COURT,
35 OR BY THE SHERIFF, OR BY THE CLERK OF THE COURT TO ENFORCE AN ORDER OF
36 RESTITUTION OR REPARATION, THE DEBTOR MAY ASSERT A MISTAKE OF FACT WITH-
37 IN FIFTEEN DAYS FROM SERVICE OF A COPY THEREOF BY APPLICATION TO THE
38 SUPREME COURT HAVING ISSUED SUCH ORDER. SUCH APPLICATION SHALL BE BY
39 PETITION ON NOTICE TO THE CREDITOR AND, IT SHALL BE HEARD AND DETERMINED
40 IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE FOUR OF THIS CHAPTER, AND A
41 DETERMINATION THEREOF SHALL BE MADE, AND THE DEBTOR NOTIFIED THEREOF
42 WITHIN FORTY-FIVE DAYS OF THE APPLICATION.

43 S 12. The opening paragraph of paragraph 1 of subdivision (g) of
44 section 5241 of the civil practice law and rules, as amended by chapter
45 398 of the laws of 1997, is amended to read as follows:

46 An employer or income payor served with an income execution shall
47 commence deductions from income due or thereafter due to the debtor no
48 later than the first pay period that occurs fourteen days after service
49 of the execution, and shall remit payments to the creditor within seven
50 business days of the date that the debtor is paid. Each payment remit-
51 ted by an employer or income payor shall include, in addition to the
52 identity and social security number of the debtor, the date and amount
53 of each withholding of the debtor's income included in the payment. If
54 the money due to the debtor consists of salary or wages and his or her
55 employment is terminated by resignation or dismissal at any time after
56 service of the execution, the levy shall thereafter be ineffective, and

1 the execution shall be returned, unless the debtor is reinstated or
2 re-employed within ninety days after such termination. An employer must
3 notify the issuer promptly when the debtor terminates employment and
4 provide the debtor's last address and name and address of the new
5 employer, if known. Where the income is compensation paid or payable to
6 the debtor for personal services, the amount of the deductions to be
7 withheld FOR SUPPORT ENFORCEMENT shall not exceed the following:

8 S 13. Subdivision (g) of section 5241 of the civil practice law and
9 rules is amended by adding a new paragraph 5 to read as follows:

10 (5) WHERE THE INCOME IS COMPENSATION PAID OR PAYABLE TO THE DEBTOR FOR
11 PERSONAL SERVICES, THE AMOUNT OF THE DEDUCTIONS TO BE WITHHELD FOR
12 RESTITUTION OR REPARATION SHALL NOT EXCEED FIFTY PERCENT OF THE EARNINGS
13 OF THE DEBTOR REMAINING AFTER THE DEDUCTION THEREFROM OF ANY AMOUNTS
14 REQUIRED BY LAW TO BE WITHHELD ("DISPOSABLE EARNINGS").

15 S 14. The section heading and subdivisions (a) and (b) of section 5242
16 of the civil practice law and rules, as amended by chapter 170 of the
17 laws of 1994, are amended to read as follows:

18 Income deduction order for support, RESTITUTION OR REPARATION enforce-
19 ment. (a) Upon application of a creditor, for good cause shown, and
20 upon such terms as justice may require, the court may correct any
21 defect, irregularity, error or omission in an income execution for
22 support, RESTITUTION OR REPARATION enforcement issued pursuant to
23 section [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article.

24 (b) Upon application of a creditor, for good cause shown, the court
25 may enter an income deduction order for support, RESTITUTION OR REPARA-
26 TION enforcement. In determining good cause, the court may take into
27 consideration evidence of the degree of such debtor's past financial
28 responsibility, credit references, credit history, and any other matter
29 the court considers relevant in determining the likelihood of payment in
30 accordance with the order of support, RESTITUTION OR REPARATION. Proof
31 of default establishes a prima facie case against the debtor, which can
32 be overcome only by proof of the debtor's inability to make the
33 payments. Unless the prima facie case is overcome, the court shall
34 enter an income deduction order for support, RESTITUTION OR REPARATION
35 enforcement pursuant to this section.

36 S 15. Subdivision (g) of section 5242 of the civil practice law and
37 rules, as amended by chapter 170 of the laws of 1994, is amended to read
38 as follows:

39 (g) Where the court issues an income deduction order for RESTITUTION
40 ENFORCEMENT, REPARATION ENFORCEMENT OR support enforcement payable to
41 the support collection unit, as defined in paragraph nine of subdivision
42 (a) of section [5241] FIFTY-TWO HUNDRED FORTY-ONE of this article, each
43 payment remitted by an employer or income payor shall include, in addi-
44 tion to the identity and social security number of the debtor, the date
45 and amount of each withholding of the debtor's income included in the
46 payment.

47 S 16. This act shall take effect on the one hundred twentieth day
48 after it shall have become a law, except that any guidelines necessary
49 for the timely implementation of this act on its effective date shall be
50 established on or before such date.