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

1634

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. TEDISCO -- Multi-Sponsored by -- M. of A. CALHOUN, FITZPATRICK, KOLB -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the correction law and the state finance law, in relation to community safety

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

Section 1. Subdivision 3 of section 60.27 of the penal law, as added by chapter 290 of the laws of 1980, is amended to read as follows:

3. The provisions of sections 400.50, 420.10, 420.20 and 420.30 of the criminal procedure law shall apply in the collection and remission of restitution and reparation.

S 2. The penal law is amended by adding a new section 60.31 to read as follows:

S 60.31 REIMBURSEMENT OF INCARCERATION COSTS.

1. IN ADDITION TO ANY OF THE DISPOSITIONS AUTHORIZED BY THIS ARTICLE, THE COURT MAY, AS PART OF THE SENTENCE IMPOSED UPON A PERSON CONVICTED OF AN OFFENSE AND SENTENCED TO A TERM OF INCARCERATION IN A CORRECTIONAL FACILITY WITHIN THE STATE, REQUIRE THE DEFENDANT TO REIMBURSE THE STATE FOR THE COSTS OF PROVIDING FOOD, SHELTER AND CLOTHING WHILE SO INCARCERATED. SUCH REIMBURSEMENT SHALL NOT EXCEED THE PER CAPITA COSTS OF PROVIDING FOOD AND SHELTER TO AN INMATE IN SAID FACILITY AS DETERMINED BY THE COMMISSIONER OF CORRECTIONAL SERVICES.

2. WHENEVER THE COURT REQUIRES REIMBURSEMENT A FINDING MUST BE MADE IN ACCORDANCE WITH SECTION 400.50 OF THE CRIMINAL PROCEDURE LAW.

3. FOR THE PURPOSES OF IMPOSITION, DETERMINATION AND REMITTANCE OF REIMBURSEMENT, AS PROVIDED IN THIS CHAPTER, THE TERM "OFFENSE" SHALL INCLUDE THE OFFENSE FOR WHICH A DEFENDANT WAS CONVICTED, AS WELL AS ANY OTHER OFFENSE THAT IS PART OF THE SAME CRIMINAL TRANSACTION OR THAT IS

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

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CONTAINED IN ANY OTHER ACCUSATORY INSTRUMENT DISPOSED OF BY ANY PLEA OF GUILTY BY THE DEFENDANT TO AN OFFENSE.

S 3. Subdivision 1 of section 390.30 of the criminal procedure law is amended to read as follows:

1. The investigation. The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, education, and personal habits. ECONOMIC STATUS SHALL INCLUDE ALL AGGREGATE ADJUSTED GROSS INCOME AS DEFINED BY THE TAX LAW, EXCEPT TO THE EXTENT ANY SUCH INCOME IS EXCLUDED BY FEDERAL STATUTE, THAT HAS BEEN OR IS EXPECTED TO BE RECEIVED BY THE DEFENDANT AND EXCEPT FOR ANY MONIES THAT THE DEFENDANT MAY EARN FOR WORK PERFORMED WHILE HE OR SHE IS AN INMATE. IT SHALL ALSO INCLUDE ANY MONIES FROM WHATEVER SOURCE, RECEIVED BY THE DEFENDANT BY WAY OF JUDGMENT, SETTLEMENT, GIFT, DEVISE OR OTHERWISE. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence, and must include any matter the court directs to be included.

S 4. The criminal procedure law is amended by adding a new section 400.50 to read as follows:

S 400.50 PROCEDURE FOR DETERMINING THE COMMUNITY REIMBURSEMENT ACCOUNT OF AN INMATE.

1. HEARING. IN ANY CASE WHERE THE COURT FINDS THAT THE SENTENCE SHALL INCLUDE A COURT ORDER THAT PORTIONS OF THE DEFENDANT'S INCOME, AS DEFINED AND DETERMINED IN SECTION 390.30 OF THIS CHAPTER, BE DISTRIBUTED FOR THE PURPOSES OF RESTITUTION AND REPARATION PURSUANT TO SECTION 60.27 OF THE PENAL LAW AND REIMBURSEMENT TO THE STATE FOR FUTURE COSTS OF FOOD, SHELTER AND CLOTHING INCURRED BY THE INCARCERATION OF SUCH DEFENDANT AS DEFINED IN SECTION 60.31 OF THE PENAL LAW, THE COURT SHALL ORDER A HEARING TO ESTABLISH THE AMOUNT OF MONEY TO BE PAID INTO AN INDIVIDUAL ACCOUNT TO THE CREDIT OF THE DEFENDANT TO BE KNOWN AS THE COMMUNITY REIMBURSEMENT ACCOUNT AND TO DETERMINE THE AMOUNTS THEREOF TO BE DISTRIBUTED AS PROVIDED BY THIS SECTION. THE ORDER FOR THE HEARING MUST BE FILED WITH THE CLERK OF THE COURT AND MUST SPECIFY A DATE FOR THE HEARING NOT LESS THAN TEN DAYS AFTER THE FILING OF THE ORDER.

2. NOTICE OF HEARING. UPON RECEIPT OF THE ORDER, THE CLERK OF THE COURT MUST SEND A NOTICE OF THE HEARING TO THE DEFENDANT, HIS OR HER COUNSEL AND THE DISTRICT ATTORNEY. SUCH NOTICE MUST SPECIFY THE TIME AND PLACE OF THE HEARING AND THE FACT THAT THE PURPOSE THEREOF IS TO DETERMINE THE DEFENDANT'S INCOME AND THE AMOUNTS THEREOF TO BE CREDITED TO AND FROM THE COMMUNITY REIMBURSEMENT ACCOUNT FOR RESTITUTION AND REPARATION AND REIMBURSEMENT.

3. HEARING; STATEMENT. WHEN THE DEFENDANT APPEARS FOR THE HEARING THE COURT MUST ASK HIM OR HER WHETHER HE OR SHE WISHES TO MAKE ANY STATEMENT WITH RESPECT TO THE PRE-SENTENCE INVESTIGATION STATING HIS OR HER ECONOMIC AND INCOME STATUS. IF THE DEFENDANT DOES MAKE A STATEMENT, THE COURT MAY ACCEPT SUCH STATEMENT AND BASE ITS FINDING THEREON. WHERE THE DEFENDANT DOES NOT MAKE A STATEMENT, OR WHERE THE COURT DOES NOT ACCEPT THE DEFENDANT'S STATEMENT, IT MAY PROCEED WITH THE HEARING.

4. BURDEN AND STANDARD OF PROOF, EVIDENCE. AT ANY HEARING HELD PURSUANT TO THIS SECTION THE BURDEN OF PROOF RESTS UPON THE PEOPLE. A FINDING AS TO THE AMOUNT OF A DEFENDANT'S INCOME MUST BE BASED UPON DOCUMENTED EVIDENCE. ANY RELEVANT EVIDENCE, NOT LEGALLY PRIVILEGED, MAY BE RECEIVED REGARDLESS OF ITS ADMISSIBILITY UNDER THE EXCLUSIONARY RULES OF EVIDENCE.

5. RULING. THE COURT MAY ORDER THAT WHILE THE DEFENDANT IS INCARCERATED IN A CORRECTIONAL FACILITY WITHIN THE STATE, HIS OR HER INCOME SHALL BE DEPOSITED IN HIS OR HER COMMUNITY REIMBURSEMENT ACCOUNT IN A BANK AS APPROVED BY THE COMPTROLLER AND PURSUANT TO SECTION ONE HUNDRED SIXTEEN-A OF THE CORRECTION LAW. THE COURT MAY ORDER PERIODIC PAYMENTS TO BE MADE IN A TIMELY AND PROPORTIONATE MANNER ACCORDING TO THE FOLLOWING PRIORITIES:

(A) FOR RESTITUTION AND REPARATION ACCORDING TO SECTION 60.27 OF THE PENAL LAW TO ANY VICTIM OF THE CRIME COMMITTED BY THE DEFENDANT; AND

(B) FOR THE REIMBURSEMENT TO THE STATE OF THE COSTS TO BE INCURRED BY THE CORRECTIONAL FACILITY IN WHICH THE DEFENDANT IS INCARCERATED FOR PROVIDING FOOD, SHELTER AND CLOTHING DURING SUCH PERIOD. IN NO CASE SHALL THIS REIMBURSEMENT EXCEED THE PER CAPITA COST OF PROVIDING FOOD, SHELTER AND CLOTHING TO AN INMATE IN SUCH CORRECTIONAL FACILITY AS DETERMINED BY THE COMMISSIONER OF CORRECTIONAL SERVICES WHICH AMOUNTS SHALL BE TRANSFERRED TO AND DEPOSITED INTO THE GENERAL FUND TO THE CREDIT OF THE COMMUNITY SAFETY FUND ESTABLISHED PURSUANT TO SECTION NINETY-ONE-H OF THE STATE FINANCE LAW.

THE ABOVE AMOUNTS SO PROPORTIONED SHALL BE REMITTED TO THE APPROPRIATE OFFICIAL AS DESIGNATED BY THE COURT FOR DISTRIBUTION TO THE PROPER PERSON. IN THE EVENT THAT THERE ARE MONIES REMAINING TO THE CREDIT OF THE DEFENDANT AFTER HIS OR HER INCARCERATION IS CONCLUDED, THEY SHALL BE MADE PAYABLE BY THE COMPTROLLER TO THE DEFENDANT UPON HIS OR HER RELEASE SUBJECT TO THE CERTIFICATION OF THE SUPERINTENDENT OF THE FACILITY IN WHICH HE OR SHE WAS INCARCERATED.

6. APPEAL. THE DEFENDANT MAY APPEAL TO THE COURT FOR RECONSIDERATION OF THE ABOVE FINDINGS RELATING TO HIS OR HER COMMUNITY REIMBURSEMENT ACCOUNT WITHIN THIRTY DAYS OF ANY SUBSTANTIVE CHANGE IN HIS OR HER INCOME. THE COURT SHALL RENDER A DECISION IN KEEPING WITH THE ABOVE PROVISIONS NO LATER THAN NINETY DAYS AFTER THE FILING OF SUCH APPEAL.

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

1. Alternative methods of payment. When the court imposes a fine upon an individual, it shall designate the official other than the district attorney to whom payment is to be remitted. When the court imposes restitution or reparation and requires that the defendant pay a designated surcharge thereon pursuant to the provisions of subdivision eight of section 60.27 of the penal law, it shall designate the official or organization other than the district attorney, selected pursuant to subdivision eight of this section, to whom payment is to be remitted. (a) The court may direct:

(i) That the defendant pay the entire amount at the time sentence is pronounced;

(ii) That the defendant pay the entire amount at some later date; or

(iii) That the defendant pay a specified portion at designated periodic intervals ACCORDING TO THE PROVISIONS OF SECTION 400.50 OF THIS TITLE.

(b) When the court imposes both (i) a fine and (ii) restitution or reparation and such designated surcharge upon an individual and imposes a schedule of payments, the court shall also direct that payment of restitution or reparation and such designated surcharge take priority over the payment of the fine.

(c) Where the defendant is sentenced to a period of probation as well as a fine, restitution or reparation and such designated surcharge, the

court may direct that payment of the fine, restitution or reparation and such designated surcharge be a condition of the sentence.

(d) When a court requires that restitution or reparation and such designated surcharge be made it must direct that notice be given to a person or persons to whom it is to be paid of the conditions under which it is to be remitted; the name and address of the public official or organization to whom it is to be remitted for payment and the amount thereof; and the availability of civil proceedings for collection under subdivision six of this section. An official or organization designated to receive payment under this subdivision must report to the court any failure to comply with the order and shall cooperate with the district attorney pursuant to his responsibilities under subdivision six of this section.

(e) Where cash bail has been posted by the defendant as the principal and is not forfeited or assigned, the court at its discretion may order that bail be applied toward payment of any order of restitution or reparation or fine. If the court so orders, the bail proceeds shall be applied to payment first of the restitution or reparation and then of the fine.

S 6. Subdivision 1 of section 112 of the correction law, as amended by chapter 476 of the laws of 1970, is amended to read as follows:

1. The commissioner [of correction] shall have the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. He shall have the power and it shall be his duty to inquire into all matters connected with said correctional facilities. He shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility, as he may deem proper, and shall cause such rules and regulations to be recorded by the superintendent of the facility, and a copy thereof to be furnished to each employee assigned to the facility. He shall also prescribe a system of accounts and records to be kept at each correctional facility, which system shall be uniform at all of said facilities, and he shall also make rules and regulations for a record of photographs and other means of identifying each inmate received into said facilities. He shall appoint and remove, subject to the civil service law and rules, subordinate officers and other employees of the department who are assigned to correctional facilities. FURTHER, HE IS EMPOWERED TO PROMULGATE NECESSARY RULES AND REGULATIONS TO IMPLEMENT AND CARRY OUT THE PURPOSES OF THE COMMUNITY REIMBURSEMENT ACCOUNT AS DEFINED AND ESTABLISHED IN SECTION ONE HUNDRED SIXTEEN-A OF THIS ARTICLE AND SECTION 400.50 OF THE CRIMINAL PROCEDURE LAW.

S 7. Section 116 of the correction law, as amended by section 42 of part A-1 of chapter 56 of the laws of 2010, is amended to read as follows:

S 116. Inmates' funds. The warden or superintendent of each of the institutions within the jurisdiction of the department [of correction] shall deposit at least once in each week to his credit as such warden, or superintendent, in such bank or banks as may be designated by the comptroller, all the moneys received by him as such warden, or superintendent, as inmates' funds, and send to the comptroller and also to the commissioner [of correction] monthly, a statement showing the amount so received and deposited. Such statement of deposits shall be certified

by the proper officer of the bank receiving such deposit or deposits. The warden, or superintendent, shall also verify by his affidavit that the sum so deposited is all the money received by him as inmates' funds during the month. Any bank in which such deposits shall be made shall, before receiving any such deposits, file a bond with the comptroller of the state, subject to his approval, for such sum as he shall deem necessary. [Upon a certificate of approval issued by the director of the budget, pursuant to the provisions of section fifty-three of the state finance law, the] THE amount of interest, if any, heretofore accrued and hereafter to accrue on moneys so deposited, heretofore and hereafter credited to the warden, or superintendent, by the bank from time to time, shall be available for expenditure by the warden, or superintendent, subject to the direction of the commissioner, for welfare work among the inmates in his custody. The withdrawal of moneys so deposited by such warden, or superintendent, as inmates' funds, including any interest so credited, shall be subject to his check. Each warden, or superintendent, shall each month provide the comptroller and also the commissioner with a record of all withdrawals from inmates' funds. As used in this section, the term "inmates' funds" means the funds in the possession of the inmate at the time of his admission into the institution, funds earned by him as provided in section one hundred eighty-seven of this chapter and any other funds received by him or on his behalf and deposited with such warden or superintendent in accordance with the rules and regulations of the commissioner EXCEPT FOR THE FUNDS SPECIFIED IN SECTION ONE HUNDRED SIXTEEN-A OF THIS ARTICLE. Whenever the total unencumbered value of funds in an inmate's account exceeds ten thousand dollars, the superintendent shall give written notice to the office of victim services.

S 8. The correction law is amended by adding a new section 116-a to read as follows:

S 116-A. COMMUNITY REIMBURSEMENT ACCOUNT. 1. EACH INMATE OF A CORRECTIONAL FACILITY WITHIN THE STATE WHO HAS RECEIVED A SENTENCE ACCORDING TO THE PROVISIONS OF SECTIONS 60.27 AND 60.31 OF THE PENAL LAW AND HAS BEEN ORDERED TO MAKE PAYMENTS FOR RESTITUTION AND REPARATION AND REIMBURSEMENT TO THE STATE FOR COSTS OF INCARCERATION PURSUANT TO THE PROVISIONS OF SECTION 400.50 OF THE CRIMINAL PROCEDURE LAW SHALL HAVE HIS OR HER INCOME DEPOSITED IN A BANK APPROVED BY THE STATE COMPTROLLER IN AN ACCOUNT TO BE KNOWN AS THE COMMUNITY REIMBURSEMENT ACCOUNT.

2. THE SUPERINTENDENT OF THE FACILITY IN WHICH THE INMATE IS INCARCERATED SHALL DEPOSIT THE INCOME OF THE INMATE IN SUCH BANK ON A REGULAR BASIS BUT IN NO CASE LESS THAN ONCE PER MONTH. REMITTANCES SHALL BE MADE ON A TIMELY BASIS TO THE APPROPRIATE OFFICIAL AS ORDERED BY THE COURT.

3. THE SUPERINTENDENT SHALL KEEP AN ACCURATE FISCAL RECORD OF THE DEPOSITS AND DISBURSEMENTS FROM THE INMATE'S COMMUNITY REIMBURSEMENT ACCOUNT AND SHALL SEND A MONTHLY STATEMENT SHOWING THE AMOUNTS RECEIVED, DEPOSITED AND DISBURSED AS ORDERED BY THE COURT AND CERTIFIED BY THE PROPER OFFICIAL OF THE BANK, TO THE COMPTROLLER AND TO THE COMMISSIONER. THE SUPERINTENDENT SHALL ALSO VERIFY BY HIS OR HER AFFIDAVIT THAT THE SUM SO DEPOSITED IS ALL THE MONEY RECEIVED BY HIM OR HER FOR THE INMATE'S COMMUNITY REIMBURSEMENT ACCOUNT AS DESIGNATED BY THE COURT ACCORDING TO SECTION 400.50 OF THE CRIMINAL PROCEDURE LAW. THESE RECORDS SHALL BE OPEN AT ALL TIMES TO THE COURT, TO THE COMMISSIONER AND TO THE COMPTROLLER AND THEIR AUTHORIZED REPRESENTATIVES.

4. IN NO CASE SHALL ANY OF THE MONIES IN THIS ACCOUNT BE USED BY THE DEPARTMENT OR THE FACILITY FOR ANY PURPOSE OTHER THAN THOSE DESIGNATED IN SUBDIVISION ONE OF THIS SECTION.

S 9. The state finance law is amended by adding a new section 91-h to read as follows:

S 91-H. COMMUNITY SAFETY FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE, A SPECIAL FUND TO BE KNOWN AS THE "COMMUNITY SAFETY FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONEYS RECEIVED BY THE STATE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF SECTION 400.50 OF THE CRIMINAL PROCEDURE LAW AND ALL OTHER GRANTS, BEQUESTS OR OTHER MONEYS APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW.

3. MONEYS IN THE FUND SHALL BE KEPT SEPARATE AND APART AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMPTROLLER AND SHALL ONLY BE EXPENDED HEREIN AND IN SUCH AMOUNTS AS APPROVED BY THE DIVISION OF THE BUDGET.

4. THE MONEYS RECEIVED BY SUCH FUND SHALL BE EXPENDED PURSUANT TO APPROPRIATION ONLY TO REIMBURSE COSTS INCURRED BY LOCAL GOVERNMENTS FOR PERSONNEL SERVICES ASSOCIATED WITH THE HIRING AND RETENTION OF NEW POLICE OFFICERS WHOSE PRIMARY RESPONSIBILITY SHALL BE TO PREVENT VIOLENT AND SERIOUS CRIMES. NONE OF THE MONEYS EXPENDED PURSUANT TO THIS SUBDIVISION SHALL BE FOR THE REIMBURSEMENT OF COSTS INCURRED BY AGENCIES OF CITIES WITH POPULATIONS OF ONE MILLION OR MORE.

5. MONEY MAY BE EXPENDED PURSUANT TO THIS SECTION ONLY IN ACCORDANCE WITH PLANS PREPARED BY SUCH LOCAL GOVERNMENTS AND APPROVED BY THE COMMUNITY SAFETY COUNCIL ESTABLISHED PURSUANT TO SUBDIVISION SIX OF THIS SECTION ACCORDING TO THE STANDARDS PROVIDED FOR IN SUBDIVISION SEVEN OF THIS SECTION.

6. THE COMMUNITY SAFETY COUNCIL SHALL CONSIST OF SIX MEMBERS APPOINTED AS FOLLOWS: TWO MEMBERS, TO BE APPOINTED BY THE GOVERNOR ON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE; TWO MEMBERS, TO BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY; ONE MEMBER, TO BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE; AND ONE MEMBER, TO BE APPOINTED UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY. THE TERM OF APPOINTMENT SHALL BE FOR A PERIOD OF TWO YEARS. APPOINTMENT TO THE COUNCIL SHALL NOT CONSTITUTE THE HOLDING OF A PUBLIC OFFICE. THE COUNCIL SHALL REPORT ANNUALLY TO THE LEGISLATURE ON THE EXPENDITURE OF MONEYS FROM THE COMMUNITY SAFETY FUND AND THE ACTIVITIES FINANCED WITH SUCH MONEYS.

7. MONEYS SHALL BE GRANTED TO LOCAL GOVERNMENTS WHO ACCORDING TO THE MOST RECENT AVAILABLE STATISTICS DEMONSTRATE TO THE COUNCIL THAT SUCH LOCAL GOVERNMENT HAS BEEN SUBJECT TO A SIGNIFICANT INCREASE IN VIOLENT OR SERIOUS CRIMES OVER THE NUMBER OF SUCH CRIMES AS REPORTED IN THE TWO THOUSAND FOUR CALENDAR YEAR. IN ORDER TO IMPLEMENT AND ASSIST IN THE IMPLEMENTATION OF THE PROVISIONS OF THIS SUBDIVISION THE COUNCIL MAY REQUEST AND SHALL RECEIVE THE ASSISTANCE OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

S 10. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.