

4393--A

2011-2012 Regular Sessions

I N   S E N A T E

April 4, 2011

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Introduced by Sens. FLANAGAN, DeFRANCISCO, GOLDEN, LARKIN, MAZIARZ, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to a defendant profiting from his or her crime

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

1     Section 1. Subdivisions 1 and 2 of section 632-a of the executive law,  
2     as amended by section 24 of part A-1 of chapter 56 of the laws of 2010,  
3     paragraph (c) of subdivision 1 as amended by section 100 and the opening  
4     paragraph of paragraph (b) of subdivision 2 as amended by section 101 of  
5     subpart B of part C of chapter 62 of the laws of 2011, are amended to  
6     read as follows:  
7     1. For the purposes of this section:  
8     (a) "Crime" means (i) any felony defined in the laws of the state; or  
9     (ii) an offense in any jurisdiction which includes all of the essential  
10    elements of any felony defined in the laws of this state and: (A) the  
11    crime victim, as defined in subparagraph (i) of paragraph (d) of this  
12    subdivision, was a resident of this state at the time of the commission  
13    of the offense; or (B) the act or acts constituting the offense occurred  
14    in whole or in part in this state.  
15    (b) "Profits from a crime" means (i) any property obtained through or  
16    income generated from the commission of a crime of which the defendant  
17    was convicted OR FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE  
18    BY REASON OF MENTAL DISEASE OR DEFECT; (ii) any property obtained by or  
19    income generated from the sale, conversion or exchange of proceeds of a

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

LBD10480-06-2

1 crime, including any gain realized by such sale, conversion or exchange;  
2 and (iii) any property which the defendant obtained or income generated  
3 as a result of having committed the crime, including any assets obtained  
4 through the use of unique knowledge obtained during the commission of,  
5 or in preparation for the commission of, a crime, as well as any proper-  
6 ty obtained by or income generated from the sale, conversion or exchange  
7 of such property and any gain realized by such sale, conversion or  
8 exchange.

9 (c) "Funds of a convicted person" means all funds and property  
10 received from any source by a person convicted of a specified crime, OR  
11 FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE BY REASON OF  
12 MENTAL DISEASE OR DEFECT or by the representative of such person as  
13 defined in subdivision six of section six hundred twenty-one of this  
14 article excluding child support and earned income, where such person:

15 (i) is an inmate serving a sentence with the department of corrections  
16 and community supervision or a prisoner confined at a local correctional  
17 facility or federal correctional institute, and includes funds that a  
18 superintendent, sheriff or municipal official receives on behalf of an  
19 inmate or prisoner and deposits in an inmate account to the credit of  
20 the inmate pursuant to section one hundred sixteen of the correction law  
21 or deposits in a prisoner account to the credit of the prisoner pursuant  
22 to section five hundred-c of the correction law; or

23 (ii) is not an inmate or prisoner but who is serving a sentence of  
24 probation or conditional discharge or is presently subject to an undisc-  
25 charged indeterminate, determinate or definite term of imprisonment or  
26 period of post-release supervision or term of supervised release, but  
27 shall include earned income earned during a period in which such person  
28 was not in compliance with the conditions of his or her probation,  
29 parole, conditional release, period of post-release supervision by the  
30 department of corrections and community supervision or term of super-  
31 vised release with the United States probation office or United States  
32 parole commission. For purposes of this subparagraph, such period of  
33 non-compliance shall be measured, as applicable, from the earliest date  
34 of delinquency determined by the department of corrections and community  
35 supervision, or from the earliest date on which a declaration of delin-  
36 quency is filed pursuant to section 410.30 of the criminal procedure law  
37 and thereafter sustained, or from the earliest date of delinquency  
38 determined in accordance with applicable federal law, rules or regu-  
39 lations, and shall continue until a final determination sustaining the  
40 violation has been made by the trial court, the department of  
41 corrections and community supervision, or appropriate federal authority;  
42 or

43 (iii) is no longer subject to a sentence of probation or conditional  
44 discharge or indeterminate, determinate or definite term of imprisonment  
45 or period of post-release supervision or term of supervised release, and  
46 where within the previous three years: the full or maximum term or peri-  
47 od terminated or expired or such person was granted a discharge by the  
48 state board of parole or the department of corrections and community  
49 supervision pursuant to applicable law, or granted a discharge or termi-  
50 nation from probation pursuant to applicable law or granted a discharge  
51 or termination under applicable federal or state law, rules or regu-  
52 lations prior to the expiration of such full or maximum term or period;  
53 and includes only: (A) those funds paid to such person as a result of  
54 any interest, right, right of action, asset, share, claim, recovery or  
55 benefit of any kind that the person obtained, or that accrued in favor  
56 of such person, prior to the expiration of such sentence, term or peri-

1 od; (B) any recovery or award collected in a lawsuit after expiration of  
2 such sentence where the right or cause of action accrued prior to the  
3 expiration or service of such sentence; and (C) earned income earned  
4 during a period in which such person was not in compliance with the  
5 conditions of his or her probation, parole, conditional release, period  
6 of post-release supervision by the department of corrections and commu-  
7 nity supervision or term of supervised release with the United States  
8 probation office or United States parole commission. For purposes of  
9 this subparagraph, such period of non-compliance shall be measured, as  
10 applicable, from the earliest date of delinquency determined by the  
11 department of corrections and community supervision, or from the earli-  
12 est date on which a declaration of delinquency is filed pursuant to  
13 section 410.30 of the criminal procedure law and thereafter sustained,  
14 or from the earliest date of delinquency determined in accordance with  
15 applicable federal law, rules or regulations, and shall continue until a  
16 final determination sustaining the violation has been made by the trial  
17 court, the department of corrections and community supervision, or  
18 appropriate federal authority; OR

19 (IV) IS COMMITTED TO A SECURE FACILITY DESIGNATED BY THE COMMISSIONER  
20 OF MENTAL HEALTH OR SUBJECT TO TREATMENT WHICH MAY INCLUDE CONDITIONAL  
21 OR UNCONDITIONAL RELEASE.

22 (d) "Crime victim" means (i) the victim of a crime; (ii) the represen-  
23 tative of a crime victim as defined in subdivision six of section six  
24 hundred twenty-one of this article; (iii) a good samaritan as defined in  
25 subdivision seven of section six hundred twenty-one of this article;  
26 (iv) the office of victim services or other governmental agency that has  
27 received an application for or provided financial assistance or compen-  
28 sation to the victim.

29 (e) (i) "Specified crime" means:

30 (A) a violent felony offense as defined in subdivision one of section  
31 70.02 of the penal law;

32 (B) a class B felony offense defined in the penal law;

33 (C) an offense for which a merit time allowance may not be received  
34 against the sentence pursuant to paragraph (d) of subdivision one of  
35 section eight hundred three of the correction law;

36 (D) an offense defined in the penal law that is titled in such law as  
37 a felony in the first degree;

38 (E) grand larceny in the fourth degree as defined in subdivision six  
39 of section 155.30 or grand larceny in the second degree as defined in  
40 section 155.40 of the penal law;

41 (F) criminal possession of stolen property in the second degree as  
42 defined in section 165.52 of the penal law; or

43 (G) an offense in any jurisdiction which includes all of the essential  
44 elements of any of the crimes specified in clauses (A) through (F) of  
45 this subparagraph and either the crime victim as defined in subparagraph  
46 (i) of paragraph (d) of this subdivision was a resident of this state at  
47 the time of the commission of the offense or the act or acts constitut-  
48 ing the crime occurred in whole or in part in this state.

49 (ii) Notwithstanding the provisions of subparagraph (i) of this para-  
50 graph a "specified crime" shall not mean or include an offense defined  
51 in any of the following articles of the penal law: articles one hundred  
52 fifty-eight, one hundred seventy-eight, two hundred twenty, two hundred  
53 twenty-one, two hundred twenty-five, and two hundred thirty.

54 (f) "Earned income" means income derived from one's own labor or  
55 through active participation in a business as distinguished from income  
56 from, for example, dividends or investments.

1 2. (a) Every person, firm, corporation, partnership, association or  
2 other legal entity, or representative of such person, firm, corporation,  
3 partnership, association or entity, which knowingly contracts for, pays,  
4 or agrees to pay: (i) any profits from a crime as defined in paragraph  
5 (b) of subdivision one of this section, to a person charged with or  
6 convicted OR FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE BY  
7 REASON OF MENTAL DISEASE OR DEFECT, of that crime, or to the represen-  
8 tative of such person as defined in subdivision six of section six  
9 hundred twenty-one of this article; or (ii) any funds of a convicted  
10 person, as defined in paragraph (c) of subdivision one of this section,  
11 where such conviction is for a specified crime and the value, combined  
12 value or aggregate value of the payment or payments of such funds  
13 exceeds or will exceed ten thousand dollars, shall give written notice  
14 to the office of the payment or obligation to pay as soon as practicable  
15 after discovering that the payment or intended payment constitutes  
16 profits from a crime or funds of a convicted person.

17 (b) Notwithstanding subparagraph (ii) of paragraph (a) of this subdi-  
18 vision, whenever the payment or obligation to pay involves funds of a  
19 convicted person that a superintendent, sheriff or municipal official  
20 receives or will receive on behalf of an inmate serving a sentence with  
21 the department of corrections and community supervision or prisoner  
22 confined at a local correctional facility and deposits or will deposit  
23 in an inmate account to the credit of the inmate or in a prisoner  
24 account to the credit of the prisoner, and the value, combined value or  
25 aggregate value of such funds exceeds or will exceed ten thousand  
26 dollars, the superintendent, sheriff or municipal official shall also  
27 give written notice to the office.

28 Further, whenever the state or subdivision of the state makes payment  
29 or has an obligation to pay funds of a convicted person, as defined in  
30 subparagraph (ii) [or], (iii) OR (IV) of paragraph (c) of subdivision  
31 one of this section, and the value, combined value or aggregate value of  
32 such funds exceeds or will exceed ten thousand dollars, the state or  
33 subdivision of the state shall also give written notice to the office.

34 In all other instances where the payment or obligation to pay involves  
35 funds of a convicted person, as defined in subparagraph (ii) [or], (iii)  
36 OR (IV) of paragraph (c) of subdivision one of this section, and the  
37 value, combined value or aggregate value of such funds exceeds or will  
38 exceed ten thousand dollars, the convicted person who receives or will  
39 receive such funds, or the representative of such person as defined in  
40 subdivision six of section six hundred twenty-one of this article, shall  
41 give written notice to the office.

42 (c) The office, upon receipt of notice of a contract, an agreement to  
43 pay or payment of profits from a crime or funds of a convicted person  
44 pursuant to paragraph (a) or (b) of this subdivision, or upon receipt of  
45 notice of funds of a convicted person from the superintendent, sheriff  
46 or municipal official of the facility where the inmate or prisoner is  
47 confined pursuant to section one hundred sixteen or five hundred-c of  
48 the correction law, shall notify all known crime victims of the exist-  
49 ence of such profits or funds at their last known address.

50 S 2. This act shall take effect immediately.