

5506

2013-2014 Regular Sessions

I N A S S E M B L Y

February 28, 2013

Introduced by M. of A. GABRYSZAK, CASTRO, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. SWEENEY, TITUS, 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.

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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 THE court must make a finding as to the dollar
16 amount of the fruits of the offense and the actual out-of-pocket loss to
17 the 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 313 of the laws of 2011, 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 office of victim
36 services or other governmental agency that has received an application
37 for or has provided financial assistance or compensation to the victim.
38 A victim shall also mean any owner or lawful producer of a master
39 recording, or a trade association that represents such owner or lawful
40 producer, that has suffered injury as a result of an offense as defined
41 in article two hundred seventy-five of this chapter.

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

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

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

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

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

4 Income execution for support, RESTITUTION OR REPARATION enforcement.

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

7 1-A. "ORDER OF RESTITUTION OR REPARATION" MEANS ANY ORDER OF A COURT
8 REQUIRING, AS PART OF A SENTENCE IMPOSED UPON A PERSON CONVICTED OF AN
9 OFFENSE, A DEFENDANT TO MAKE RESTITUTION OF THE FRUITS OF HIS OFFENSE OR
10 REPARATION FOR THE LOSS OR DAMAGE CAUSED THEREBY.

11 S 8. Paragraphs 2, 3, 7 and 8 of subdivision (a) of section 5241 of
12 the civil practice law and rules, as added by chapter 809 of the laws of
13 1985, are amended to read as follows:

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

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

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

24 8. "Mistake of fact" means an error in the amount of current support,
25 RESTITUTION OR REPARATION or arrears or in the identity of the debtor or
26 that the order of support, RESTITUTION OR REPARATION does not exist or
27 has been vacated.

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

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

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

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

1 The income execution shall contain the caption of the order of
2 support, RESTITUTION OR REPARATION and specify the date that the order
3 of support, RESTITUTION OR REPARATION was entered, the court in which it
4 was entered, the amount of the periodic payments directed, the amount of
5 arrears, the nature of the default and the names of the debtor and cred-
6 itor. In addition, the income execution shall include:

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

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

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

47 S 12. The opening paragraph of paragraph 1 of subdivision (g) of
48 section 5241 of the civil practice law and rules, as amended by chapter
49 398 of the laws of 1997, is amended to read as follows:

50 An employer or income payor served with an income execution shall
51 commence deductions from income due or thereafter due to the debtor no
52 later than the first pay period that occurs fourteen days after service
53 of the execution, and shall remit payments to the creditor within seven
54 business days of the date that the debtor is paid. Each payment remit-
55 ted by an employer or income payor shall include, in addition to the
56 identity and social security number of the debtor, the date and amount

1 of each withholding of the debtor's income included in the payment. If
2 the money due to the debtor consists of salary or wages and his or her
3 employment is terminated by resignation or dismissal at any time after
4 service of the execution, the levy shall thereafter be ineffective, and
5 the execution shall be returned, unless the debtor is reinstated or
6 re-employed within ninety days after such termination. An employer must
7 notify the issuer promptly when the debtor terminates employment and
8 provide the debtor's last address and name and address of the new
9 employer, if known. Where the income is compensation paid or payable to
10 the debtor for personal services, the amount of the deductions to be
11 withheld FOR SUPPORT ENFORCEMENT shall not exceed the following:

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

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

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

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

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

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

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

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