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

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2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

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:

Section 1. Subdivisions 1 and 2 of section 632-a of the executive law, as amended by section 24 of part A-1 of chapter 56 of the laws of 2010, paragraph (c) of subdivision 1 as amended by section 100 and the opening paragraph of paragraph (b) of subdivision 2 as amended by section 101 of subpart B of part C of chapter 62 of the laws of 2011, are amended to read as follows:

1. For the purposes of this section:

(a) "Crime" means (i) any felony defined in the laws of the state; or (ii) an offense in any jurisdiction which includes all of the essential elements of any felony defined in the laws of this state and: (A) the crime victim, as defined in subparagraph (i) of paragraph (d) of this subdivision, was a resident of this state at the time of the commission of the offense; or (B) the act or acts constituting the offense occurred in whole or in part in this state.

(b) "Profits from a crime" means (i) any property obtained through or income generated from the commission of a crime of which the defendant was convicted OR FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT; (ii) any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such sale, conversion or exchange; and (iii) any property which the defendant obtained or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, a crime, as well as any proper-

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

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ty obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

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

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

(ii) is not an inmate or prisoner but who is serving a sentence of probation or conditional discharge or is presently subject to an undischarged indeterminate, determinate or definite term of imprisonment or period of post-release supervision or term of supervised release, but shall include earned income earned during a period in which such person was not in compliance with the conditions of his or her probation, parole, conditional release, period of post-release supervision by the department of corrections and community supervision or term of supervised release with the United States probation office or United States parole commission. For purposes of this subparagraph, such period of non-compliance shall be measured, as applicable, from the earliest date of delinquency determined by the department of corrections and community supervision, or from the earliest date on which a declaration of delinquency is filed pursuant to section 410.30 of the criminal procedure law and thereafter sustained, or from the earliest date of delinquency determined in accordance with applicable federal law, rules or regulations, and shall continue until a final determination sustaining the violation has been made by the trial court, the department of corrections and community supervision, or appropriate federal authority; or

(iii) is no longer subject to a sentence of probation or conditional discharge or indeterminate, determinate or definite term of imprisonment or period of post-release supervision or term of supervised release, and where within the previous three years: the full or maximum term or period terminated or expired or such person was granted a discharge by the state board of parole or the department of corrections and community supervision pursuant to applicable law, or granted a discharge or termination from probation pursuant to applicable law or granted a discharge or termination under applicable federal or state law, rules or regulations prior to the expiration of such full or maximum term or period; and includes only: (A) those funds paid to such person as a result of any interest, right, right of action, asset, share, claim, recovery or benefit of any kind that the person obtained, or that accrued in favor of such person, prior to the expiration of such sentence, term or period; (B) any recovery or award collected in a lawsuit after expiration of such sentence where the right or cause of action accrued prior to the expiration or service of such sentence; and (C) earned income earned during a period in which such person was not in compliance with the conditions of his or her probation, parole, conditional release, period

of post-release supervision by the department of corrections and community supervision or term of supervised release with the United States probation office or United States parole commission. For purposes of this subparagraph, such period of non-compliance shall be measured, as applicable, from the earliest date of delinquency determined by the department of corrections and community supervision, or from the earliest date on which a declaration of delinquency is filed pursuant to section 410.30 of the criminal procedure law and thereafter sustained, or from the earliest date of delinquency determined in accordance with applicable federal law, rules or regulations, and shall continue until a final determination sustaining the violation has been made by the trial court, the department of corrections and community supervision, or appropriate federal authority; OR

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

(d) "Crime victim" means (i) the victim of a crime; (ii) the representative of a crime victim as defined in subdivision six of section six hundred twenty-one of this article; (iii) a good samaritan as defined in subdivision seven of section six hundred twenty-one of this article; (iv) the office of victim services or other governmental agency that has received an application for or provided financial assistance or compensation to the victim.

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

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

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

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

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

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

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

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

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

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

2. (a) Every person, firm, corporation, partnership, association or other legal entity, or representative of such person, firm, corporation, partnership, association or entity, which knowingly contracts for, pays, or agrees to pay: (i) any profits from a crime as defined in paragraph (b) of subdivision one of this section, to a person charged with or

convicted OR FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, of that crime, or to the representative of such person as defined in subdivision six of section six hundred twenty-one of this article; or (ii) any funds of a convicted person, as defined in paragraph (c) of subdivision one of this section, where such conviction is for a specified crime and the value, combined value or aggregate value of the payment or payments of such funds exceeds or will exceed ten thousand dollars, shall give written notice to the office of the payment or obligation to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from a crime or funds of a convicted person.

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

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

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

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

S 2. This act shall take effect immediately.