

2058

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:

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
20 crime, including any gain realized by such sale, conversion or exchange;
21 and (iii) any property which the defendant obtained or income generated
22 as a result of having committed the crime, including any assets obtained
23 through the use of unique knowledge obtained during the commission of,
24 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

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

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

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

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

25 (A) a violent felony offense as defined in subdivision one of section
26 70.02 of the penal law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 S 2. This act shall take effect immediately.