§ 400.30 Procedure for determining the amount of a fine based upon the defendant's gain from the offense.

1. Order directing a hearing. In any case where the court is of the opinion that the sentence should consist of or include a fine and that, pursuant to article eighty of the penal law, the amount of the fine should be based upon the defendant's gain from the commission of the offense, the court may order a hearing to determine the amount of such gain. The order 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 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 amount of the defendant's gain from the commission of the offense so that an appropriate fine can be imposed.

3. Hearing. When the defendant appears for the hearing the court must ask him whether he wishes to make any statement with respect to the amount of his gain from the commission of the offense. 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 the defendant's gain from the commission of the offense must be based upon a preponderance of the evidence. Any relevant evidence, not legally privileged, may be received regardless of its admissibility under the exclusionary rules of evidence.

5. Termination of hearing. At any time during the pendency of a hearing pursuant to this section the court may, in its discretion, terminate the hearing without making any finding.