§ 632-a. Crime victims. 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; (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 property 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 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 incarcerated individual 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 incarcerated individual or prisoner and deposits in an incarcerated individual account to the credit of the incarcerated individual 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 incarcerated individual 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.

(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 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 incarcerated individual 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 incarcerated individual account to the credit of the incarcerated individual 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) 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) 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 incarcerated individual 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.

3. Notwithstanding any inconsistent provision of the estates, powers and trusts law or the civil practice law and rules with respect to the timely bringing of an action, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of a crime of which the crime victim is a victim, or the representative of that convicted person, within three years of the discovery of any profits from a crime or funds of a convicted person, as those terms are defined in this section. Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or

enforcement against the first one thousand dollars deposited in an incarcerated individual account to the credit of the incarcerated individual pursuant to section one hundred sixteen of the correction law or in a prisoner account to the credit of the prisoner pursuant to section five hundred-c of the correction law. In addition, where the civil action involves funds of a convicted person and such funds were recovered by the convicted person pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to execution or enforcement against a portion thereof in accordance with subdivision (k) of section fifty-two hundred five of the civil practice law and rules. If an action is filed pursuant to this subdivision after the expiration of all other applicable statutes of limitation, any other crime victims must file any action for damages as a result of the crime within three years of the actual discovery of such profits or funds, or within three years of actual notice received from or notice published by the office of such discovery, whichever is later.

4. Upon filing an action pursuant to subdivision three of this section, the crime victim shall give notice to the office of the filing by delivering a copy of the summons and complaint to the office. The crime victim may also give such notice to the office prior to filing the action so as to allow the office to apply for any appropriate provisional remedies which are otherwise authorized to be invoked prior to the commencement of an action.

5. Upon receipt of a copy of a summons and complaint, or upon receipt of notice from the crime victim prior to filing the action as provided in subdivision four of this section, the office shall immediately take such actions as are necessary to:

(a) notify all other known crime victims of the alleged existence of profits from a crime or funds of a convicted person by certified mail, return receipt requested, where the victims' names and addresses are known by the office;

(b) publish, at least once every six months for three years from the date it is initially notified by a victim, pursuant to subdivision four of this section, a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to

such county advising any crime victims of the existence of profits from a crime or funds of a convicted person. For crimes committed in a county located within a city having a population of one million or more, the notice shall be published in newspapers having general circulation in such city. The office may, in its discretion, provide for such additional notice as it deems necessary;

(c) avoid the wasting of the assets identified in the complaint as the newly discovered profits from a crime or as funds of a convicted person, in any manner consistent with subdivision six of this section.

6. The office, acting on behalf of the plaintiff and all other victims, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff.

(a) The provisional remedies of attachment, injunction, receivership and notice of pendency available to the plaintiff under the civil practice law and rules, shall also be available to the office in all actions under this section.

(b) On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

7. (a) (i) Whenever it appears that a person or entity has knowingly and willfully failed to give notice in violation of paragraph (a) or (b) of subdivision two of this section, other than the state, a subdivision of the state, or a person who is a superintendent, sheriff or municipal official required to give notice pursuant to this section or section one hundred sixteen or section five hundred-c of the correction law, the office shall be authorized to serve a notice of hearing upon the person or entity by personal service or by registered or certified mail. The notice shall contain the time, place and purpose of the hearing. In addition, the notice shall be accompanied by a petition alleging facts of an evidentiary character that support or tend to support that the person or entity, who shall be named therein as a respondent, knowingly and willfully failed to give notice in violation of paragraph (a) or (b) of subdivision two of this section. Service of the notice and petition

shall take place at least fifteen days prior to the date of the hearing.

(ii) The director or any individual designated by the director, shall preside over the hearing, shall administer oaths, may issue subpoenas and shall not be bound by the rules of evidence or civil procedure, but his or her determination shall be based on a preponderance of the evidence. At the hearing, the burden of proof shall be on the office. The office shall produce witnesses and present evidence in support of the alleged violation, which may include relevant hearsay evidence. The respondent, who may appear personally at the hearing, shall have the right of counsel and may cross-examine witnesses and produce evidence and witnesses in his or her behalf, which may include relevant hearsay evidence. The issue of whether the person who received an alleged payment or obligation to pay committed the underlying crime shall not be re-litigated at the hearing. Where the alleged violation is the failure to give notice of a payment amount involving two or more payments the combined value or aggregate value of which exceeds ten thousand dollars, no violation shall be found unless it is shown that such payments were intentionally structured to conceal their character as funds of a convicted person, as defined in this section.

(iii) At the conclusion of the hearing, if the director or designated individual is not satisfied that there is a preponderance of evidence in support of a violation, the director or designated individual shall dismiss the petition. If the director or designated individual is satisfied that there is a preponderance of the evidence that the respondent committed one or more violations, the director or designated individual shall so find. Upon such a finding, the director or designated individual shall prepare a written statement, to be made available to the respondent and respondent's counsel, indicating the evidence relied on and the reasons for finding the violation.

(iv) The director shall adopt, promulgate, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, including rules and regulations for the administrative appeal of a decision made pursuant to this paragraph, provided such rules and regulations are consistent with the provisions of this subdivision.

(b)(i) Whenever it is found pursuant to paragraph (a) of this subdivision that a respondent knowingly and willfully failed to give

notice in violation of paragraph (a) or (b) of subdivision two of this section, the office shall impose an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to one thousand dollars or ten percent of the payment or obligation to pay, whichever is greater. If a respondent fails to pay the assessment and civil penalty imposed pursuant to this paragraph, the assessment and civil penalty may be recovered from the respondent by an action brought by the attorney general, upon the request of the office, in any court of competent jurisdiction. The office shall deposit the assessment in an escrow account pending the expiration of the three year statute of limitations authorized by subdivision three of this section to preserve such funds to satisfy a civil judgment in favor of a person who is a victim of a crime committed by the convicted person to whom such failure to give notice relates. The office shall pay the civil penalty to the state comptroller who shall deposit the money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law.

(ii) The office shall then notify any crime victim or crime victims, who may have a claim against the convicted person, of the existence of such moneys. Such notice shall instruct such person or persons that they may have a right to commence a civil action against the convicted person, as well as any other information deemed necessary by the office.

(iii) Upon a crime victim's presentation to the office of a civil judgment for damages incurred as a result of the crime, the office shall satisfy up to one hundred percent of that judgment, including costs and disbursements as taxed by the clerk of the court, with the escrowed fund obtained pursuant to this paragraph, but in no event shall the amount of all judgments, costs and disbursements satisfied from such escrowed funds exceed the amount in escrow. If more than one such crime victim indicates to the office that they intend to commence or have commenced a civil action against the convicted person, the office shall delay satisfying any judgment, costs and disbursements until the claims of all such crime victims are reduced to judgment. If the aggregate of all judgments, costs and disbursement obtained exceeds the amount of escrowed funds, the amount used to partially satisfy each judgment shall be reduced to a pro rata share.

(iv) After expiration of the three year statute of limitations period established in subdivision three of this section, the office shall review all judgments that have been satisfied from such escrowed funds. In the event no claim was filed or judgment obtained prior to the expiration of the three year statute of limitations, the office shall return the escrowed amount to the respondent. In the event a claim or claims are pending at the expiration of the statute of limitations, such funds shall remain escrowed until the final determination of all such claims to allow the office to satisfy any judgment which may be obtained by the crime victim. Upon the final determination of all such claims and the satisfaction of up to one hundred percent of such claims by the office, the office shall be authorized to impose an additional civil penalty of up to one thousand dollars or ten percent of the payment or obligation to pay, whichever is greater. Prior to imposing any such penalty, the office shall serve a notice upon the respondent by personal service or by registered or certified mail of the intent of the office to impose such penalty thirty days after the date of the notice and of the opportunity to submit documentation concerning the office's determination. After imposing and deducting any such additional civil penalty, the office shall distribute such remaining escrowed funds, if any, as follows: fifty percent to the state comptroller, who shall deposit the money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law; and fifty percent to the respondent.

(v) Notwithstanding any provision of law, an alleged failure by a convicted person to give notice under this section may not result in proceedings for an alleged violation of the conditions of probation, parole, conditional release, post release supervision or supervised release unless: one or more claims were made by a crime victim against the convicted person pursuant to this section, and the office imposes an assessment and/or penalty upon the convicted person pursuant to this section, and the convicted person fails to pay the total amount of the assessment and/or penalty within sixty days of the imposition of such assessment and/or penalty.

(vi) Records maintained by the office and proceedings by the office based thereon regarding a claim submitted by a victim or a claimant

shall be deemed confidential, subject to the exceptions that appear in subdivision one of section six hundred thirty-three of this article.