§ 460.30 Enterprise corruption; forfeiture.

1. Any person convicted of enterprise corruption may be required pursuant to this section to criminally forfeit to the state:

(a) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise whose affairs he has controlled or in which he has participated in violation of subdivision one of section 460.20 of this article and for which he was convicted and the use of which interest, security, claim or right by him contributed directly and materially to the crime for which he was convicted unless such forfeiture is disproportionate to the defendant's gain from his association or employment with the enterprise, in which event the jury may recommend forfeiture of a portion thereof;

(b) any interest, including proceeds, he has acquired or maintained in an enterprise in violation of subdivision one of section 460.20 of this article and for which he was convicted unless such forfeiture is disproportionate to the conduct he engaged in and on which the forfeiture is based, in which event the jury may recommend forfeiture of a portion thereof; or

(c) any interest, including proceeds he has derived from an investment of proceeds in an enterprise in violation of subdivision one of section 460.20 of this article and for which he was convicted unless such forfeiture is disproportionate to the conduct he engaged in and on which the forfeiture is based, in which event the jury may recommend forfeiture of a portion thereof.

2. (a) Forfeiture may be ordered when the grand jury returning an indictment charging a person with enterprise corruption has received evidence legally sufficient to establish, and providing reasonable cause to believe, that the property or other interest is subject to forfeiture under this section. In that event, the grand jury shall file a special information, not to be disclosed to the jury in the criminal action prior to verdict on the criminal charges, specifying the property or other interest for which forfeiture is sought and containing a plain and concise factual statement which sets forth the basis for the forfeiture. Alternatively, where the defendant has waived indictment and consented

to be prosecuted by superior court information pursuant to article one hundred ninety-five of the criminal procedure law, the prosecutor may file, in addition to the superior court information charging enterprise corruption, a special information specifying the property or other interest for which forfeiture is sought and containing a plain and concise factual statement which sets forth the basis for the forfeiture.

(b) After returning a verdict of guilty on an enterprise corruption count or counts, the jury shall be given the special information and hear any additional evidence which is relevant and legally admissible upon the forfeiture count or counts of the special information. After hearing such evidence, the jury shall then deliberate upon the forfeiture count or counts and, based upon all the evidence received in connection with the indictment or superior court information and the special information, may, if satisfied by proof beyond a reasonable doubt that the property or other interest, or a portion thereof, is subject to forfeiture under this section return a verdict determining such property or other interest, or portion thereof, is subject to forfeiture, provided, however, where a defendant has waived a jury trial pursuant to article three hundred twenty of the criminal procedure law, the court may hear and receive all of the evidence upon the indictment or superior court information and the special information and render a verdict upon the enterprise corruption count or counts and the forfeiture count or counts.

(c) After the verdict of forfeiture, the court shall hear arguments and may receive additional evidence upon a motion of the defendant that the verdict of forfeiture (i) is against the weight of the evidence, or (ii) is, with respect to a forfeiture pursuant to paragraph (a) of subdivision one of this section, disproportionate to the defendant's gain from his association or employment with the enterprise, or, with respect to a forfeiture pursuant to paragraph (b) or (c) of subdivision one of this section, disproportionate to the conduct he engaged in on which the forfeiture is based. Upon such a finding the court may in the interests of justice set aside, modify, limit or otherwise condition an order of forfeiture.

3. (a) An order of criminal forfeiture shall authorize the prosecutor to seize all property or other interest declared forfeited under this

section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the prosecutor, it shall expire and shall not revert to the convicted person. The court ordering any forfeiture may remit such forfeiture or any portion thereof.

(b) No person shall forfeit any right, title or interest in any property or enterprise under this article who has not been convicted of a violation of section 460.20 of this article. Any person other than the convicted person claiming an interest in forfeited property or other interest may bring a special proceeding to determine that claim, before or after trial, pursuant to section thirteen hundred twenty-seven of the civil practice law and rules, provided, however, that if such an action is brought before trial, it may, upon motion of the prosecutor, and in the court's discretion, be postponed by the court until completion of the trial. In addition, any person claiming an interest in property subject to forfeiture may petition for remission as provided in subdivision seven of section thirteen hundred eleven of such law and rules.

4. All property and other interests which are criminally forfeited following the commencement of an action under this article, whether by plea, verdict or other agreement, shall be disposed of in accordance with the provisions of section thirteen hundred forty-nine of the civil practice law and rules. In any case where one or more of the counts upon which a person is convicted specifically includes as a criminal act a violation of any offense defined in article two hundred twenty of this chapter, the court shall determine what portion of that property or interest derives from or relates to such criminal act, and direct that distribution of that portion be conducted in the manner prescribed for actions grounded upon offenses in violation of article two hundred twenty.

5. Any person convicted of a violation of section 460.20 of this article through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine not in excess of three times the gross value he gained or three times the gross loss he caused, whichever is greater. Moneys so

collected shall be paid as restitution to victims of the crime for medical expenses actually incurred, loss of earnings or property loss or damage caused thereby. Any excess after restitution shall be paid to the state treasury. In any case where one or more of the counts upon which a person is convicted specifically includes as a criminal act a violation of any offense defined in article two hundred twenty of this chapter, the court shall determine what proportion of the entire pattern such criminal acts constitute and distribute such portion in the manner prescribed by section three hundred forty-nine of the civil practice law and rules for forfeiture actions grounded upon offenses in violation of article two hundred twenty. When the court imposes a fine pursuant to this subdivision, the court shall make a finding as to the amount of the gross value gained or the gross loss caused. If the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the fine is disproportionate to the conduct in which he engaged, its impact on victims and the enterprise corrupted by that conduct, as well as the economic circumstances of the convicted person, including the effect of the imposition of such a fine upon his immediate family.

6. The imposition of an order of criminal forfeiture pursuant to subdivision one of this section, a judgment of civil forfeiture pursuant to article thirteen-A of the civil practice law and rules, or a fine pursuant to subdivision five of this section or paragraph (b) of subdivision one of section 80.00 of this chapter, shall preclude the imposition of any other such order or judgment of forfeiture or fine based upon the same criminal conduct, provided however that where an order of criminal forfeiture is imposed pursuant to subdivision one of this section, an action pursuant to article thirteen-A of the civil practice law and rules may nonetheless be brought, and an order imposed in that action, for forfeiture of the proceeds of a crime or the substituted proceeds of a crime where such proceeds are not subject to criminal forfeiture pursuant to subdivision one of this section. The imposition of a fine pursuant to subdivision five of this section or paragraph (b) of subdivision one of section 80.00 of this chapter, shall preclude the imposition of any other fine pursuant to any other

provision of this chapter.

7. Other than as provided in subdivision six, the imposition of a criminal penalty, forfeiture or fine under this section shall not preclude the application of any other criminal penalty or civil remedy under this article or under any other provision of law.

8. Any payment made as restitution to victims pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment.