

Amend Senate S6255, Assembly A9055, A BUDGET BILL, AN ACT to amend the executive law, in relation to the DNA testing of certain offenders convicted of a crime...

Page	Line	Amendment
Page 2,	Unnumbered line 29 (AN ACT CLAUSE),	After "or", strike out "merge" and insert "merger"
Page 3,	Unnumbered line 29 (AN ACT CLAUSE),	After "(Part P);" strike out "and"
Page 3,	Unnumbered line 33 (AN ACT CLAUSE),	After "(Part Q)" insert "; and to amend the workers' compensation law, in relation to the collection of assessments for annual expenses (Part R);
Page 3,	Line 4,	After "through" strike out "Q" and insert "R"
Page 8,	Between lines 15 and 16,	<p>Insert "§ 1-a. Subdivision 4 of section 60.01 of the penal law, as amended by chapter 548 of the laws of 1984, is amended to read as follows:</p> <p style="padding-left: 40px;">4. [In] <u>Notwithstanding subdivision three of this section, in any case where a person has been sentenced to a period of probation imposed pursuant to section 65.00 of this chapter or paragraph (d) of subdivision two of this section, if the [part of the] sentence [that provides for] of probation is revoked, the court must sentence such person to imprisonment or to the sentence of imprisonment and probation as provided for in paragraph (d) of subdivision two of this section; provided, however, that if the original period of probation was less than the maximum probation sentence authorized by subdivision three of section 65.00 of this chapter, the court may instead impose the remaining portion of such maximum authorized sentence in lieu of imprisonment. In the event that a probation sentence is violated, the sentence of probation shall be in accordance with subdivision four of section 65.00 of this chapter.</u></p> <p>§ 1-b. Subdivision four of section 65.00 of the penal law, as added by chapter 264 of the laws of 2003, is amended to read as follows:</p> <p style="padding-left: 40px;">4. In any case where a court pursuant to its authority under subdivision four of section 60.01 of this chapter revokes probation and sentences such person to imprisonment and probation as provided in paragraph (d) of subdivision two of section 60.01 of this chapter <u>or a sentence of probation imposed pursuant to section 65.00 of this chapter</u>, the period of probation shall be the remaining period of the</p>

		<p>[original] <u>maximum authorized probation sentence in accordance with subdivision three of this section</u> or one year whichever is greater, in addition to any time authorized pursuant to <u>subdivision five of section 410.70 of the criminal procedure law.</u></p> <p>§ 1-c. Subdivision five of section 410.70 of the criminal procedure law, as amended by chapter 112 of the laws of 1985, is amended to read as follows:</p> <p>5. Revocation; modification; continuation. At the conclusion of the hearing the court may revoke, continue or modify the sentence of probation or conditional discharge. Where the court revokes the sentence, it must impose sentence as specified in [subdivisions] <u>subdivision three [and] or four of section 60.01 of the penal law, whichever is applicable.</u> Where the court continues or modifies the sentence, it must vacate the declaration of delinquency and direct that the defendant be released. If the alleged violation is sustained and the court continues or modifies the sentence, it may extend the sentence up to the period of interruption specified in subdivision two of section 65.15 of the penal law, but any time spent in custody in any correctional institution pursuant to section 410.60 of this article shall be credited against the term of the sentence."</p>
Page 8,	Line 50,	After " <u>section</u> " strike out " <u>210.40</u> " and insert " <u>410.40</u> "
Page 9,	Line 26,	After " <u>1.</u> " Strike out " <u>The</u> " and insert " <u>Upon application of the people, the</u> "
Page 9,	Line 26,	After " <u>convicted of a</u> " insert " <u>crime</u> "
Page 9,	Line 27,	Before " <u>defined in</u> " strike out " <u>violation of any offense</u> " and after " <u>defined in</u> " strike out " <u>this chapter or</u> " and before " <u>chapter of</u> " strike out " <u>other</u> "
Page 9,	Line 28,	before " <u>laws of the</u> " strike out " <u>consolidated</u> "
Page 9,	Lines 29 through 31,	After " <u>any</u> " strike out " <u>property, real or personal, constituting, or derived from, proceeds the person obtained directly or indirectly as the result of such violation.</u> " and insert " <u>proceeds of a crime and substituted proceeds of a crime, as those terms are defined in section 425.00 of the criminal procedure law</u> "
Page 9,	Line 31,	Before " <u>court</u> " strike out " <u>The</u> " and insert

		"Upon the application of the people the"
Page 9,	Line 32,	Strike out " <u>violation of any</u> " and after " <u>felony</u> " strike out " <u>offense</u> " and insert " <u>crime defined in any chapter of the laws of the state</u> " and after " <u>shall</u> " insert " <u>also</u> "
Page 9,	Lines 33 through 34,	After " <u>personal,</u> " strike out " <u>involved in such offense, or any property traceable to such property.</u> " and insert " <u>which constitutes an instrumentality of a felony crime as that term is defined in section 425.00 of the criminal procedure law.</u> "
Page 9,	Between lines 34 and 35,	Insert " <u>The forfeiture order shall divest from the defendant, and award to the people, all of the defendant's interest in the property forfeited, as defined in section 425.00 of the criminal procedure law. Where the court imposes a sentence of forfeiture upon property that is not in the people's or the claiming agent's or the court's custody at the time of the imposition of that sentence, the forfeiture order may be enforced in the same manner as authorized by article fifty-one of the civil practice law and rules by any claiming agent, as defined in subdivision twelve of section 1310 of the civil practice law and rules, except that, upon application of the people, the court may, at imposition of a sentence, issue other orders to obtain possession of property ordered forfeited. When the court imposes a sentence of forfeiture upon property, the people's interest in the forfeited property vests at the time of the offense that gave rise to the forfeiture, unless a third party establishes that he or she was a bona fide purchaser. Upon application of the people, the court, in imposing a sentence upon a person, shall award a money judgment to the people and against the defendant in an amount equal to the value of the property which constitutes the proceeds, substituted proceeds, or instrumentality of the crime or crimes, as defined in section 425.00 of the criminal procedure law, giving rise to the forfeiture. The total amount that may be recovered by the people against a criminal defendant shall not exceed the value of the proceeds, or substituted proceeds of the crime, whichever amount is greater, in addition to the value of any forfeited instrumentality.</u> "
Page 9,	Line 35,	After " <u>criminal</u> " strike out " <u>case</u> " and insert " <u>action</u> "

Page 9,	Line 37,	After " <u>any</u> " insert " <u>seized or restrained</u> "
Page 9,	Lines 38 through 39,	After " <u>proceeds</u> " strike out " <u>obtained directly or indirectly, as the result of any violation of this chapter,</u> " and insert " <u>of a crime and substituted proceeds of a crime as those terms are defined in section 425.00 of the criminal procedure law,</u> "
Page 9,	Line 39,	Before " <u>property</u> " insert " <u>seized or restrained</u> "
Page 9,	Lines 40 through 41,	After " <u>personal,</u> " strike out " <u>involved in any violation of this chapter, or any property traceable to such property.</u> " and insert " <u>which constitutes an instrumentality of a felony crime, as that term is defined in section 425.00 of the criminal procedure law</u> "
Page 10,	Line 18,	Before " <u>forfeiture</u> " insert " <u>proceedings governing</u> "
Page 10,	Lines 19 through 20,	After " <u>seizure and</u> " strike out " <u>disposition</u> " and insert " <u>disposal</u> " and after " <u>property</u> " strike out " <u>and any related judicial or administrative proceeding</u> " and insert " <u>under this article</u> "
Page 10,	Line 21,	After " <u>provisions of</u> " strike out " <u>article thirteen A of the civil practice law and rules.</u> " and insert " <u>section 425.00 of the criminal procedure law.</u> "
Page 10,	Line 23,	After " <u>forfeiture</u> " insert " <u>or any seizure or forfeiture provisions of the tax law.</u> "
Page 10,	Line 24,	After "2" strike out ", 4-a"
Page 10,	Lines 32 through 34,	Strike out "4-a. "Real property instrumentality of a crime" means an interest in real property the use of which contributes directly and materially to the commission of a specified felony offense <u>or misdemeanor.</u> "
Page 10,	Line 36,	After "in" insert "[" and after "law or" insert "]" and after "any" insert "[" and after "other" insert "]" and before "consolidated" insert "[" and after "consolidated" insert "]"
Page 11,	Between lines 29 and 30,	Insert "\$5. The criminal procedure law is amended by adding a new article 425 to read as follows: <u>Article 425 Criminal Asset Forfeiture</u> <u>425.00 Definitions</u> <u>425.05 Notice to the Defendant</u> <u>425.10 Forfeiture Procedure and</u>

		<p><u>Determinations</u></p> <p><u>425.15 Forfeiture Order</u></p> <p><u>425.20 Third-Party Rights</u></p> <p><u>425.25 Stay Pending Appeal</u></p> <p><u>425.30 Seized and Forfeited Property</u></p> <p><u>425.35 Attorney's Payments</u></p> <p><u>425.40 Preservation of other rights and remedies</u></p> <p><u>425.45 Property Seized Before the Filing of an Accusatory Instrument</u></p> <p><u>§ 425.00 Definitions.</u></p> <p><u>1. "Property" means real property, personal property, money, negotiable instruments, securities, or anything of value or any interest in a thing of value.</u></p> <p><u>2. "Proceeds of a crime" means any property obtained through the commission of a crime defined in any chapter of the laws of the state, and includes any appreciation in value of such property.</u></p> <p><u>3. "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.</u></p> <p><u>4. As used in subdivisions two and three of this section, "proceeds" and "substituted proceeds" refer to gross receipts, not profits.</u></p> <p><u>5. "Instrumentality of a felony crime" means and includes any property whose use contributes directly and materially to the commission of a felony crime defined in any chapter of the laws of the state.</u></p> <p><u>6. "Specific property" means all property subject to forfeiture other than that property whose seizure and forfeiture would require a money judgment in favor of the people.</u></p> <p><u>7. "Real property instrumentality of a crime" means an interest in real property the use of which contributes directly and materially to the commission of any felony defined in any chapter of the laws of the state.</u></p> <p><u>§ 425.05 Notice to the Defendant.</u></p> <p><u>A court must not enter a judgment of forfeiture in a criminal proceeding unless the people provide written notice of their intention to seek the forfeiture of property as part of any sentence in accordance with the applicable statute. The notice shall be served upon the defendant within fifteen days after arraignment and before trial. The notice</u></p>
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need not identify the property subject to forfeiture or specify the amount of any forfeiture money judgment that the people seek. Where the people seek the forfeiture of specific property, excluding a personal money judgment, in addition to notice of their general intention to seek forfeiture, they shall serve a forfeiture bill of particulars on the defendant no later than ninety days after the arraignment. The forfeiture bill of particulars shall state the property that the people seek to forfeit and the general theory under which the people seek to forfeit that property. The timing requirements under this section may be waived by the court for good cause shown, including where the people discover or identify forfeitable property after the notice periods have elapsed.

§ 425.10 Forfeiture Procedure and Determinations.

1. Burden of proof. In a forfeiture action under this article, the burden shall be upon the people to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

2. Evidence and hearing. The forfeiture determination is part of sentencing, and the court's determination may be based on evidence already in the record, including any facts contained in any plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. Upon application of either party, the court must conduct a hearing in accordance with the provisions of subdivision four of section 710.60 of the criminal procedure law after the conviction.

3. Non-jury cases. As soon as practicable after a verdict of guilty of a charge subjecting property to forfeiture, the court must determine what property is subject to forfeiture under this article and article sixty-two of the penal law. The court must determine whether the people have proven by a preponderance of the evidence that the specific property is the proceeds of crime, substituted proceeds of a crime, or an instrumentality of a felony crime, as applicable, or, where the people seek a personal money judgment, the court must determine the amount of the money judgment.

4. Jury cases. In any case tried before a jury, if the people have served notice of

their intention to forfeit specific property, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property should the jury return a verdict of guilty to a charge subjecting property to forfeiture. If either party timely requests to have the jury determine forfeiture, the people must submit a proposed Special Verdict Form listing the specific property subject to forfeiture and asking the jury to determine whether the people have proven by a preponderance of the evidence that the specific property is proceeds of crime, substituted proceeds of a crime, or an instrumentality of a felony crime, as applicable. The determination of the amount of a personal money judgment shall be made only by the court and in accordance with subdivision three of this section.

§ 425.15 Forfeiture Order.

1. Contents of a specific order. If the court or jury finds that property is subject to forfeiture, the court must promptly enter an order of forfeiture setting forth the amount of any money judgment and directing the forfeiture of specific property. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim under the provisions of this article or article sixty-two of the penal law. The forfeiture order is part of a defendant's sentence. Even where a defendant has agreed to forfeiture of certain property, the court still must issue a forfeiture order.

2. Sentence and judgment. At sentencing -- or at any time before sentencing if the defendant consents -- the forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, then the order remains preliminary as to third parties until any ancillary proceeding is concluded under this section if a third party timely files a claim, as set forth in sections 425.20 and 425.25 of this article. If no third party timely files a claim under this section, the forfeiture order becomes final as to all parties.

§ 425.20 Third-Party Rights.

1. An innocent interest in property shall not be forfeited under article sixty-two of the penal law. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence. Any person claiming an interest in property subject to forfeiture may institute a special proceeding in the court before which the criminal case is pending to determine that claim, before or after the trial, pursuant to section 1327 of the civil practice law and rules; provided, however, that if such special proceeding is initiated before trial, it may, upon written 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 the court pursuant to section 1311 of the civil practice law and rules.

2. With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who did not know of the conduct giving rise to forfeiture; or upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such criminal use of the property.

3. For the purposes of this section, ways in which a person may show that he did all that reasonably could be expected under the circumstances to terminate the criminal use of property may include demonstrating that he, to the extent permitted by law:

- a. gave timely notice to a law enforcement agency of information that led him to know the conduct giving rise to a forfeiture would occur or has occurred; or
- b. in a timely fashion, revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property; or
- c. took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

A person is not required by this section to take steps that the person reasonably believes would be likely to subject any person, other than the person whose conduct gave rise to the forfeiture, to physical

danger.

4. With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property was a bona fide purchaser or seller for value, including a purchaser or seller of goods or services for value, did not know and was reasonably without cause to believe that the property was subject to forfeiture.

An otherwise valid claim under this section shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if:

a. the property is the primary residence of the claimant; or

b. depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant; or

c. the property is not, and is not traceable to, the proceeds of any criminal offense; or

d. the claimant acquired his or her interest in the property through marriage, divorce, or legal separation; or

e. the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate.

Provided, however, that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subdivision to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

5. Notwithstanding any provision of this section, no person may assert an ownership interest under this section in contraband or other property that it is illegal to possess.

6. If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order severing the property; transferring the property to the people with a provision that the people

		<p><u>compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or permitting the innocent owner to retain the property subject to a lien in favor of the people to the extent of the forfeitable interest in the property.</u></p> <p><u>7. For the purposes of this section, the term "owner" means a person with an ownership interest in the specific property sought to be forfeited, including, but not limited to, a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest. It does not include a person with only a general unsecured interest in, or claim against, the property or estate of another; a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or a nominee who exercises no dominion or control over the property.</u></p> <p><u>8. Third-party transfers. All right, title, and interest in property described in this section vests in the people upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in a hearing pursuant to this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.</u></p> <p><u>§ 425.25 Stay Pending Appeal.</u></p> <p><u>If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.</u></p>
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		<p><u>a provisional remedy pursuant to article thirteen-A of the civil practice law and rules that justifies the continued retention of the property or shall file a charging instrument that gives notice of the people's intention to forfeit that property as set forth in section 425.05 of this article, except that the court may extend the ninety-day period for good cause shown or upon agreement of the parties. If the people fail to comply with the provisions of this section, the court shall order the release of the property.</u></p> <p><u>2. Within ten business days of seizing property, the people shall send notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture advising them of the seizure, the specific property seized, and the appropriate government lawyer and court that said individual has a right to a prompt hearing for a return of the property.</u></p> <p><u>3. Subdivision one of this section shall not apply if the court finds that the seized property:</u></p> <ul style="list-style-type: none"> <u>a. is contraband; is to be used as evidence of a violation of the law;</u> <u>b. is particularly suited for use in illegal activities by reason of design or other characteristic;</u> <u>c. is likely to be used to commit additional criminal acts if returned to the claimant; or</u> <u>d. is likely to be used to commit additional criminal acts if returned to the claimant."</u>
Page 11,	Line 30,	After "\$" strike "5" and insert "6"
Page 12,	Between lines 26 and 27,	<p>Insert "\$7. Subdivision 3 of section 450.10 of the criminal procedure law is amended to read as follows:</p> <p>3. A sentence including an order of criminal forfeiture entered pursuant to <u>either section 460.30 or section 62.00</u> of the penal law with respect to such forfeiture order."</p>
Page 12,	Line 27,	After "\$" strike "6" and insert "8"
Page 81,	Between lines 6 and 7,	Insert "c. Great lakes restoration initiative account (GL)."
Page 81,	Line 7,	Strike Out "c." and insert "d."

Page 81,	Line 8,	Strike Out "d." and insert "e."
Page 81,	Line 9,	Strike Out "e." and insert "f."
Page 81,	Line 10,	Strike Out "f." and insert "g."
Page 81,	Line 11,	Strike Out "g." and insert "h."
Page 81,	Line 12,	Strike Out "h." and insert "i."
Page 81,	Line 13,	Strike Out "i." and insert "j."
Page 81,	Line 14,	Strike Out "j." and insert "k."
Page 90,	Line 41,	After "to" Strike Out "\$968,550,000" and insert "\$968,550,300"
Page 93,	Line 18,	After "section" Strike Out "92-I' and insert "92-l"
Page 93,	Line 20,	After "92-w of the state finance law" insert "as added by chapter 561 of the laws of 1994"
Page 93,	Line 23,	After "section 97-fff of the state finance law" insert "as added by chapter 432 of the laws of 1997"
Page 93,	Lines 23 through 24,	After "section 97-uuu of the state finance law" insert "as added by chapter 294 of the laws of 2000"
Page 93,	Line 24,	After "section 97-www of the state finance law" insert "as added by chapter 189 of the laws of 2000"
Page 93,	Lines 26 through 27,	After "section 99-i of the state finance law" insert "as added by chapter 62 of the laws of 2003"
Page 93,	Lines 27 through 28,	After "education law," Strike Out "paragraph f of subdivision 31 of section 1680 of the public authorities law,"
Page 93,	Line 32,	After "92-a," Strike Out "92-i," and insert "92-l,"
Page 93,	Line 32,	After "92-w," insert "as added by chapter 561 of the laws of 1994"
Page 93,	Line 33,	After "97-fff," insert "as added by chapter 432 of the laws of 1997"
Page 93,	Line 33,	After "97-uuu," insert "as added by chapter 294 of the laws of 2000"
Page 93,	Line 33,	After "97-www," insert "as added by chapter 189 of the laws of 2000"

Page 93,	Line 34,	After "99-i," insert "as added by chapter 62 of the laws of 2003"
Page 93,	Lines 37 through 38,	Strike Out "\$ 18-d. Paragraph f of subdivision 31 of section 1680 of the public authorities law is REPEALED."
Page 93,	Line 39,	Strike Out "18-e." and insert "18-d."
Page 93,	Line 40,	Strike Out "18-f." and insert "18-e."
Page 104,	Line 53,	After "up to" Strike Out "\$26,000,000" and insert "\$40,000,000"
Page 104,	Line 54,	After "laws of" Strike Out "2012" and insert "2011"
Page 118,	Line 21,	After "state police," strike out "insurance, banking" and insert "financial services"
Page 121,	Between Lines 51 & 52,	Insert new Part R "LBD 70037-01-2"
Page 122,	Line 8,	After "through" strike out "Q" and insert "R"