

# UNDERSTANDING THE NEW 'SON OF SAM' LAW

Prepared by Prisoners' Legal Services of New York

In the summer of 2001, the New York State Legislature significantly broadened the so-called "Son of Sam" law.

Previously, the law required that victims of crimes be notified whenever a person convicted of a crime received "profits of the crime." "Profits of the crime" referred to money an inmate might receive as a result of having committed the crime for which he or she was convicted. It was intended to prevent inmates from "profiting" – through book or movie deals or in similar ways – from their crimes, and to make it easier for persons who had been the victims of those crimes to sue the convicted person if they received "profits" from the crime.

The new law greatly expands the 'Son of Sam' law. The new law attempts to notify crime victims be notified *any* time an inmate, convicted of one of numerous "specified crimes," receives \$10,000.00 or more – from virtually *any* source. The law then gives crime victims an extended period of time during which they may sue the person who committed the crime of which they were the victim. It also authorizes the a State Agency, the Crime Victims' Board, to act in the victim's behalf in some circumstances.

This new, expanded 'Son of Sam' law may have a major impact on you if you stand to receive a significant amount of money from any source – whether through inheritance, investment, or as the result of a settlement or an award in litigation – while still under a criminal sentence – and even, in some cases, after your sentence is completed. This memo is intended to answer basic questions about how the new law works and how it may affect you. This is a complicated new law, however, with many details. This memo is only intended to provide an overview. If, after reading this memo, you have more specific questions about how and whether the law will apply to you, please write to Prisoners' Legal Services, Central Intake, 118 Prospect St., Suite 307, Ithaca, NY 14850.

## 1. HOW DOES THE NEW LAW WORK?

Basically, the new law requires that any money received by an inmate over a certain amount be reported to the New York State Crime Victims' Board. The Crime Victims' Board, in turn, is required to attempt to notify any victims of the crime for which the inmate in question was convicted that the inmate has money. The law then gives victims additional time, over and above the usual statute of limitations, in which he or she may file a civil suit against the inmate to recover damages for any injury suffered as a result of the crime. inmates convicted of certain specified crimes.

Under the original 'Son of Sam' law any person or entity contracting to pay a convicted person the "profits of a crime" was required to notify the Crime Victims' Board. The Crime Victims' Board, in turn, was to notify any victims of the crime that the convicted person had received "profits" of the crime, so that the victim would be able to sue the convicted person.

"Profits of a crime", however, was defined narrowly. It meant "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, the crime." See, Executive Law § 632-a.. The law was thus limited to income you might receive specifically as a result of having committed a crime.

The new law, however, adds an entirely new category of income, called "Funds of a Convicted Person" which must now also be reported to the Crime Victims' Bureau.

"Funds of a Convicted Person" is defined very broadly. It means "*all* funds and property received *from any source*" by a person convicted of certain specified crimes "excluding child support and earned income."

## 2. TO WHAT CRIMES DOES THE NEW LAW APPLY?

The crimes to which the new law applies include all violent felony offenses (as defined in section 70.02 of the Penal Law); all first degree felonies; all "B" felonies; and all offenses "for which a merit time allowance may not be received."<sup>1</sup> It also includes

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<sup>1</sup> These include all A-1 felonies, manslaughter in the second degree, vehicular manslaughter in the first and second degrees, criminally negligent homicide, sex offenses, offenses relating to sexual performances by minors, and incest. They also include extortion, larceny, criminal possession of stolen property in excess of \$50,000.00 and any offense committed in another jurisdiction if it contains all of the elements of any of the above offenses and the victim was either a New York State resident of the crime occurred in New York.

grand larceny in the second and fourth degrees, and criminal possession of stolen property in the second degree.

The new law does *not* apply, however, to any drug offenses under Penal Law section 220 or 221 or to the crimes of welfare fraud and gambling. So, if you have been convicted of a drug offense, the law does not apply to you, even if your conviction is for felony in the first degree or a "B" felony.

In short, "funds of a convicted person" means essentially any money that you may receive, excluding child support and earned income, *so long as you have been convicted of one of the above specified offenses.*

### **3. WHAT HAPPENS IF I HAVE BEEN CONVICTED OF ONE OF THE SPECIFIED CRIMES AND I RECEIVE "FUNDS OF A CONVICTED PERSON?"**

Basically, if you have been convicted of one of the specified crimes and you receive "funds of a convicted person" *in excess of \$10,000.00*, the State Crime Victims' Board must be notified.

For this notification obligation to take effect, however, two conditions must be met.

First, the money at issue must really be "funds of a convicted person." That means they must be funds, not including "earned income or child support payments" paid to or owed to a person convicted of one of the specified offenses discussed in section 2, above.

Second, the funds at issue must have a "value, combined value or aggregate value" that exceeds or will exceed \$10,000.00.

If both of these conditions are met, the Crime Victims' Board must be notified.

The notification requirement is accomplished in three ways. First, the statute states that whenever any person or entity, including the State or any subdivision of the State, agrees to pay any person convicted of one of the specified crimes funds whose "value, combined value or aggregate value...exceeds... \$10,000.00" it must give written notice to the Crime Victims' Bureau. See Executive Law § 632-a(2)

Second, the statute requires that the *Department of Correctional Services* notify the Crime Victims' Board whenever an inmate receives "funds of a convicted person" in excess of \$10,000.00. See Correction Law § 500-c.

Finally, the statute states that “in all other instances” where a payment involves “funds of a convicted person” the convicted person *himself* must notify the Crime Victims’ Board of the receipt of the funds, where the funds exceed \$10,000.00.

Thus, one way or another, the statute assures that the Crime Victims Board will be notified if you receive “funds of a convicted person” in excess of \$10,000.00.

**4. WHAT DOES THE CRIME VICTIMS’ BOARD DO WHEN IT RECEIVES NOTICE OF A PAYMENT OF FUNDS OF A CONVICTED PERSON OF MORE THAN \$10,000.00?**

The new law states that upon receipt of a notification that “funds of a convicted person” have been or will be paid to a convicted person the Crime Victims’ Board is required to notify all known victims of the crime for which the person receiving the funds was convicted.

A “crime victim” is defined in the law as (i) the victim of the offense; (ii) the representative of the crime victim; (iii) a good samaritan (i.e., someone who was injured trying to assist the victim of a crime) or (iv) the Crime Victims’ Board itself, if it has received an application for financial assistance from the victim.

**5. WHAT HAPPENS AFTER THE CRIME VICTIM HAS BEEN NOTIFIED THAT AN INMATE HAS RECEIVED FUNDS?**

The new statute states that crime victims shall have the right to bring a civil action to recover money damages from a person convicted of a crime of which they were the victim.

The statute provides three different statutes of limitation for such a suit. First, *any* crime victim may bring a suit against a person convicted of a crime in which they were injured within *seven years* of the conviction for the crime, regardless of the crime of conviction or whether the convicted person has received “funds of a convicted person.”

Second, a crime victim who was the victim of one of the crimes specified in section 2, above, may bring a suit against the person convicted of that crime within *ten years* of the conviction.

Finally, a crime victim may bring suit against the person convicted of the crime of which he or she was a victim at any time *within three years* of the “discovery” of any “funds of the convicted person” as defined in sections 1 and 2, above.

So, for example, if the Crime Victims' Board notifies a person who was the victim of your crime that you have recently received "funds of a convicted person," – that is, you have been convicted of one of the specified crimes, and you have recently received money that was not earned income or child support payments – the victim would have three years from the date of the notification within which to sue you for money damages, even if such a lawsuit would otherwise be barred by the seven or ten year statute of limitations.

The statute also states that *if* a crime victim brings suit against you, they must notify the Crime Victims' Board. The Crime Victims' Board, in turn, is authorized to act in the crime victim's behalf in order to avoid the "wasting" – i.e., spending – of the funds. It can do this by seeking any preliminary remedy that may otherwise be available to a plaintiff in a civil action to prevent the wasting of assets, such as attachment or injunction. In other words, if a crime victim brings a suit against you, the Crime Victims' Board has the right to apply to a court to hold or freeze your money while the case is being litigated.

**6. CAN I AVOID THE EFFECTS OF THIS STATUTE BY GIVING ALL OF MY MONEY TO SOMEONE ELSE, OR DIRECTING THAT ANY MONEY OWED TO ME BE GIVEN TO SOMEONE ELSE?**

Probably not. The statute applies both to convicted persons and their "representatives."

A "representative" is defined in Executive Law § 621 as "one who represents or stands in the place of another person, including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor."

So, for example, if you try and give your money to another person, or direct that the money be given to another person, that person would become your "assignee", or representative, and all of the provisions of the statute would apply: The Crime Victims' Board would have to be notified, they would have to attempt to notify the victim(s) of the crime, and victim(s) could sue both you and your representative.

**7. IS THERE ANY MONEY THAT IS EXCLUDED FROM THE NOTIFICATION REQUIREMENT?**

Yes. The statute excludes both "earned income" and child support payments from the notification requirement.

The statute defines “earned income” as “income derived from one’s own labor or through active participation in a business as distinguished from, for example, dividends or investments.”

Since both “earned income” and child support payments are excluded from the definition of “funds of a convicted person” they do not have to be reported to the Crime Victims’ Board, even if you receive more than \$10,000.00.

That does not mean, however, that “earned income” would not be liable to a crime victim if he or she were to win a judgment against you. It only means that such income would not have to be reported to the Crime Victim’s Board, were it received.

## 8. WHAT IF I SETTLE OR WIN A LAWSUIT AGAINST THE STATE?

Money that you may win in a suit against the State (or any one else) is also considered “funds of a convicted person”— if you have been convicted of one of the specified crimes – and so it, too, would have to be reported to the Crime Victims’ Board if the payment exceeds \$10,000.00. Executive Law 632-a. See also, Correction Law § 500-c.

*However*, the statute provides that if money you receive as the result of a judgment in a lawsuit represents “compensatory damages”, *ten percent* of that money is immune to a judgment on behalf of a crime victim.

In other words, if you win \$20,000.00 in a lawsuit against the Department of Correctional Services, alleging that they used excessive force against you, and, later, the victim of your crime sues you for damages for injuries that you caused during the course of your crime, \$2,000.00 of the money you won in your suit against DOCS would be immune from any judgment the victim might get against you.

The statute requires that in order to determine what portion of any award you might receive is subject to this rule, the court must first deduct attorneys fees from the compensatory damages. Thus, if you win \$20,000.00 in compensatory damages, and \$5,000.00 is supposed to be paid to you attorney, the court will deduct the \$5,000.00 before determining how much of your award is protected from the crime victim. So, in that example, you would be left with \$15,000.00 after the payment of fees and only \$1,5000.00 would be immune from a victim’s judgment.

This rule only applies to compensatory damages. It does not apply, for instance, to punitive damages. Thus, if you win \$10,000.00 in compensatory damages, but \$50,000.00 in punitive damages, this rule would only protect 10% of the \$10,000.00 dollars awarded for compensatory damages.

**9. IS THERE ANYTHING ELSE THAT IS IMMUNE TO A JUDGMENT ON BEHALF OF THE CRIME VICTIM?**

Yes. The statute also states that the first *one thousand dollars* deposited in your inmate account is immune from any judgment that a crime victim may obtain against you.

This sum is in addition to the 10% compensatory damages exclusion discussed in section 8, above. Thus, if you have \$1,000.00 in your inmate account, and you win \$20,000.00 in compensatory damages in a lawsuit, \$2,000.00 of the latter *plus* the \$1,000.00 already in your account would be immune to suit.

**10. DOES THIS STATUTE APPLY TO ME EVEN IF I HAVE BEEN RELEASED FROM PRISON?**

Yes, it does. The statute applies to persons who are serving an undischarged indeterminate, determinate or definite sentence, including persons serving some form of post-release supervision, such as parole.

The statute also applies for three years *after* you have completed your maximum term, or have been discharged from parole -- but in that case only funds that are paid to you as a result of "any interest, right, right of action, asset share, claim, recovery or benefit of any kind" that accrued prior to the expiration of your sentence would have to be reported to the Crime Victims' Board. So, for example, if you received an inheritance two years after your maximum term had expired, you would not have to report that to the Crime Victims' Board, because it did not "accrue" while you were serving your sentence. If, on the other hand, you settle a lawsuit about something that happened while you were incarcerated, two years after your maximum term has expired, you would have to report that to the Crime Victims' Bureau, because the right to sue accrued while your sentence was still running.

If you receive earned income during a period when you are supposed to be under parole supervision, but you are not in compliance with the terms of your parole (you are delinquent) that income will become subject to the reporting requirements, even though it would not be otherwise.

**11. WHERE CAN I READ THIS NEW LAW FOR MYSELF?**

Unfortunately, the new law was passed in a complicated way. It was passed as a series of amendments to a large number of different sections of law. It contains amendments, for instance, to the Executive Law, the Corrections Law, the Civil

Practice Law, the Surrogate's Court Act and the Criminal Procedure Law, among others. Thus, there is no one single place to view the whole law.

The most important parts of the law, however – those defining “funds of convicted person” and stating what the reporting requirements are, can be found in New York’s Executive Law section 632-a. You should be able to find this in your law library. Since this is a new law, you will probably need to check the “pocket part” to see the amendments to section 632-a. Your law librarian should be able to help you with this.

## **12. A CAUTION**

The above is just a brief review of the most relevant parts of this new law. There are many details that are not discussed in this memorandum. If you have more specific questions about how this new law might apply to you, write to Prisoners’ Legal Services of New York, Central Intake, 118 Prospect St., Suite 307, Ithaca, NY 14850.