

RESOLUTION NO. 2015065

RE: AMENDING THE 2015 ADOPTED COUNTY BUDGET AS IT PERTAINS TO THE SHERIFF (A.3110.05)

Legislators ROMAN, FLESLAND, HORTON, SAGLIANO, WEISS, JETER-JACKSON, MAC AVERY, FARLEY, and JOHNSON offer the following and move its adoption:

WHEREAS, the Sheriff has requested the transfer of asset forfeiture funds to the Sheriff's budget for spending within the guidelines as outlined by the US Department of Justice, and

WHEREAS, pursuant to Article 13-A of the CPLR, said funds must be used to enhance prosecutorial and law enforcement efforts and not to supplement ordinary budgetary expenses, and

WHEREAS, the Sheriff has requested that the sum of \$14,967 be placed in various Sheriff Asset Forfeiture accounts to be used for law enforcement efforts, now therefore, be it

RESOLVED, that the Commissioner of Finance is authorized and directed to amend the 2015 Adopted County Budget as follows:

APPROPRIATIONS

Increase

A.3110.05.4123.	Safety Supplies	\$ 4,300
A.3110.05.4650	Freight	74
A.3110.05.4438	Investigations	<u>10,593</u>
		<u>\$14,967</u>

REVENUES

Increase

A.9998.95110.02	Appropriated Reserve Asset Forfeiture - Sheriff	<u>\$14,967</u>
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CA-043-15
kvh/G-0224
2/17/15
Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 9th day of March 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 9th day of March 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT



NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 0
and Source

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

The Sheriff's Office has received \$14,967. in Asset Forfeiture Funds. Resolution Request to appropriate funds to the Sheriff's-2015 Budget. A.3110.05 for the purchase of Stop Sticks and Confidential Investigation Funds.

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): _____

Over Five Years: _____

Additional Comments/Explanation:

The Sheriff's Office has received \$14,967. in Asset Forfeiture Funds. Resolution Request to appropriate funds to the Sheriff's 2015 Budget. A.3110.05 for the purchase of Stop Sticks and Confidential Investigation Funds.

Prepared by: Maureen Sarigianis

Prepared On: 02/17/2015

McKinney's Consolidated Laws of New York Annotated
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 13-a. Proceeds of a Crime-Forfeiture (Refs & Annos)

McKinney's CPLR § 1310

§ 1310. Definitions

Currentness

In this article:

1. "Property" means and includes: real property, personal property, money, negotiable instruments, securities, or any thing of value or any interest in a thing of value.
2. "Proceeds of a crime" means any property obtained through the commission of a felony crime defined in subdivisions five and six hereof, and includes any appreciation in value of such property.
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.
4. "Instrumentality of a crime" means any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of a crime defined in subdivisions five and six hereof.
 - 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.
 - 4-b. "Specified felony offense" means:
 - (a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or
 - (b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43 or 221.55 of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one

of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 or 220.39 of the penal law, or a conviction of a criminal defendant for a violation of section 221.30 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances or where the conviction is for a violation of section 221.30 of the penal law, marijuana, as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance or where the conviction is for a violation of section 221.30 of the penal law, marijuana, that such possession was with the intent to sell it.

5. "Post-conviction forfeiture crime" means any felony defined in the penal law or any other chapter of the consolidated laws of the state.

6. "Pre-conviction forfeiture crime" means only a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law.

7. "Court" means a superior court.

8. "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and a "non-criminal defendant".

9. "Criminal defendant" means a person who has criminal liability for a crime defined in subdivisions five and six hereof. For purposes of this article, a person has criminal liability when (a) he has been convicted of a post-conviction forfeiture crime, or (b) the claiming authority proves by clear and convincing evidence that such person has committed an act in violation of article two hundred twenty or section 221.30 or 221.55 of the penal law.

10. "Non-criminal defendant" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

11. "Claiming authority" means the district attorney having jurisdiction over the offense or the attorney general for purpose of those crimes for which the attorney general has criminal jurisdiction in a case where the underlying criminal charge has been, is being or is about to be brought by the attorney general, or the appropriate corporation counsel or county attorney, provided that the corporation counsel or county attorney may act as a claiming authority only with the consent of the district attorney or the attorney general, as appropriate.

12. "Claiming agent" means and shall include all persons described in subdivision thirty-four of section 1.20 of the criminal procedure law, and sheriffs, undersheriffs and deputy sheriffs of counties within the city of New York.

13. "Fair consideration" means fair consideration is given for property, or obligation, (a) when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b)

when such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

14. "District attorney" means and shall include all persons described in subdivision thirty-two of section 1.20 of the criminal procedure law and the special assistant district attorney in charge of the office of prosecution, special narcotics courts of the city of New York.

Credits

(Added L.1984, c. 669, § 1. Amended L.1986, c. 8, § 1; L.1986, c. 174, § 1; L.1990, c. 655, §§ 1, 2.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Anthony J. Girese

2014

In *U.S.v. Real Property and Premises located at 249-20 Cambria Avenue, Little Neck, NY 11362*, ___ F.Supp. ___, 2014 WL 2198618 (E.D.N.Y. 2014), the court faced "... a question of first impression-namely, whether a New York State civil action brought pursuant to Article 13-A of the CPLR amounts to a jurisdictional bar to a later commenced civil *in rem* action in a federal court."

Here, in a case involving the sale of counterfeit goods, the Suffolk County District Attorney commenced a CPLR Article 13-A action in state court and had obtained attachments pursuant to CPLR 1317 against some of the defendants property. The federal government subsequently commenced a federal civil *in rem* forfeiture action against cash seized from the defendants, who then sought to block that forfeiture on the basis of "... a common law rule of long standing (which) prohibits a court from assuming *in rem* jurisdiction over a res that is already under the jurisdiction of another court..." (citations omitted).

The defendants necessarily asserted that Article 13-A was at least a *quasi in rem* statute. The court rejected the claim, finding that "... Article 13-A by its terms makes clear that it is an *in personam*, rather than an *in rem* statute."

On a later motion for reconsideration, the defendants sought to focus on the state attachment under CPLR 1317, claiming that this was a "seizure" of the property. The court rejected the claim, noting that even were this to be the case "... it does not follow that such 'seizure', by itself, confers *in rem* or *quasi in rem* jurisdiction over that property *U.S. v. Real Property and Premises located at 249-20 Cambria Avenue, Little Neck, NY 11362*, ___ F.Supp. ___, 2014 WL 3339567 (E.D.N.Y. 2014).

2013

Forfeiture of Instrumentalities

In *People v. DeProspero*, 20 N.Y.3d 527, 987 N.E.2d 264, 964 N.Y.S.2d 487 (2013), the defendant, following a criminal conviction for possessing a sexual performance by a child based upon a single pornographic image found on his computer, sought the return of various digital devices which had been seized from his residence pursuant