

STATE OF NEW YORK

7443

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

Introduced by M. of A. WEPRIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to deferral of court fees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1, 2, 3, 4 and 5 of section 420.40 of the
2 criminal procedure law, as amended by section 8 of part F of chapter 62
3 of the laws of 2003, are amended to read as follows:

4 1. Applicability. The procedure specified in this section governs the
5 deferral of the obligation to pay all or part of a mandatory surcharge,
6 sex offender registration fee, supplemental sex offender registration
7 fee, crime victims' assistance fee or DNA databank fee imposed pursuant
8 to subdivision one of section 60.35 of the penal law and financial hard-
9 ship hearings relating to mandatory surcharges.

10 2. On an appearance date set forth in a summons issued pursuant to
11 subdivision three of section 60.35 of the penal law, section eighteen
12 hundred nine of the vehicle and traffic law ~~[or]~~, section 27.12 of the
13 parks, recreation and historic preservation law, or upon the date a
14 defendant is sentenced for the commission of a crime in connection with
15 which any mandatory surcharge, sex offender registration fee, supple-
16 mental sex offender registration fee, crime victims' assistance fee or
17 DNA databank fee has or will be imposed, a person upon whom a mandatory
18 surcharge, sex offender registration fee, supplemental sex offender
19 registration fee, crime victims' assistance fee or DNA databank fee was
20 levied shall have an opportunity to present on the record credible and
21 verifiable information establishing that ~~[the mandatory surcharge, sex~~
22 ~~offender registration fee or DNA databank fee]~~ such fees should be
23 deferred, in whole or in part, because, due to the indigence of such
24 person the payment of ~~[said surcharge, sex offender registration fee or~~
25 ~~DNA databank fee]~~ such fees would work an unreasonable hardship on the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 person or his or her immediate family. In determining whether the imposi-
2 sition of such fees would create an "unreasonable hardship" on the
3 person or his or her immediate family, the court shall consider both the
4 interest served by the imposition of the obligation and the cumulative
5 effect of financial obligations on the person's successful and law-abid-
6 ing re-entry. The court shall assess each defendant's circumstances
7 individually, rather than comparing a defendant's circumstances to those
8 of other defendants or inmates.

9 3. In assessing such information the superior court shall be mindful
10 of the mandatory nature of the surcharge, sex offender registration fee,
11 supplemental sex offender registration fee, crime victims' assistance
12 fee and DNA databank fee, and the important criminal justice and victim
13 services sustained by such fees.

14 4. Where a court determines that it will defer part or all of a manda-
15 tory surcharge, sex offender registration fee, supplemental sex offender
16 registration fee, crime victims' assistance fee or DNA databank fee
17 imposed pursuant to subdivision one of section 60.35 of the penal law, a
18 statement of such finding and of the facts upon which it is based shall
19 be made part of the record.

20 5. A court which defers a person's obligation to pay a mandatory
21 surcharge, sex offender registration fee, supplemental sex offender
22 registration fee, crime victims' assistance fee or DNA databank fee
23 imposed pursuant to subdivision one of section 60.35 of the penal law
24 shall do so in a written order. Such order shall not excuse the person
25 from the obligation to pay the surcharge, sex offender registration fee,
26 supplemental sex offender registration fee, crime victims' assistance
27 fee or DNA databank fee. Rather, the court's order shall direct the
28 filing of a certified copy of the order with the county clerk of the
29 county in which the court is situate except where the court which issues
30 such order is the supreme court in which case the order itself shall be
31 filed by the clerk of the court acting in his or her capacity as the
32 county clerk of the county in which the court is situate. Such order
33 shall be entered by the county clerk in the same manner as a judgment in
34 a civil action in accordance with subdivision (a) of rule five thousand
35 sixteen of the civil practice law and rules. The order shall direct that
36 any unpaid balance of the mandatory surcharge, sex offender registration
37 fee, supplemental sex offender registration fee, crime victims' assist-
38 ance fee or DNA databank fee may be collected in the same manner as a
39 civil judgment. The entered order shall be deemed to constitute a judg-
40 ment-roll as defined in section five thousand seventeen of the civil
41 practice law and rules and immediately after entry of the order, the
42 county clerk shall docket the entered order as a money judgment pursuant
43 to section five thousand eighteen of such law and rules.

44 § 2. This act shall take effect on the ninetieth day after it shall
45 have become a law.