

STATE OF NEW YORK

2348--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. NIOU, BARRON, SEAWRIGHT, SIMON, GOTTFRIED, STECK, DE LA ROSA, FRONTUS, EPSTEIN, L. ROSENTHAL, BURGOS, FORREST, REYES, MAMDANI, QUART, CRUZ, GONZALEZ-ROJAS, AUBRY, JACKSON, BURDICK, GALLAGHER, MITAYNES -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the correction law, the executive law, the vehicle and traffic law, the village law and the state finance law, in relation to eliminating certain surcharges and fees; to amend the correction law, in relation to eliminating the requirement that a parolee or releasee receiving a merit termination of sentence be financially able to comply with an order of restitution; to amend the executive law, in relation to eliminating the requirement that a person receiving a discharge of sentence be financially able to comply with an order of restitution and the payment of certain surcharges or fees; and to repeal certain provisions of the penal law, the vehicle and traffic law, the parks, recreation and historic preservation law, the executive law, the environmental conservation law and the correction law relating thereto (Part A); to amend the penal law and the vehicle and traffic law, in relation to prohibiting mandatory minimum fines for penal law and vehicle and traffic offenses (Part B); to amend the penal law and the vehicle and traffic law, in relation to mandating that courts engage in an individualized assessment of a person's financial ability to pay a fine prior to imposing a fine (Part C); to amend the criminal procedure law, in relation to eliminating the availability of incarceration as a remedy for a failure to pay a fine, surcharge or fee, lifting and vacating all existing warrants issued solely based on a person's failure to timely pay a fine, surcharge or fee and ending all existing sentences of incarceration based on such failure; and to repeal certain provisions of the criminal procedure law relating thereto (Part D); in relation to vacating all existing unsatisfied civil judgments entered solely based on a person's failure to timely pay a surcharge or fee and to repeal certain provisions of the criminal

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

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procedure law relating thereto (Part E); to amend the criminal procedure law, in relation to prohibiting the collection of a fine, restitution or reparation from the funds of an incarcerated person; and to amend the correction law, in relation to prohibiting the payment of court fines, mandatory surcharges, certain fees, restitution, reparation or forfeitures from the earnings of prisoners (Part F); and in relation to vacating all existing unpaid surcharges, DNA databank fees, crime victim assistance fees, sexual offender registration fees, supplemental sex offender victim fees, probation supervision fees or parole supervision fees; and to repeal subdivision 3 of section 420.30 of the criminal procedure law relating to restrictions on remitting such fees (Part G)

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

1 Section 1. This act enacts into law major components of legislation
2 relating to ending the unfair financial burdens imposed on defendants in
3 criminal, vehicle and traffic, or other types of criminal or quasi-criminal
4 matters by the existence of mandatory court surcharges and fees,
5 mandatory minimum fines and mandatory probation or parole fees. This
6 act further enacts into law procedures by which courts would be required
7 to engage in an individualized assessment of a person's financial ability
8 to pay a fine prior to imposing a fine, eliminates the availability
9 of incarceration as a remedy for a failure to pay a fine, and vacates
10 all existing warrants or unsatisfied civil judgments issued solely based
11 on a person's failure to timely pay a fine, surcharge, or fee. Each
12 component is wholly contained within a Part identified as Parts A
13 through G. The effective date for each particular provision contained
14 within such Part is set forth in the last section of such Part. Any
15 provision in any section contained within a Part, including the effective
16 date of the Part, which makes reference to a section "of this act",
17 when used in connection with that particular component, shall be deemed
18 to mean and refer to the corresponding section of the Part in which it
19 is found. Section four of this act sets forth the general effective
20 date of this act.

21 § 2. Legislative intent. The legislative intent of this act is to end
22 the inequitable financial burdens placed on defendants by the previously
23 enacted statutory provisions which have authorized or mandated the imposition
24 of surcharges, fees, and/or mandatory minimum fines, which have
25 had a disparate impact on poor defendants, people of color, and those
26 who lack access to the significant financial resources necessary in
27 order to satisfy the imposition of surcharges, fees, and fines, and
28 which have also contributed to mass incarceration in New York state. The
29 legislative intent is also to end New York's regressive reliance on
30 generating governmental revenue by imposing surcharges, fees, and fines
31 on those least able to pay.

32 PART A

33 Section 1. Section 60.35 of the penal law is REPEALED.

34 § 2. Section 1809 of the vehicle and traffic law is REPEALED.

35 § 3. Section 1809-a of the vehicle and traffic law is REPEALED.

36 § 4. Section 1809-aa of the vehicle and traffic law is REPEALED.

37 § 5. Section 1809-b of the vehicle and traffic law is REPEALED.

1 § 6. Section 1809-c of the vehicle and traffic law is REPEALED.

2 § 7. Section 1809-d of the vehicle and traffic law is REPEALED.

3 § 8. Section 1809-e of the vehicle and traffic law is REPEALED.

4 § 9. Section 71-0213 of the environmental conservation law is
5 REPEALED.

6 § 10. Subdivision (f) of section 1101 of the civil practice law and
7 rules, as added by section 1 of part D of chapter 412 of the laws of
8 1999, subparagraph (i) of paragraph 1 and paragraph 3 as amended by
9 section 51 of subpart B of part C of chapter 62 of the laws of 2011, is
10 amended to read as follows:

11 (f) Fees for inmates. 1. Notwithstanding any other provision of law to
12 the contrary, a federal, state or local inmate under sentence for
13 conviction of a crime may seek to commence his or her action or proceed-
14 ing by paying a reduced filing fee as provided in paragraph two of this
15 subdivision. Such inmate shall file the form affidavit referred to in
16 subdivision (d) of this section along with the summons and complaint or
17 summons with notice or third-party summons and complaint or petition or
18 notice of petition or order to show cause. As part of such application,
19 the inmate shall indicate the name and mailing address of the facility
20 at which he or she is confined along with the name and mailing address
21 of any other federal, state or local facility at which he or she was
22 confined during the preceding six month period. The case will be given
23 an index number if applicable, or, in courts other than the supreme or
24 county courts, any necessary filing number and the application will be
25 submitted to a judge of the court. Upon receipt of the application, the
26 court shall obtain from the appropriate official of the facility at
27 which the inmate is confined a certified copy of the inmate's trust fund
28 account statement (or institutional equivalent) for the six month period
29 preceding filing of the inmate's application. If the inmate has been
30 confined for less than six months at such facility, the court shall
31 obtain additional information as follows:

32 (i) in the case of a state inmate who has been transferred from another
33 state correctional facility, the court shall obtain a trust fund
34 account statement for the six month period from the central office of
35 the department of corrections and community supervision in Albany; or

36 (ii) in the case of a state inmate who is newly transferred from a
37 federal or local correctional facility, the court shall obtain any trust
38 fund account statement currently available from such facility. The court
39 may, in its discretion, seek further information from the prior or
40 current facility.

41 2. If the court determines that the inmate has insufficient means to
42 pay the full filing fee, the court may permit the inmate to pay a
43 reduced filing fee, the minimum of which shall not be less than fifteen
44 dollars and the maximum of which shall not be more than fifty dollars.
45 The court shall require an initial payment of such portion of the
46 reduced filing fee as the inmate can reasonably afford or shall author-
47 ize no initial payment of the fee if exceptional circumstances render
48 the inmate unable to pay any fee; provided however, that the difference
49 between the amount of the reduced filing fee and the amount paid by the
50 inmate in the initial partial payment shall be assessed against the
51 inmate as an outstanding obligation to be collected either by the super-
52 intendent or the municipal official of the facility at which the inmate
53 is confined, as the case may be[~~, in the same manner that mandatory~~
54 ~~surcharges are collected as provided for in subdivision five of section~~
55 ~~60.35 of the penal law~~]. The court shall notify the superintendent or
56 the municipal official of the facility where the inmate is housed of the

1 amount of the reduced filing fee that was not directed to be paid by the
2 inmate. Thereafter, the superintendent or the municipal official shall
3 forward to the court any fee obligations that have been collected,
4 provided however, that:

5 (i) in no event shall the filing fee collected exceed the amount of
6 fees required for the commencement of an action or proceeding; and

7 (ii) in no event shall an inmate be prohibited from proceeding for the
8 reason that the inmate has no assets and no means by which to pay the
9 initial partial filing fee.

10 3. The institution at which an inmate is confined, or the central
11 office for the department of corrections and community supervision,
12 whichever is applicable, shall promptly provide the trust fund account
13 statement to the inmate as required by this subdivision.

14 4. Whenever any federal, state or local inmate obtains a judgment in
15 connection with any action or proceeding which exceeds the amount of the
16 filing fee, paid in accordance with the provisions of this subdivision
17 for commencing such action or proceeding, the court shall award to the
18 prevailing inmate, as a taxable disbursement, the actual amount of any
19 fee paid to commence the action or proceeding.

20 5. The provisions of this subdivision shall not apply to a proceeding
21 commenced pursuant to article seventy-eight of this chapter which
22 alleges a failure to correctly award or certify jail time credit due an
23 inmate, in violation of section six hundred-a of the correction law and
24 section 70.30 of the penal law.

25 § 11. Paragraph (a) of subdivision 2 of section 259-i of the executive
26 law, as amended by section 38-f-1 of subpart A of part C of chapter 62
27 of the laws of 2011, is amended to read as follows:

28 (a) (i) Except as provided in subparagraph (ii) of this paragraph, at
29 least one month prior to the date on which an inmate may be paroled
30 pursuant to subdivision one of section 70.40 of the penal law, a member
31 or members as determined by the rules of the board shall personally
32 interview such inmate and determine whether he should be paroled in
33 accordance with the guidelines adopted pursuant to subdivision four of
34 section two hundred fifty-nine-c of this article. If parole is not
35 granted upon such review, the inmate shall be informed in writing within
36 two weeks of such appearance of the factors and reasons for such denial
37 of parole. Such reasons shall be given in detail and not in conclusory
38 terms. The board shall specify a date not more than twenty-four months
39 from such determination for reconsideration, and the procedures to be
40 followed upon reconsideration shall be the same. If the inmate is
41 released, he shall be given a copy of the conditions of parole. Such
42 conditions shall where appropriate, include a requirement that the paro-
43 lee comply with any restitution order, mandatory surcharge, sex offender
44 registration fee and DNA databank fee previously imposed by a court of
45 competent jurisdiction that applies to the parolee. The conditions shall
46 indicate which restitution collection agency established under subdivi-
47 sion eight of section 420.10 of the criminal procedure law, shall be
48 responsible for collection of restitution[, mandatory surcharge, sex
49 offender registration fees and DNA databank fees as provided for in
50 section 60.35 of the penal law and section eighteen hundred nine of the
51 vehicle and traffic law].

52 (ii) Any inmate who is scheduled for presumptive release pursuant to
53 section eight hundred six of the correction law shall not appear before
54 the board as provided in subparagraph (i) of this paragraph unless such
55 inmate's scheduled presumptive release is forfeited, canceled, or
56 rescinded subsequently as provided in such law. In such event, the

1 inmate shall appear before the board for release consideration as
2 provided in subparagraph (i) of this paragraph as soon thereafter as is
3 practicable.

4 § 12. Paragraph (a) of subdivision 2 of section 259-i of the executive
5 law, as amended by section 38-f-2 of subpart A of part C of chapter 62
6 of the laws of 2011, is amended to read as follows:

7 (a) At least one month prior to the expiration of the minimum period
8 or periods of imprisonment fixed by the court or board, a member or
9 members as determined by the rules of the board shall personally inter-
10 view an inmate serving an indeterminate sentence and determine whether
11 he should be paroled at the expiration of the minimum period or periods
12 in accordance with the procedures adopted pursuant to subdivision four
13 of section two hundred fifty-nine-c of this article. If parole is not
14 granted upon such review, the inmate shall be informed in writing within
15 two weeks of such appearance of the factors and reasons for such denial
16 of parole. Such reasons shall be given in detail and not in conclusory
17 terms. The board shall specify a date not more than twenty-four months
18 from such determination for reconsideration, and the procedures to be
19 followed upon reconsideration shall be the same. If the inmate is
20 released, he shall be given a copy of the conditions of parole. Such
21 conditions shall where appropriate, include a requirement that the paro-
22 lee comply with any restitution order and mandatory surcharge previously
23 imposed by a court of competent jurisdiction that applies to the paro-
24 lee. The conditions shall indicate which restitution collection agency
25 established under subdivision eight of section 420.10 of the criminal
26 procedure law, shall be responsible for collection of restitution [~~and~~
27 ~~mandatory surcharge as provided for in section 60.35 of the penal law~~
28 ~~and section eighteen hundred nine of the vehicle and traffic law~~].

29 § 12-a. Subdivision 9 of section 201 of the correction law is
30 REPEALED.

31 § 12-b. Section 257-c of the executive law is REPEALED and a new
32 section 257-c is added to read as follows:

33 § 257-c. Probation fees prohibited. Notwithstanding any other
34 provision of law, no county or city may require individuals currently
35 serving or who shall be sentenced to a period of probation upon
36 conviction of any crime to pay any fee, including but not limited to an
37 administrative fee, supervision fee, monitoring fee, testing fee, or
38 screening fee, to the local probation department with the responsibility
39 of supervising the probationer. Nothing in this section shall be
40 construed to affect the collection of restitution payments pursuant to
41 sections 65.10 and 60.27 of the penal law and subdivision eight of
42 section 420.10 of the criminal procedure law.

43 § 12-c. Subdivision 2 of section 205 of the correction law, as added
44 by section 32 of subpart A of part C of chapter 62 of the laws of 2011,
45 is amended to read as follows:

46 2. A merit termination granted by the department under this section
47 shall constitute a termination of the sentence with respect to which it
48 was granted. No such merit termination shall be granted unless the
49 department is satisfied that termination of sentence from presumptive
50 release, parole, conditional release or post-release supervision is in
51 the best interest of society[, ~~and that the parolee or releasee, other-~~
52 ~~wise financially able to comply with an order of restitution and the~~
53 ~~payment of any mandatory surcharge previously imposed by a court of~~
54 ~~competent jurisdiction, has made a good faith effort to comply there-~~
55 ~~with~~].

§ 12-d. Subdivisions 1 and 3 of section 259-j of the executive law, as amended by section 38-g of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

1. Except where a determinate sentence was imposed for a felony other than a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law, if the board of parole is satisfied that an absolute discharge from presumptive release, parole, conditional release or release to a period of post-release supervision is in the best interests of society, the board may grant such a discharge prior to the expiration of the full term or maximum term to any person who has been on unrevoked community supervision for at least three consecutive years. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted. ~~[No such discharge shall be granted unless the board is satisfied that the parolee or releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee or DNA databank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.]~~

3. Notwithstanding any other provision of this section to the contrary, where a term of post-release supervision in excess of five years has been imposed on a person convicted of a crime defined in article one hundred thirty of the penal law, including a sexually motivated felony, the board of parole may grant a discharge from post-release supervision prior to the expiration of the maximum term of post-release supervision. Such a discharge may be granted only after the person has served at least five years of post-release supervision, and only to a person who has been on unrevoked post-release supervision for at least three consecutive years. No such discharge shall be granted unless the board of parole or the department acting pursuant to its responsibility under subdivision one of section two hundred one of the correction law consults with any licensed psychologist, qualified psychiatrist, or other mental health professional who is providing care or treatment to the supervisee; and the board~~[(a)]~~ determines that a discharge from post-release supervision is in the best interests of society~~[(a) and (b) is satisfied that the supervisee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee, or DNA data bank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith]~~. Before making a determination to discharge a person from a period of post-release supervision, the board of parole may request that the commissioner of the office of mental health arrange a psychiatric evaluation of the supervisee. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted.

§ 13. Subdivision 5 of section 27.12 of the parks, recreation and historic preservation law is REPEALED and subdivision 6 is renumbered subdivision 5.

§ 14. Subdivision 4 of section 60.02 of the penal law is renumbered subdivision 3.

§ 15. Subparagraph (i) of paragraph (j-1) of subdivision 2 of section 503 of the vehicle and traffic law, as amended by section 3 of part PP of chapter 59 of the laws of 2009, is amended to read as follows:

(i) When a license issued pursuant to this article, or a privilege of operating a motor vehicle or of obtaining such a license, has been suspended based upon a failure to answer an appearance ticket or a

1 summons or failure to pay a fine, penalty or mandatory surcharge, pursu-
2 ant to subdivision three of section two hundred twenty-six, subdivision
3 four of section two hundred twenty-seven, ~~or subdivision four-a of~~
4 ~~section five hundred ten [or subdivision five-a of section eighteen~~
5 ~~hundred nine]~~ of this chapter, such suspension shall remain in effect
6 until a termination of a suspension fee of seventy dollars is paid to
7 the court or tribunal that initiated the suspension of such license or
8 privilege. In no event may the aggregate of the fees imposed by an indi-
9 vidual court pursuant to this paragraph for the termination of all
10 suspensions that may be terminated as a result of a person's answers,
11 appearances or payments made in such cases pending before such individ-
12 ual court exceed four hundred dollars. For the purposes of this para-
13 graph, the various locations of the administrative tribunal established
14 under article two-A of this chapter shall be considered an individual
15 court.

16 § 16. Section 4-411 of the village law, as amended by section 12 of
17 part F of chapter 62 of the laws of 2003, is amended to read as follows:

18 § 4-411 Disposition of fines and penalties. Except as otherwise
19 provided by law, all fines and penalties imposed for the violation of a
20 village local law, ordinance or regulation shall be the property of the
21 village, whether or not the village has established the office of
22 village justice. ~~[Nothing in this section shall be deemed to affect the~~
23 ~~disposition of mandatory surcharges, sex offender registration fees, DNA~~
24 ~~databank fees or crime victim assistance fees as provided by section~~
25 ~~60.35 of the penal law, or of mandatory surcharges as provided by~~
26 ~~section eighteen hundred nine of the vehicle and traffic law, or of~~
27 ~~fines, penalties and forfeitures as provided by section eighteen hundred~~
28 ~~three of the vehicle and traffic law relating to traffic offenses.]~~

29 § 17. Subdivision 2 of section 837-i of the executive law, as added by
30 chapter 166 of the laws of 1991, is amended to read as follows:

31 2. The commissioner in consultation with the chief executive officers
32 of cities with a population in excess of one hundred thousand persons
33 according to the nineteen hundred eighty United States census shall
34 establish a system to record and monitor the issuance and disposition of
35 parking tickets~~[, to monitor the collection of the mandatory surcharge~~
36 ~~required by section eighteen hundred nine-a of the vehicle and traffic~~
37 ~~law]~~ and to receive information from cities for this purpose. Each such
38 city shall report on such parking violations on a monthly basis in the
39 form and manner prescribed by the commissioner including, but not limit-
40 ed to, the parking tickets issued, the dispositions of such tickets and
41 the amount of fines~~[, and~~ penalties ~~[and mandatory surcharges]~~
42 collected. The commissioner shall collect, process and analyze such
43 information and present periodic reports on the parking violations
44 enforcement and disposition program.

45 § 18. Section 837-j of the executive law is REPEALED.

46 § 19. Subdivision 1 of section 837-i of the executive law, as added by
47 chapter 166 of the laws of 1991, is amended to read as follows:

48 1. The commissioner, in cooperation with the commissioner of the
49 department of motor vehicles, and in consultation with the chief execu-
50 tive officers of cities with a population in excess of one hundred thou-
51 sand persons according to the nineteen hundred eighty United States
52 census shall prescribe the form and content of uniform parking tickets
53 for such cities in all cases involving a parking, standing or stopping
54 violation as defined in accordance with the vehicle and traffic law,
55 hereinafter referred to as parking violations, or of any local law,
56 ordinance, rule or regulation adopted pursuant to the vehicle and traf-

1 fic law relating to parking violations. [~~Upon written application of the~~
2 ~~chief executive officer of any such city, the commissioner, after~~
3 ~~consultation with the commissioner of the department of motor vehicles,~~
4 ~~may authorize the use of a parking ticket other than the uniform parking~~
5 ~~ticket prescribed pursuant to this section if he or she determines that~~
6 ~~use of such other parking ticket is not inconsistent with, and will not~~
7 ~~diminish the effectiveness of, the parking violations enforcement and~~
8 ~~disposition program established pursuant to section eight hundred thir-~~
9 ~~ty-seven-j of this chapter, and may also authorize for a specified time~~
10 ~~period the use of a parking ticket which was used by such city on or~~
11 ~~before the effective date of this section.~~]

12 § 20. Clause (E) of subparagraph 2 of paragraph a of subdivision 2 of
13 section 235 of the vehicle and traffic law, as amended by section 18 of
14 part J of chapter 62 of the laws of 2003, is amended to read as follows:

15 (E) that submission of a plea of guilty to the parking violation makes
16 the owner liable for payment of the stated fine and additional penalties
17 imposed pursuant to paragraph b of this subdivision [~~and the mandatory~~
18 ~~surcharge of fifteen dollars imposed upon parking violations pursuant to~~
19 ~~section eighteen hundred nine-a of this chapter~~].

20 § 21. Subdivision 4 of section 1203-g of the vehicle and traffic law,
21 as added by chapter 497 of the laws of 1999, is amended to read as
22 follows:

23 4. Every county and the city of New York that establishes a hand-
24 icapped parking education program shall establish a separate handicapped
25 parking education fund in the custody of the chief fiscal officer of
26 each such county or city, by April first, two thousand[, ~~which shall~~
27 ~~consist of moneys granted to such county or city pursuant to section~~
28 ~~eighteen hundred nine-b of this chapter~~]. No provision of law shall be
29 deemed to preclude a county or the city of New York from receiving funds
30 [~~from other sources~~] to be deposited in the handicapped parking edu-
31 cation fund, provided such funds are used in a manner and for purposes
32 consistent with this section. The moneys of such fund shall be disbursed
33 to provide education, advocacy and increased awareness of handicapped
34 parking laws and may be used to execute contracts with private organiza-
35 tions for such purposes. Such contracts shall be awarded upon compet-
36 itive bids after the issuance of requests for proposal.

37 § 22. Subdivision 2 of section 99-n of the state finance law, as added
38 by chapter 223 of the laws of 2005, is amended to read as follows:

39 2. The fund shall consist of all monies appropriated for its
40 purpose[, ~~and~~ and all monies required by this section or any other
41 provision of law to be paid into or credited to such fund[, ~~collected by~~
42 ~~the mandatory surcharges imposed pursuant to subdivision one of section~~
43 ~~eighteen hundred nine-d of the vehicle and traffic law~~]. Nothing
44 contained in this section shall prevent the department of motor vehicles
45 from receiving grants or other appropriations for the purposes of the
46 fund as defined in this section and depositing them into the fund
47 according to law.

48 § 23. This act shall take effect immediately; provided however that
49 the amendments to subdivision (f) of section 1101 of the civil practice
50 law and rules made by section ten of this act shall not affect the expi-
51 ration of such section and shall be deemed to expire therewith; provided
52 further, however, that the amendments to paragraph (a) of subdivision 2
53 of section 259-i of the executive law made by section eleven of this act
54 shall be subject to the expiration and reversion of such paragraph
55 pursuant to subdivision d of section 74 of chapter 3 of the laws of
56 1995, as amended, when upon such date the provisions of section twelve

1 of this act shall take effect; and provided further however that the
2 amendments to clause (E) of subparagraph 2 of paragraph a of subdivision
3 2 of section 235 of the vehicle and traffic law made by section twenty
4 of this act shall not affect the expiration of such section and shall
5 expire therewith.

PART B

7 Section 1. The penal law is amended by adding a new section 80.20 to
8 read as follows:

9 § 80.20 Mandatory minimum fines prohibited.

10 Notwithstanding any other provision of law, no offense shall carry a
11 mandatory minimum fine.

12 § 2. Section 1800 of the vehicle and traffic law is amended by adding
13 a new subdivision (j) to read as follows:

14 (j) Notwithstanding any other provision of law, no offense described
15 in this chapter shall carry a mandatory minimum fine.

16 § 3. This act shall take effect immediately.

PART C

18 Section 1. Section 80.05 of the penal law is amended by adding a new
19 subdivision 7 to to read as follows:

20 7. Individualized assessment. When imposing a fine pursuant to the
21 provisions of this section, the court shall consider the profit gained
22 by the defendant's conduct, whether the amount of the fine is dispropor-
23 tionate to the conduct in which the defendant engaged, the impact on any
24 victims, and the defendant's economic circumstances, including the
25 defendant's ability to pay, the effect of the fine upon his or her imme-
26 diat family or any other persons to whom the defendant owes an obli-
27 gation of support. In addition, when imposing a fine the court shall
28 establish such payment schedules as are fair and reasonable taking into
29 consideration the defendant's economic circumstances.

30 § 2. The vehicle and traffic law is amended by adding a new section
31 1811 to read as follows:

32 § 1811. Fines; individualized assessment. When imposing a fine pursu-
33 ant to the provisions of this section, the court shall consider the
34 profit gained by the defendant's conduct, whether the amount of the fine
35 is disproportionate to the conduct in which the defendant engaged, the
36 impact on any victims, and the defendant's economic circumstances,
37 including the defendant's ability to pay, the effect of the fine upon
38 his or her immediate family or any other persons to whom the defendant
39 owes an obligation of support. In addition, when imposing a fine the
40 court shall establish such payment schedules as are fair and reasonable
41 taking into consideration the defendant's economic circumstances.

42 § 3. This act shall take effect immediately.

PART D

44 Section 1. Subdivisions 3 and 4 of section 420.10 of the criminal
45 procedure law are REPEALED.

46 § 2. Section 420.35 of the criminal procedure law is REPEALED.

47 § 3. Subdivision 5 of section 420.10 of the criminal procedure law, as
48 separately amended by chapters 233 and 506 of the laws of 1985, the
49 second undesignated paragraph as amended by chapter 618 of the laws of
50 1992, is amended to read as follows:

5. Application for resentencing. In any case where the defendant is unable to pay a fine, restitution or reparation imposed by the court, he may at any time apply to the court for resentencing. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation it must:

(a) Adjust the terms of payment; or

(b) Lower the amount of the fine, restitution or reparation to an amount the defendant is able to pay, or revoke it entirely from the sentence if the defendant has no ability to pay; or

~~(c) [Where the sentence consists of probation or imprisonment and a fine, restitution or reparation, revoke the portion of the sentence imposing the fine, restitution or reparation, or~~

~~(d)]~~ Revoke the entire sentence imposed and resentence the defendant. Upon such resentencing the court may impose any sentence it originally could have imposed, except that the amount of any fine, restitution or reparation imposed may not be in excess of the amount the defendant is able to pay and that the court may not sentence the defendant to any term of imprisonment, probation, or post-release supervision in excess of any such term imposed by the original sentence.

In any case where the defendant applies for resentencing with respect to any condition of the sentence relating to restitution or reparation the court must order that notice of such application and a reasonable opportunity to be heard be given to the person or persons given notice pursuant to subdivision one of this section. If the court grants the defendant's application by changing the original order for restitution or reparation in any manner, the court must place the reasons therefor on the record.

~~[For the purposes of this subdivision, the court shall not determine that the defendant is unable to pay the fine, restitution or reparation ordered solely because of such defendant's incarceration but shall consider all the defendant's sources of income including, but not limited to, moneys in the possession of an inmate at the time of his admission into such facility, funds earned by him in a work release program as defined in subdivision four of section one hundred fifty of the correction law, funds earned by him as provided for in section one hundred eighty seven of the correction law and any other funds received by him or on his behalf and deposited with the superintendent or the municipal official of the facility where the person is confined.]~~ In determining whether an incarcerated defendant is able to pay a fine, restitution, or reparation, the court shall not consider income earned pursuant to subdivision four of section one hundred fifty of the correction law, income earned pursuant to section one hundred eighty-seven of the correction law, or funds received by the defendant or on the defendant's behalf and deposited with the superintendent or the municipal official of the facility where the person is confined.

§ 4. Subdivision 1 of section 420.30 of the criminal procedure law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

1. Applicability. The procedure specified in this section governs remission of fines, restitution or reparation ~~[in all cases not covered by subdivision four of section 420.10].~~

§ 5. The criminal procedure law is amended by adding a new section 420.11 to read as follows:

§ 420.11 Warrants and sentences of incarceration; effectiveness.

1. All warrants issued prior to the effective date of this section pursuant to the provisions of subdivision three of section 420.10 of this article as such subdivision existed prior to the effective date of

this section and/or the provisions of subdivision one of section 420.35 of this article as such subdivision existed prior to the effective date of this section solely based on the alleged failure on the part of a defendant to timely pay, and/or to appear on a court date set for the sole purpose of payment of, a fine, restitution, reparation, surcharge, DNA databank fee, crime victim assistance fee, sexual offender registration fee, and/or supplemental sex offender victim fee, are deemed to be null and void.

2. The office of court administration, in consultation with such other state or municipal agencies as necessary, shall establish procedures to formally rescind all warrants issued prior to the effective date of this section pursuant to the provisions of subdivision three of section 420.10 of this article as such subdivision existed prior to the effective date of this section and/or the provisions of subdivision one of section 420.35 of this article as such subdivision existed prior to the effective date of this section solely based on the alleged failure on the part of a defendant to timely pay, and/or to appear on a court date set for the sole purpose of payment of, a fine, restitution, reparation, surcharge, DNA databank fee, crime victim assistance fee, sexual offender registration fee, and/or supplemental sex offender victim fee. Such procedures shall not require any affirmative actions on the part of any defendant subject to any such warrant. Such procedures shall be designed and implemented so as to accomplish the rescinding of all such warrants within six months of the effective date of this section.

3. All sentences of incarceration imposed prior to the effective date of this section pursuant to the provisions of subdivision three of section 420.10 of this article as such subdivision existed prior to the effective date of this section, subdivision five of section 420.10 of this article, or section 420.35 of this article as such section existed prior to the effective date of this section based solely on the alleged failure on the part of a defendant to timely pay, or timely appear on a court date scheduled for the purposes of payment of, a fine, restitution, reparation, surcharge, DNA databank fee, crime victim assistance fee, sexual offender registration fee, or supplemental sex offender victim fee are deemed to be null and void and any person serving such a sentence shall be released from custody immediately.

4. The office of court administration, in consultation with such other state or municipal agencies as is necessary, shall establish procedures to formally rescind all sentences of incarceration imposed prior to the effective date of this section pursuant to the provisions of subdivision three of section 420.10 of this article as such subdivision existed prior to the effective date of this section or section 420.35 of this article as such section existed prior to the effective date of this section based solely on the alleged failure on the part of a defendant to timely pay a fine, restitution, reparation, surcharge, DNA databank fee, crime victim assistance fee, sexual offender registration fee, or supplemental sex offender victim fee. Such procedures shall not require any affirmative actions on the part of any defendant subject to any such sentence.

§ 6. Subdivision 1 of section 430.20 of the criminal procedure law, as amended by chapter 788 of the laws of 1971, is amended to read as follows:

1. In general. When a sentence of imprisonment is pronounced, or [~~when the sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied,~~] the defendant must

1 forthwith be committed to the custody of the appropriate public servant
2 and detained until the sentence is complied with.

3 § 7. Subdivision 5 of section 430.20 of the criminal procedure law is
4 REPEALED.

5 § 8. This act shall take effect immediately.

6 PART E

7 Section 1. All unsatisfied civil judgments issued prior to the effective
8 date of this act pursuant to the provisions of subdivision 5 of
9 section 420.40 of the criminal procedure law solely based on the alleged
10 failure on the part of a defendant to timely pay, and/or to appear on a
11 court date set for the sole purpose of payment of a surcharge, DNA data-
12 bank fee, crime victim assistance fee, sexual offender registration fee,
13 or supplemental sex offender victim fee are deemed to be null and void
14 and, for all legal purposes, vacated and discharged.

15 § 2. The office of court administration, in consultation with such
16 other state or municipal agencies as necessary, shall establish procedures
17 to formally vacate and discharge all unsatisfied civil judgments
18 entered prior to the effective date of this act pursuant to the
19 provisions of subdivision 5 of the criminal procedure law section 420.40
20 solely based on the alleged failure on the part of a defendant to timely
21 pay, and/or to appear on a court date set for the sole purpose of
22 payment of, a surcharge, DNA databank fee, crime victim assistance fee,
23 sexual offender registration fee, or supplemental sex offender victim
24 fee. Such procedures shall not require any affirmative actions on the
25 part of any defendant subject to any such civil judgment. Such procedures
26 shall be designed and implemented so as to accomplish the vacatur
27 and discharge of all such civil judgments within six months of the
28 effective date of this act.

29 § 3. Subdivision 3 of section 420.30 of the criminal procedure law is
30 REPEALED.

31 § 4. This act shall take effect immediately.

32 PART F

33 Section 1. Section 420.10 of the criminal procedure law is amended by
34 adding a new subdivision 9 to read as follows:

35 9. In no case shall a fine, restitution, or reparation be collected
36 out of the funds of a person who is presently incarcerated, including
37 funds earned by the person in a work release program as defined in
38 subdivision four of section one hundred fifty of the correction law,
39 funds earned by a person as provided for in section one hundred eighty-
40 seven of the correction law, and any other funds received by the person
41 or on the person's behalf and deposited with the superintendent or the
42 municipal official of the facility where the person is confined.

43 § 2. Section 154 of the correction law, as added by chapter 788 of the
44 laws of 1968, subdivision 4 as amended by section 3 of part F of chapter
45 62 of the laws of 2003, is amended to read as follows:

46 § 154. Disposition of Earnings. The earnings of a prisoner participating
47 in a work release program, less any payroll deductions required or
48 authorized by law, shall be deposited with the department in a trust
49 fund account. Such earnings shall not be subject to attachment or
50 garnishment in the hands of the department. The commissioner is authorized
51 to provide for disbursements from the trust fund account for any or
52 all of the following purposes:

1 1. Such costs incident to the prisoner's confinement as the commis-
2 sioner deems appropriate and reasonable.

3 2. Such costs related to the prisoner's work release program as the
4 commissioner deems appropriate and reasonable.

5 3. Support of the prisoner's dependents.

6 ~~[4. Payment of court fines, mandatory surcharge, sex offender regis-~~
7 ~~tration fee, DNA databank fee, restitution or reparation, or forfei-~~
8 ~~tures.]~~

9 The balance of such earnings, if any, after disbursements for any of
10 the foregoing purposes shall be paid to the prisoner upon termination of
11 his imprisonment.

12 § 3. This act shall take effect immediately.

13 PART G

14 Section 1. All orders issued prior to the effective date of this act
15 directing payment by a defendant of a surcharge, DNA databank fee, crime
16 victim assistance fee, sexual offender registration fee, supplemental
17 sex offender victim fee, probation supervision fee or parole supervision
18 fee are deemed to be null and void and, such orders are for all legal
19 purposes, vacated and discharged. Pursuant to this section, any exist-
20 ing encumbrances on commissary accounts or similar accounts held by a
21 correctional facility, jail, or detention facility shall be lifted and
22 deemed null and void.

23 § 2. This act shall take effect immediately.

24 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
25 sion, section or part of this act shall be adjudged by any court of
26 competent jurisdiction to be invalid, such judgment shall not affect,
27 impair, or invalidate the remainder thereof, but shall be confined in
28 its operation to the clause, sentence, paragraph, subdivision, section
29 or part thereof directly involved in the controversy in which such judg-
30 ment shall have been rendered. It is hereby declared to be the intent of
31 the legislature that this act would have been enacted even if such
32 invalid provisions had not been included herein.

33 § 4. This act shall take effect immediately provided, however, that
34 the applicable effective date of Parts A through G of this act shall be
35 as specifically set forth in the last section of such Parts.