S T A T E O F N E W Y O R K

4902

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. EDDINGTON, HYER-SPENCER, CARROZZA, CHRISTENSEN, ZEBROWSKI, GABRYSZAK -- Multi-Sponsored by -- M. of A. ABBATE, DESTITO, LIFTON, MAISEL, PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the correction law and the state finance law, in relation to reimbursement for dissemination of sex offender information

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 60.35 of the penal law, as amended by section 1 of part E of chapter 56 of the laws of 2004, paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of 2006 and subdivision 10 as amended by section 2 of part Y of chapter 56 of the laws of 2008, and subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as amended by section 1 of part DD of chapter 56 of the laws of 2008, is amended to read as follows:

S 60.35 Mandatory surcharge, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee [and], crime victim assistance fee AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE required in certain cases.

1. (a) Except as provided in section eighteen hundred nine of the vehicle and traffic law and section 27.12 of the parks, recreation and historic preservation law, whenever proceedings in an administrative tribunal or a court of this state result in a conviction for a felony, a misdemeanor, or a violation, as these terms are defined in section 10.00 of this chapter, there shall be levied at sentencing a mandatory surcharge, sex offender registration fee, DNA databank fee [and], a crime victim assistance fee AND A SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE in addition to any sentence required or permitted by law, in accordance with the following schedule:

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

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(i) a person convicted of a felony shall pay a mandatory surcharge of three hundred dollars and a crime victim assistance fee of twenty-five dollars;

(ii) a person convicted of a misdemeanor shall pay a mandatory surcharge of one hundred seventy-five dollars and a crime victim assistance fee of twenty-five dollars;

(iii) a person convicted of a violation shall pay a mandatory surcharge of ninety-five dollars and a crime victim assistance fee of twenty-five dollars;

(iv) a person convicted of a sex offense as defined by subdivision two of section one hundred sixty-eight-a of the correction law or a sexually violent offense as defined by subdivision three of section one hundred sixty-eight-a of the correction law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a sex offender registration fee of fifty dollars AND PAY A SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE OF TWENTY-FIVE DOLLARS.

(v) a person convicted of a designated offense as defined by subdivision seven of section nine hundred ninety-five of the executive law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a DNA databank fee of fifty dollars.

(b) When the felony or misdemeanor conviction in subparagraphs (i), (ii) or (iv) of paragraph (a) of this subdivision results from an offense contained in article one hundred thirty of this chapter, incest in the third, second or first degree as defined in sections 255.25, 255.26 and 255.27 of this chapter or an offense contained in article two hundred sixty-three of this chapter, the person convicted shall pay a supplemental sex offender victim fee of one thousand dollars in addition to the mandatory surcharge and any other fee.

2. Where a person is convicted of two or more crimes or violations committed through a single act or omission, or through an act or omission which in itself constituted one of the crimes or violations and also was a material element of the other, the court shall impose a mandatory surcharge and a crime victim assistance fee, and where appropriate a supplemental sex offender victim fee, in accordance with the provisions of this section for the crime or violation which carries the highest classification, and no other sentence to pay a mandatory surcharge, crime victim assistance fee or supplemental sex offender victim fee required by this section shall be imposed. Where a person is convicted of two or more sex offenses or sexually violent offenses, as defined by subdivisions two and three of section one hundred sixty-eight-a of the correction law, committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the court shall impose only one sex offender registration fee AND ONLY ONE SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE. Where a person is convicted of two or more designated offenses, as defined by subdivision seven of section nine hundred ninety-five of the executive law, committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the court shall impose only one DNA databank fee.

3. The mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, [and] supplemental sex offender victim fee AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE provided for in subdivision one of this section shall be paid to the clerk of the court or administrative tribunal that rendered the

conviction. Within the first ten days of the month following collection of the mandatory surcharge, crime victim assistance fee, and supplemental sex offender victim fee, the collecting authority shall determine the amount of mandatory surcharge, crime victim assistance fee, and supplemental sex offender victim fee collected and, if it is an administrative tribunal, or a town or village justice court, it shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law. Within the first ten days of the month following collection of the sex offender registration fee [and], DNA databank fee, AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE the collecting authority shall determine the amount of the sex offender registration fee [and], DNA databank fee collected AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE and, if it is an administrative tribunal, or a town or village justice court, it shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the general fund. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the mandatory surcharge or crime victim assistance fee to the state commissioner of taxation and finance to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the sex offender registration fee [and], the DNA databank fee AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE to the state commissioner of taxation and finance to the credit of the general fund.

4. Any person who has paid a mandatory surcharge, sex offender registration fee, DNA databank fee, a crime victim assistance fee [or], a supplemental sex offender victim fee OR A SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE under the authority of this section based upon a conviction that is subsequently reversed or who paid a mandatory surcharge, sex offender registration fee, DNA databank fee, a crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE under the authority of this section which is ultimately determined not to be required by this section shall be entitled to a refund of such mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE upon application to the state comptroller. The state comptroller shall require such proof as is necessary in order to determine whether a refund is required by law.

5. (a) When a person who is convicted of a crime or violation and sentenced to a term of imprisonment has failed to pay the mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE required by this section, the clerk of the court that rendered the conviction shall notify the superintendent or the municipal official of the facility where the person is confined. The superintendent or the municipal official shall cause any amount owing to be collected from such person during his or her term of imprisonment from moneys to the credit of an inmates' fund or such moneys as may be earned by a person in a work release

program pursuant to section eight hundred sixty of the correction law. Such moneys attributable to the mandatory surcharge or crime victim assistance fee shall be paid over to the state comptroller to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law and such moneys attributable to the sex offender registration fee [or], DNA databank fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE shall be paid over to the state comptroller to the credit of the general fund, except that any such moneys collected which are surcharges, sex offender registration fees, DNA databank fees, crime victim assistance fees [or], supplemental sex offender victim fees OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE levied in relation to convictions obtained in a town or village justice court shall be paid within thirty days after the receipt thereof by the superintendent or municipal official of the facility to the justice of the court in which the conviction was obtained. For the purposes of collecting such mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, [and], supplemental sex offender victim fee, AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE the state shall be legally entitled to the money to the credit of an inmates' fund or money which is earned by an inmate in a work release program. For purposes of this subdivision, the term "inmates' fund" shall mean moneys in the possession of an inmate at the time of his or her admission into such facility, funds earned by him or her as provided for in section one hundred eighty-seven of the correction law and any other funds received by him or her or on his or her behalf and deposited with such superintendent or municipal official.

(b) The incarceration fee provided for in subdivision two of section one hundred eighty-nine of the correction law shall not be assessed or collected if any order of restitution or reparation, fine, mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE remains unpaid. In such circumstances, any monies which may lawfully be withheld from the compensation paid to a prisoner for work performed while housed in a general confinement facility in satisfaction of such an obligation shall first be applied toward satisfaction of such obligation.

6. Notwithstanding any other provision of this section, where a person has made restitution or reparation pursuant to section 60.27 of this article, such person shall not be required to pay a mandatory surcharge or a crime victim assistance fee.

7. Notwithstanding the provisions of subdivision one of section 60.00 of this article, the provisions of subdivision one of this section shall not apply to a violation under any law other than this chapter.

8. Subdivision one of section 130.10 of the criminal procedure law notwithstanding, at the time that the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE is imposed a town or village court may, and all other courts shall, issue and cause to be served upon the person required to pay the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE, a summons directing that such person appear before the court regarding the payment of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or],

supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE, if after sixty days from the date it was imposed it remains unpaid. The designated date of appearance on the summons shall be set for the first day court is in session falling after the sixtieth day from the imposition of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE. The summons shall contain the information required by subdivision two of section 130.10 of the criminal procedure law except that in substitution for the requirement of paragraph (c) of such subdivision the summons shall state that the person served must appear at a date, time and specific location specified in the summons if after sixty days from the date of issuance the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE remains unpaid. The court shall not issue a summons under this subdivision to a person who is being sentenced to a term of confinement in excess of sixty days in jail or in the department of correctional services. The mandatory surcharges, sex offender registration fee and DNA databank fees, crime victim assistance fees [and], supplemental sex offender victim fees AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEES for those persons shall be governed by the provisions of section 60.30 of this article.

9. Notwithstanding the provisions of subdivision one of this section, in the event a proceeding is in a town or village court, such court shall add an additional five dollars to the surcharges imposed by such subdivision one.

10. The provisions of this section shall apply to sentences imposed upon a youthful offender finding; provided, however that the court shall not impose the sex offender registration fee, DNA databank fee or supplemental sex offender victim fee, as defined in subparagraphs (iv) and (v) of paragraph (a) and paragraph (b) of subdivision one of this section, for an offense in which the conviction was substituted with a youthful offender finding.

S 2. Subdivision 5 of section 60.35 of the penal law, as amended by section 2 of part E of chapter 56 of the laws of 2004, is amended to read as follows:

5. When a person who is convicted of a crime or violation and sentenced to a term of imprisonment has failed to pay the mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE required by this section, the clerk of the court that rendered the conviction shall notify the superintendent or the municipal official of the facility where the person is confined. The superintendent or the municipal official shall cause any amount owing to be collected from such person during his or her term of imprisonment from moneys to the credit of an inmates' fund or such moneys as may be earned by a person in a work release program pursuant to section eight hundred sixty of the correction law. Such moneys attributable to the mandatory surcharge or crime victim assistance fee shall be paid over to the state comptroller to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law and such moneys attributable to the sex offender registration fee [or], DNA databank fee OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE shall be paid over to the

state comptroller to the credit of the general fund, except that any such moneys collected which are surcharges, sex offender registration fees, DNA databank fees, crime victim assistance fees [or], supplemental sex offender victim fees OR SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEES levied in relation to convictions obtained in a town or village justice court shall be paid within thirty days after the receipt thereof by the superintendent or municipal official of the facility to the justice of the court in which the conviction was obtained. For the purposes of collecting such mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [and], supplemental sex offender victim fee, AND SEX OFFENDER DISSEMINATION OF INFORMATION REIMBURSEMENT FEE, the state shall be legally entitled to the money to the credit of an inmates' fund or money which is earned by an inmate in a work release program. For purposes of this subdivision, the term "inmates' fund" shall mean moneys in the possession of an inmate at the time of his or her admission into such facility, funds earned by him or her as provided for in section one hundred eighty-seven of the correction law and any other funds received by him or her or on his or her behalf and deposited with such superintendent or municipal official.

S 3. Section 168-l of the correction law is amended by adding a new subdivision 6-a to read as follows:

6-A. DISCLOSURE AND DISSEMINATION OF SEX OFFENDER INFORMATION BY THE SUPERINTENDENT OF SCHOOLS OR CHIEF SCHOOL ADMINISTRATOR OF A SCHOOL DISTRICT. (A) A SUPERINTENDENT OF SCHOOLS OR CHIEF SCHOOL ADMINISTRATOR OF A SCHOOL DISTRICT WHO TAKES ACTION TO DISSEMINATE RELEVANT INFORMATION, AS PROVIDED BY LAW ENFORCEMENT AGENCIES PURSUANT TO SUBDIVISION SIX OF THIS SECTION, SHALL USE THE MOST EFFECTIVE AND EFFICIENT METHOD OF DISSEMINATION AVAILABLE TO SUCH SCHOOL DISTRICT.

(B) A SUPERINTENDENT OF SCHOOLS OR CHIEF SCHOOL ADMINISTRATOR OF A SCHOOL DISTRICT WHO HAS TAKEN SUCH ACTION AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, MAY APPLY FOR FULL REIMBURSEMENT FROM THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT, AS ESTABLISHED BY SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW, FOR ALL REASONABLY INCURRED EXPENSES. AN ACCOUNTING OF DISSEMINATION EXPENSES SHALL BE SUBMITTED TO THE COMPTROLLER BY SUCH SUPERINTENDENT OF SCHOOLS OR CHIEF SCHOOL ADMINISTRATOR OF A SCHOOL DISTRICT IN ORDER TO QUALIFY FOR SUCH REIMBURSEMENT.

S 4. Subdivision 3 of section 97-bb of the state finance law, as added by chapter 309 of the laws of 1996, is amended to read as follows:

3. Monies of the criminal justice improvement account, following appropriation by the legislature and allocation by the director of the budget shall be made available for local assistance services and expenses of programs to provide services to crime victims and witnesses, FOR REIMBURSEMENT TO A SCHOOL DISTRICT DISSEMINATING SEX OFFENDER INFORMATION IN ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT-L OF THE CORRECTION LAW, and for payments to victims in accordance with the federal crime control act of 1984, as administered pursuant to article twenty-two of the executive law.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided that the amendments to subdivision 5 of section 60.35 of the penal law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect.