

5527

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. McKEVITT, WALKER, FINCH, ALFANO, McDONOUGH --  
Multi-Sponsored by -- M. of A. BARRA -- read once and referred to the  
Committee on Codes

AN ACT to amend the family court act, the domestic relations law, the  
executive law and the penal law, in relation to fees for probation  
services

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

1 Section 1. Section 424 of the family court act is amended by adding a  
2 new subdivision 4 to read as follows:

3 4. WHEN A LOCAL PROBATION SERVICE PROVIDES SERVICES TO PERSONS ORDERED  
4 TO PAY SUPPORT SEEKING TO MODIFY SUCH ORDERS, THE COURT SHALL IMPOSE AN  
5 INVESTIGATION REPORT FEE UNLESS A WAIVER IS GRANTED PURSUANT TO SECTION  
6 TWO HUNDRED FIFTY-TWO-A OF THIS ACT.

7 S 2. Section 653 of the family court act, as amended by chapter 580 of  
8 the laws of 1966, is amended to read as follows:

9 S 653. Rules of court. Rules of court, not inconsistent with any law,  
10 may authorize the probation service to interview such persons and obtain  
11 such data as will aid the court in determining a habeas corpus or custo-  
12 dy proceeding under section six hundred fifty-one OF THIS PART. WHENEV-  
13 ER A COURT ORDERS THE PROBATION SERVICE TO INTERVIEW PERSONS AND OBTAIN  
14 DATA TO AID THE COURT IN DETERMINING HABEAS CORPUS AND CUSTODY THE COURT  
15 SHALL IMPOSE A FEE.

16 S 3. Section 750 of the family court act is amended by adding a new  
17 subdivision 3 to read as follows:

18 3. THE COURT SHALL IMPOSE A FEE FOR REPORTS PREPARED PURSUANT TO  
19 SUBDIVISIONS ONE AND TWO OF THIS SECTION, UNLESS A WAIVER IS GRANTED DUE  
20 TO THE INDIGENCY OF THE YOUTH AND HIS FAMILY.

21 S 4. Subdivision 4 of section 115-d of the domestic relations law, as  
22 amended by chapter 230 of the laws of 2004, is amended to read as  
23 follows:

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

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1 4. A pre-placement investigation conducted pursuant to the provisions  
2 of this section shall be made by a disinterested person who in the opin-  
3 ion of the judge or surrogate is qualified by training and experience to  
4 examine into the allegations set forth in the application and any other  
5 factors which may be relevant to the suitability of the applicant or  
6 applicants as a qualified adoptive parent or parents. For the purposes  
7 of this section, a disinterested person shall also include a licensed  
8 master social worker, licensed clinical social worker, the probation  
9 service of the family court or an authorized agency specifically desig-  
10 nated by the court to conduct pre-placement investigations. IN ANY  
11 INSTANCE WHERE THE PROBATION SERVICE OF THE FAMILY COURT CONDUCTS AN  
12 INVESTIGATION THE COURT SHALL IMPOSE A FEE UNLESS A WAIVER IS GRANTED IN  
13 ACCORDANCE WITH SECTION TWO HUNDRED FIFTY-TWO-A OF THE FAMILY COURT ACT.

14 S 5. The executive law is amended by adding a new section 246-a to  
15 read as follows:

16 S 246-A. REIMBURSEMENT FOR PROBATION SERVICES. 1. A PERSON WHO  
17 RECEIVES A SENTENCE OF PROBATION, PURSUANT TO ARTICLE SIXTY-FIVE OF THE  
18 PENAL LAW, IS CHARGEABLE WITH REIMBURSEMENT TO THE COUNTY PROBATION  
19 SERVICES OR TO THE PROBATION SERVICES OF NEW YORK CITY OF THE COUNTY OR  
20 CITY WHICH HAS SUPERVISION OVER SUCH PERSON; PROVIDED HE OR SHE IS OF  
21 SUFFICIENT MEANS OR ABLE TO EARN SUCH MEANS. REIMBURSEMENT PAYMENTS OF  
22 SUCH REIMBURSEMENT PURSUANT TO THIS SECTION SHALL BE PAYABLE MONTHLY AND  
23 SHALL BE A MINIMUM OF SEVENTY-FIVE DOLLARS BUT SHALL NOT EXCEED THAT  
24 AMOUNT ACTUALLY EXPENDED FOR PROVISION OF SUCH PROBATION SERVICES BY A  
25 COUNTY OR CITY DURING THE PERIOD THE PROBATIONER IS ON PROBATION. THE  
26 SENTENCING COURT MAY MODIFY SUCH REIMBURSEMENT PURSUANT TO AN ADJUSTABLE  
27 SCALE AS A CONDITION OF PROBATION AFTER CONSIDERATION OF ALL RELEVANT  
28 FACTORS, INCLUDING THE PROBATIONER'S:

29 (A) FINANCIAL RESOURCES, ASSETS AND EXPENSES,

30 (B) HEALTH,

31 (C) AGE,

32 (D) CURRENT CHILD SUPPORT AND MAINTENANCE COURT ORDERS,

33 (E) OUTSTANDING COURT ORDERED FINES OR RESTITUTION OR CURRENT INCOME  
34 EXECUTIONS OR INCOME DEDUCTION ORDERS, AND

35 (F) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST  
36 AND PROPER.

37 2. THE SENTENCING COURT SHALL ORDER PAYMENT OF REIMBURSEMENT BY THE  
38 PROBATIONER, PURSUANT TO SUBDIVISION ONE OF THIS SECTION, TO THE LOCAL  
39 PROBATION SERVICES HAVING SUPERVISION OVER SUCH PERSON.

40 3. FEES ORDERED PAID PURSUANT TO THIS SECTION SHALL BE PAID DIRECTLY  
41 TO THE LOCAL PROBATION DEPARTMENT. MONIES COLLECTED SHALL BE RETAINED  
42 AND UTILIZED TO ENHANCE LOCAL PROBATION SERVICES, AND SHALL NOT BE  
43 CONSIDERED BY THE DIVISION OF PROBATION WHEN DETERMINING STATE AID  
44 REIMBURSEMENT PURSUANT TO SECTION TWO HUNDRED FORTY-SIX OF THIS ARTICLE.  
45 FEES COLLECTED SHALL NOT BE USED TO REPLACE FEDERAL OR STATE FUNDS  
46 OTHERWISE UTILIZED FOR PROBATION SERVICES.

47 S 6. Subdivision 1 of section 247 of the executive law, as amended by  
48 chapter 134 of the laws of 1985, is amended to read as follows:

49 1. In any case where the number of probation officers required for  
50 service to all courts within a county is not in excess of five officers,  
51 as determined pursuant to standards for probation administration formu-  
52 lated by the director, the chief executive officer of the county, with  
53 the approval of the governing board of such county, may request the  
54 division of probation and correctional alternatives to perform all  
55 probation services in such county. The director may agree to perform  
56 such services if sufficient personnel of the division are available to

1 perform such services as well as the other services and duties of the  
2 division or if additional personnel can be employed for such services  
3 within amounts appropriated therefor. In the event the director is of  
4 the opinion that the division should perform such services but cannot  
5 supply the personnel therefor, the director may agree to perform such  
6 services contingent upon an appropriation being made for such purpose.  
7 After the division has commenced performance of probation services in  
8 the county, the division shall be deemed and held to be the probation  
9 department of the county and the officers of the division of probation  
10 and correctional alternatives designated to render probation services in  
11 that county shall have all the duties and powers of probation officers  
12 of that county. Such officers shall work under the supervision and  
13 direction of the director of probation and correctional alternatives and  
14 in cooperation with the court or courts that are served. THE LOCAL  
15 DEPARTMENT OF PROBATION MAY CHARGE A FEE FOR THE INVESTIGATION UNDERTAK-  
16 EN UPON A COURT ORDER PURSUANT TO SECTION TWO HUNDRED FIFTY-TWO-A OF THE  
17 FAMILY COURT ACT. The division may discontinue such service at any time  
18 but shall not be required to discontinue such service solely by virtue  
19 of the fact that more than five probation officers are needed for  
20 performance of the work at a time that is subsequent to the time  
21 performance of such services commenced.

22 S 7. Subdivision 3 of section 65.10 of the penal law, paragraph (c) as  
23 amended by chapter 270 of the laws of 1980, is amended to read as  
24 follows:

25 3. Conditions relating to supervision. When imposing a sentence of  
26 probation the court, in addition to any conditions imposed pursuant to  
27 subdivision two of this section, shall require as conditions of the  
28 sentence, that the defendant:

29 (a) Report to a probation officer as directed by the court or the  
30 probation officer and permit the probation officer to visit him at his  
31 place of abode or elsewhere;

32 (b) Remain within the jurisdiction of the court unless granted permis-  
33 sion to leave by the court or the probation officer; [and]

34 (c) Answer all reasonable inquiries by the probation officer and noti-  
35 fy the probation officer prior to any change in address or  
36 employment[.]; AND

37 (D) PAY A FEE FOR PROBATION SERVICES PURSUANT TO SECTION TWO HUNDRED  
38 FORTY-SIX-A OF THE EXECUTIVE LAW.

39 S 8. This act shall take effect on the first of September next  
40 succeeding the date on which it shall have become a law.