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

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2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. FLANAGAN, DeFRANCISCO, O. JOHNSON, LAVALLE, MAZIARZ, MORAHAN, SALAND, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law and the criminal procedure law, in relation to probation administrative fees; and to amend chapter 55 of the laws of 1992, amending the tax law and other laws relating to taxes, surcharges, fees and funding, in relation to extending the expiration of certain provisions of such chapter

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

Section 1. Section 257-c of the executive law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

S 257-c. Probation administrative [fee] FEES. 1. (A) Notwithstanding any other provision of law, every county and the city of New York[,] may adopt a local law requiring individuals currently serving or who shall be sentenced to a period of probation upon conviction of any crime [under article thirty-one of the vehicle and traffic law], AS DEFINED IN SUBDIVISION SIX OF SECTION 10.00 OF THE PENAL LAW, OR WHO HAVE BEEN CONDITIONALLY RELEASED PURSUANT TO SUBDIVISION TWO OF SECTION 70.40 OF THE PENAL LAW FOLLOWING CONVICTION OF SUCH A CRIME, to pay to the local probation department with the responsibility of supervising the probationer OR RELEASEE an administrative fee of UP TO thirty dollars per month, PROVIDED, HOWEVER, THAT WHERE SUCH ADMINISTRATIVE FEES ESTABLISHED AS OF AUGUST FIRST, TWO THOUSAND NINE EXCEED THE AMOUNT AUTHORIZED HEREIN, SUCH FEES MAY BE CONTINUED DURING THE PERIOD FROM AUGUST FIRST, TWO THOUSAND NINE THROUGH JUNE THIRTIETH, TWO THOUSAND TEN. [The department shall waive all or part of such fee where, because of the indigence of the offender, the payment of said surcharge would work an unreasonable hardship on the person convicted, his or her immediate

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

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family, or any other person who is dependent on such person for financial support.]

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY COUNTY AND THE CITY OF NEW YORK MAY ADOPT A LOCAL LAW AUTHORIZING ITS PROBATION DEPARTMENT, WHICH PERFORMS DRUG TESTING AS A CONDITION OF PROBATION OR CONDITIONAL RELEASE PURSUANT TO SUBDIVISION TWO OF SECTION 70.40 OF THE PENAL LAW, TO BE ENTITLED TO ASSESS A FEE TO THE PROBATIONER OR RELEASEE OF THE ACTUAL COST OF SUCH TESTING, BUT IN NO EVENT MORE THAN EIGHT DOLLARS FOR EACH TEST OR PANEL OF TESTS ADMINISTERED. FEES FOR DRUG TESTING SHALL NOT EXCEED SIX HUNDRED DOLLARS PER PROBATIONER OR RELEASEE PER YEAR.

FOR PURPOSES OF THIS PARAGRAPH, "ACTUAL COST" SHALL INCLUDE THE REASONABLE COST FOR EQUIPMENT ACTUALLY CONSUMED IN CONDUCTING SUCH TEST AND FOR ANALYSIS ACTUALLY PERFORMED BY A LABORATORY OR SIMILAR ENTITY.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY COUNTY AND THE CITY OF NEW YORK MAY ADOPT A LOCAL LAW AUTHORIZING ITS PROBATION DEPARTMENT TO BE ENTITLED TO ASSESS AN ELECTRONIC MONITORING FEE OF THE ACTUAL PER DIEM COST OF ELECTRONIC MONITORING, WHERE AUTHORIZED PURSUANT TO SUBDIVISION FOUR OF SECTION 65.10 OF THE PENAL LAW, TO A MAXIMUM OF EIGHT DOLLARS PER DAY TO A PROBATIONER SUBJECT TO ELECTRONIC MONITORING AS A CONDITION OF PROBATION. FEES FOR ELECTRONIC MONITORING SHALL NOT EXCEED NINE HUNDRED DOLLARS PER PROBATIONER.

(D) BEFORE IMPOSING ANY FEE AUTHORIZED BY THIS SECTION, THE PROBATION DEPARTMENT SHALL NOTIFY THE PROBATIONER OR RELEASEE ORALLY AND IN WRITING OF: (I) EACH PROPOSED FEE AND THE AMOUNT OF SUCH FEE; AND (II) THE OPPORTUNITY TO MEET WITH THE DIRECTOR OF THE DEPARTMENT OR, CONSISTENT WITH SUBDIVISION SEVEN OF THIS SECTION, THE DIRECTOR'S DESIGNEE CONCERNING ANY SUCH FEE, AND TO OFFER THE DIRECTOR OR DESIGNEE INFORMATION TENDING TO SHOW THAT, BECAUSE OF THE PROBATIONER'S OR RELEASEE'S FINANCIAL CIRCUMSTANCES OR A CHANGE IN SUCH CIRCUMSTANCES, SUCH PROPOSED FEE AND/OR FEE AMOUNT WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER OR RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS ON HIM OR HER FOR FINANCIAL SUPPORT. SUCH NOTIFICATION, WHICH SHALL INCLUDE THE WRITTEN NOTICE PROMULGATED BY THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, SHALL ALSO INFORM THE PROBATIONER OR RELEASEE OF THE RIGHT AND PROCEDURE TO BE HEARD IN THE COURT THAT IMPOSED THE SENTENCE REGARDING THE DEPARTMENTAL DETERMINATION OF FEE PAYMENT, PURSUANT TO SECTION 410.15 OF THE CRIMINAL PROCEDURE LAW.

(E) THE PROBATION DEPARTMENT SHALL WAIVE ALL OR PART OF SUCH ADMINISTRATIVE, DRUG TESTING AND ELECTRONIC MONITORING FEES WHERE, BECAUSE OF THE FINANCIAL CIRCUMSTANCES OF THE PROBATIONER OR RELEASEE, THE PAYMENT OF SAID FEE WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER OR RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS ON SUCH PERSON FOR FINANCIAL SUPPORT. SUCH DETERMINATION SHALL BE MADE BY THE PROBATION DEPARTMENT BASED ON REGULATIONS PROMULGATED BY THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES.

2. The provisions of subdivision six of section 420.10 of the criminal procedure law shall govern for purposes of collection of the administrative [fee], DRUG TESTING AND ELECTRONIC MONITORING FEES, EXCEPT THAT, CONSISTENT WITH SUBDIVISION SEVEN OF THIS SECTION, ANOTHER OFFICIAL OR AGENCY MAY BE DESIGNATED TO COLLECT SUCH FEE WHEN SUCH FEES ARE DUE AND OWING AND HAVING NOT BEEN PAID. THE SUPERVISING PROBATION DEPARTMENT SHALL ISSUE A WRITTEN FEE DETERMINATION CONTAINING THE AMOUNT REQUIRED TO BE PAID BY THE PROBATIONER OR RELEASEE.

3. The probation administrative fee, DRUG TESTING FEE, AND ELECTRONIC MONITORING FEE authorized by this section shall not constitute nor be imposed as a condition of probation.

4. In the event of non-payment of any fees which have not been waived by the local probation department, the county or the city of New York may seek to enforce payment in any manner permitted by law for enforcement of a debt.

5. Monies collected pursuant to this section shall be utilized for probation services by the local probation department. Such moneys shall not be considered by the division OF PROBATION AND CORRECTIONAL ALTERNATIVES when determining state aid reimbursement pursuant to section two hundred forty-six of [the executive law] THIS CHAPTER. Monies collected shall not be used to replace federal funds otherwise utilized for probation services.

6. The director of the division OF PROBATION AND CORRECTIONAL ALTERNATIVES shall submit a report, with recommendations, to the governor, temporary president of the senate, speaker of the assembly, to the chairpersons of the senate crime VICTIMS, CRIME and correction committee, and assembly correction committee, senate codes committee and assembly codes committee on or before January first, [nineteen hundred ninety-three] TWO THOUSAND TEN and January first, [nineteen hundred ninety-four as to the effectiveness of the probation administrative fee in enhancing the delivery of probation services throughout the state] TWO THOUSAND ELEVEN. The report shall include, but not be limited to, [amounts of fees imposed and collected,] rates of payment for different categories of convictions and types of offenders, and [remedies utilized and costs incurred for collection in cases of non-payment] DATA FROM EACH COUNTY AND THE CITY OF NEW YORK SPECIFYING THE FEES OR RANGES OF FEES IMPOSED AND COLLECTED FOR SPECIFICALLY ADMINISTRATIVE, DRUG TESTING AND ELECTRONIC MONITORING PURPOSES, NUMBERS AND PERCENTAGES OF WAIVERS FOR FINANCIAL CIRCUMSTANCES REQUESTED AND GRANTED BY COUNTY, SHOWING AMOUNTS THEREOF, COSTS AND TYPES OF DRUG TESTS ADMINISTERED, ANNUAL REVENUE COLLECTED FROM SUCH FEES AND EFFECTIVENESS OF SUCH FEES IN ENHANCING THE DELIVERY OF PROBATION SERVICES.

7. THE DIRECTOR OF THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES SHALL PROMULGATE REGULATIONS IMPLEMENTING THE IMPOSITION AND COLLECTION OF ADMINISTRATIVE, DRUG TESTING, AND ELECTRONIC MONITORING FEES. SUCH REGULATIONS SHALL UTILIZE A MEANS TEST BASED ON TWO HUNDRED PERCENT OF THE FEDERAL POVERTY GUIDELINES PROMULGATED ANNUALLY BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AND IF THE PROBATIONER OR RELEASEE FALLS BELOW SUCH PERCENTAGE THEN NO FEE SHALL BE CHARGED, AND EARNINGS ABOVE SUCH PERCENTAGE SHALL BE CONSIDERED ON A SLIDING SCALE. SUCH REGULATIONS SHALL ALSO PROVIDE THAT PROBATION DEPARTMENTS CONSIDER ANY ADDITIONAL TEST OR INDICIA THAT DEMONSTRATES THE INABILITY OF A PROBATIONER OR RELEASEE TO PAY SUCH FEES. THE DIRECTOR OF SUCH DIVISION SHALL ALSO PROMULGATE REGULATIONS PROHIBITING THE COLLECTION OF PROBATION RELATED FEES BY PROBATION OFFICERS, SENIOR PROBATION OFFICERS OR PROBATION SUPERVISORS.

S 2. The criminal procedure law is amended by adding a new section 410.15 to read as follows:

S 410.15 MOTION REGARDING PROBATION-RELATED FEES.

WHEN THE COURT WHICH IMPOSED SENTENCE RECEIVES A MOTION CONCERNING A FEE DETERMINATION ISSUED BY A PROBATION DEPARTMENT PURSUANT TO SECTION TWO HUNDRED FIFTY-SEVEN-C OF THE EXECUTIVE LAW, THE PROCEDURAL PROVISIONS OF SUBDIVISION ONE OF SECTION 410.20 OF THIS ARTICLE SHALL APPLY, CONSISTENT WITH SUBDIVISION THREE OF SUCH SECTION TWO HUNDRED

FIFTY-SEVEN-C. THE MOVANT AND PROBATION DEPARTMENT SHALL HAVE AN OPPORTUNITY TO BE HEARD. AFTER DECIDING THE MOTION, THE COURT SHALL REMIT THE MATTER FOR A FINAL DETERMINATION BY THE PROBATION DEPARTMENT, WHICH SHALL BE CONSISTENT WITH THE COURT'S RULING.

S 3. Subdivision (aa) of section 427 of chapter 55 of the laws of 1992, amending the tax law and other laws relating to taxes, surcharges, fees and funding, as amended by section 11 of part C of chapter 56 of the laws of 2007, is amended to read as follows:

(aa) the provisions of sections three hundred eighty-two, three hundred eighty-three and three hundred eighty-four of this act shall expire on September 1, [2009] 2011;

S 4. This act shall take effect immediately, provided, however that (a) the provisions of this act shall apply to probationers and releasees presently paying such fees; (b) the provisions of this act shall apply to probationers and releasees directed to pay such fees after the effective date of this act pursuant to local law; and (c) the amendments to section 257-c of the executive law made by section one of this act shall not affect the expiration of such section and shall be deemed to expire therewith.