

3241

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:

1 Section 1. Section 257-c of the executive law, as added by chapter 55
2 of the laws of 1992, is amended to read as follows:
3 S 257-c. Probation administrative [fee] FEES. 1. (A) Notwithstanding
4 any other provision of law, every county and the city of New York[,] may
5 adopt a local law requiring individuals currently serving or who shall
6 be sentenced to a period of probation upon conviction of any crime
7 [under article thirty-one of the vehicle and traffic law], AS DEFINED IN
8 SUBDIVISION SIX OF SECTION 10.00 OF THE PENAL LAW, OR WHO HAVE BEEN
9 CONDITIONALLY RELEASED PURSUANT TO SUBDIVISION TWO OF SECTION 70.40 OF
10 THE PENAL LAW FOLLOWING CONVICTION OF SUCH A CRIME, to pay to the local
11 probation department with the responsibility of supervising the proba-
12 tioner OR RELEASEE an administrative fee of UP TO thirty dollars per
13 month, PROVIDED, HOWEVER, THAT WHERE SUCH ADMINISTRATIVE FEES ESTAB-
14 LISHED AS OF AUGUST FIRST, TWO THOUSAND NINE EXCEED THE AMOUNT AUTHOR-
15 IZED HEREIN, SUCH FEES MAY BE CONTINUED DURING THE PERIOD FROM AUGUST
16 FIRST, TWO THOUSAND NINE THROUGH JUNE THIRTIETH, TWO THOUSAND TEN. [The
17 department shall waive all or part of such fee where, because of the
18 indigence of the offender, the payment of said surcharge would work an
19 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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1 family, or any other person who is dependent on such person for finan-
2 cial support.]

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

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

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

23 (D) BEFORE IMPOSING ANY FEE AUTHORIZED BY THIS SECTION, THE PROBATION
24 DEPARTMENT SHALL NOTIFY THE PROBATIONER OR RELEASEE ORALLY AND IN WRIT-
25 ING OF: (I) EACH PROPOSED FEE AND THE AMOUNT OF SUCH FEE; AND (II) THE
26 OPPORTUNITY TO MEET WITH THE DIRECTOR OF THE DEPARTMENT OR, CONSISTENT
27 WITH SUBDIVISION SEVEN OF THIS SECTION, THE DIRECTOR'S DESIGNEE CONCERN-
28 ING ANY SUCH FEE, AND TO OFFER THE DIRECTOR OR DESIGNEE INFORMATION
29 TENDING TO SHOW THAT, BECAUSE OF THE PROBATIONER'S OR RELEASEE'S FINAN-
30 CIAL CIRCUMSTANCES OR A CHANGE IN SUCH CIRCUMSTANCES, SUCH PROPOSED FEE
31 AND/OR FEE AMOUNT WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER
32 OR RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS
33 ON HIM OR HER FOR FINANCIAL SUPPORT. SUCH NOTIFICATION, WHICH SHALL
34 INCLUDE THE WRITTEN NOTICE PROMULGATED BY THE DIVISION OF PROBATION AND
35 CORRECTIONAL ALTERNATIVES PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION,
36 SHALL ALSO INFORM THE PROBATIONER OR RELEASEE OF THE RIGHT AND PROCEDURE
37 TO BE HEARD IN THE COURT THAT IMPOSED THE SENTENCE REGARDING THE DEPART-
38 MENTAL DETERMINATION OF FEE PAYMENT, PURSUANT TO SECTION 410.15 OF THE
39 CRIMINAL PROCEDURE LAW.

40 (E) THE PROBATION DEPARTMENT SHALL WAIVE ALL OR PART OF SUCH ADMINIS-
41 TRATIVE, DRUG TESTING AND ELECTRONIC MONITORING FEES WHERE, BECAUSE OF
42 THE FINANCIAL CIRCUMSTANCES OF THE PROBATIONER OR RELEASEE, THE PAYMENT
43 OF SAID FEE WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER OR
44 RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS ON
45 SUCH PERSON FOR FINANCIAL SUPPORT. SUCH DETERMINATION SHALL BE MADE BY
46 THE PROBATION DEPARTMENT BASED ON REGULATIONS PROMULGATED BY THE DIVI-
47 SION OF PROBATION AND CORRECTIONAL ALTERNATIVES.

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

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

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

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

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

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

49 S 2. The criminal procedure law is amended by adding a new section
50 410.15 to read as follows:

51 S 410.15 MOTION REGARDING PROBATION-RELATED FEES.

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

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

5 S 3. Subdivision (aa) of section 427 of chapter 55 of the laws of
6 1992, amending the tax law and other laws relating to taxes, surcharges,
7 fees and funding, as amended by section 11 of part C of chapter 56 of
8 the laws of 2007, is amended to read as follows:

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

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