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

5105

2009-2010 Regular Sessions

I N  A S S E M B L Y

February 10, 2009

Introduced by M. of A. BRODSKY, HOYT, CHRISTENSEN -- Multi-Sponsored by -- M. of A. GALEF, JOHN -- read once and referred to the Committee on Judiciary

AN ACT to amend the criminal procedure law and the family court act, in relation to imposing a mandatory surcharge upon issuance of certain orders of protection; and to amend the state finance law, in relation to creating the domestic violence legal services account as depository for such surcharges

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

Section 1. Section 530.12 of the criminal procedure law is amended by adding a new subdivision 6-b to read as follows:

6-B. WHENEVER A COURT MAKES AN ORDER OF PROTECTION PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 2. Section 530.13 of the criminal procedure law is amended by adding a new subdivision 5-a to read as follows:

5-A. WHENEVER A COURT MAKES AN ORDER OF PROTECTION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY

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

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SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 3. Subdivision 1 of section 420.35 of the criminal procedure law, as amended by section 7 of part F of chapter 62 of the laws of 2003, is amended to read as follows:

1. The provisions of section 420.10 of this article governing the collection of fines and the provisions of section 420.40 of this article governing deferral of mandatory surcharges, sex offender registration fees, DNA databank fees and financial hardship hearings and the provisions of section 430.20 of this chapter governing the commitment of a defendant for failure to pay a fine shall be applicable to a mandatory surcharge, sex offender registration fee, DNA databank fee and a crime victim assistance fee imposed pursuant to subdivision one of section 60.35 of the penal law, subdivision twenty-a of section three hundred eighty-five of the vehicle and traffic law, subdivision nineteen-a of section four hundred one of the vehicle and traffic law, or a mandatory surcharge imposed pursuant to section eighteen hundred nine of the vehicle and traffic law [or], section 27.12 of the parks, recreation and historic preservation law, A MANDATORY SURCHARGE IMPOSED PURSUANT TO SECTION 530.12 OR 530.13 OF THIS CHAPTER, OR A MANDATORY SURCHARGE IMPOSED PURSUANT TO SECTION 352.3, FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, OR ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT. When the court directs that the defendant be imprisoned until the mandatory surcharge, sex offender registration fee or DNA databank fee is satisfied, it must specify a maximum period of imprisonment not to exceed fifteen days; provided, however, THAT a court may not direct that a defendant be imprisoned until the mandatory surcharge, sex offender registration fee, or DNA databank fee is satisfied or otherwise for failure to pay the mandatory surcharge, sex offender registration fee or DNA databank fee unless the court makes a contemporaneous finding on the record, after according defendant notice and an opportunity to be heard, that the payment of the mandatory surcharge, sex offender registration fee or DNA databank fee upon defendant will not work an unreasonable hardship upon him or her or his or her immediate family.

S 4. Subdivisions 1, 2, 3, 4 and 5 of section 420.40 of the criminal procedure law, as amended by section 8 of part F of chapter 62 of the laws of 2003, are amended to read as follows:

1. Applicability. The procedure specified in this section governs the deferral of the obligation to pay all or part of a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law, SECTION 530.12 OR 530.13 OF THIS CHAPTER, SECTION 352.3, FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, OR ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT and financial hardship hearings relating to mandatory surcharges.

2. On an appearance date set forth in a summons issued pursuant to subdivision three of section 60.35 of the penal law, section eighteen hundred nine of the vehicle and traffic law, or section 27.12 of the parks, recreation and historic preservation law, OR UPON ISSUANCE OF AN ORDER OF PROTECTION PURSUANT TO SECTION 530.12 OR 530.13 OF THIS CHAPTER, SECTION 352.3, FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, OR

ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT, a person upon whom a mandatory surcharge, sex offender registration fee or DNA databank fee was levied shall have an opportunity to present on the record credible and verifiable information establishing that the mandatory surcharge, sex offender registration fee or DNA databank fee should be deferred, in whole or in part, because, due to the indigence of such person, the payment of said surcharge, sex offender registration fee or DNA databank fee would work an unreasonable hardship on the person or his or her immediate family.

3. In assessing such information, the superior court shall be mindful of the mandatory nature of the surcharge, sex offender registration fee and DNA databank fee, and the important criminal justice [and], victim services, AND VICTIMS OF DOMESTIC VIOLENCE DIRECT LEGAL SERVICES sustained by such fees.

4. Where a court determines that it will defer part or all of a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law, SECTION 530.12 OR 530.13 OF THIS CHAPTER, SECTION 352.3, FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, OR ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT, a statement of such finding and of the facts upon which it is based shall be made part of the record.

5. A court which defers a person's obligation to pay a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law, SECTION 530.12 OR 530.13 OF THIS CHAPTER, SECTION 352.3, FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, OR ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT shall do so in a written order. Such order shall not excuse the person from the obligation to pay the surcharge, sex offender registration fee or DNA databank fee. Rather, the court's order shall direct the filing of a certified copy of the order with the county clerk of the county in which the court is situate except where the court which issues such order is the supreme court in which case the order itself shall be filed by the clerk of the court acting in his or her capacity as the county clerk of the county in which the court is situate. Such order shall be entered by the county clerk in the same manner as a judgment in a civil action in accordance with subdivision (a) of rule five thousand sixteen of the civil practice law and rules. The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee or DNA databank fee may be collected in the same manner as a civil judgment. The entered order shall be deemed to constitute a judgment-roll as defined in [section] RULE five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules.

S 5. Section 352.3 of the family court act is amended by adding a new subdivision 3 to read as follows:

(3) WHENEVER A COURT MAKES AN ORDER OF PROTECTION, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREAS-

URY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 6. Section 446 of the family court act is amended by adding a new closing paragraph to read as follows:

WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS PART, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 7. Section 551 of the family court act is amended by adding a new closing paragraph to read as follows:

WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS ARTICLE, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 8. Section 656 of the family court act is amended by adding a new closing paragraph to read as follows:

WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS PART, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 9. Section 759 of the family court act is amended by adding a new closing paragraph to read as follows:

WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS ARTICLE, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 10. Section 842 of the family court act is amended by adding a new closing paragraph to read as follows:

WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS PART, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH

ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 11. Section 1056 of the family court act is amended by adding a new subdivision 6 to read as follows:

6. WHENEVER A COURT MAKES AN ORDER OF PROTECTION UNDER THIS PART, THERE SHALL BE LEVIED UPON THE PARTY AGAINST WHOM THE ORDER HAS BEEN ISSUED A MANDATORY SURCHARGE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH MANDATORY SURCHARGE SHALL BE PAID TO THE CLERK OF THE COURT WHICH ISSUED SUCH ORDER OF PROTECTION. WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE MANDATORY SURCHARGES, THE COLLECTING COURT SHALL DETERMINE THE AMOUNT OF MANDATORY SURCHARGES COLLECTED, AND IT SHALL PAY SUCH MONEY TO THE STATE COMPTROLLER, WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY TO THE CREDIT OF THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT ESTABLISHED BY SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW.

S 12. The state finance law is amended by adding a new section 99-q to read as follows:

S 99-Q. DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT TO BE KNOWN AS THE DOMESTIC VIOLENCE LEGAL SERVICES ACCOUNT.

2. SUCH ACCOUNT SHALL CONSIST OF ALL MANDATORY SURCHARGES RECEIVED BY THE COMPTROLLER PURSUANT TO SUBDIVISION SIX-B OF SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW, SUBDIVISION FIVE-A OF SECTION 530.13 OF THE CRIMINAL PROCEDURE LAW, SUBDIVISION THREE OF SECTION 352.3 AND SECTIONS FOUR HUNDRED FORTY-SIX, FIVE HUNDRED FIFTY-ONE, SIX HUNDRED FIFTY-SIX, SEVEN HUNDRED FIFTY-NINE, EIGHT HUNDRED FORTY-TWO, AND SUBDIVISION SIX OF SECTION ONE THOUSAND FIFTY-SIX OF THE FAMILY COURT ACT AND REQUIRED TO BE DEPOSITED TO THIS ACCOUNT AND ALL OTHER MONEYS CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW.

3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE, SHALL BE AWARDED TO THE NEW YORK STATE OFFICE FOR PREVENTION OF DOMESTIC VIOLENCE FOR THE PROVISION OF DIRECT LEGAL SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE.

4. AFTER CONSULTATION WITH DOMESTIC VIOLENCE ADVOCATES, SUCH OFFICE SHALL PROMULGATE REGULATIONS FOR THE EXPENDITURE OF FUNDS IN ACCORDANCE WITH THIS SECTION.

5. NO MORE THAN TEN PERCENT OF THE MONEYS DEPOSITED IN THIS ACCOUNT MAY BE EXPENDED FOR ADMINISTRATIVE PURPOSES.

S 13. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.