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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

(A) FINANCIAL RESOURCES, ASSETS AND EXPENSES,

(B) HEALTH,

(C) AGE,

(D) CURRENT CHILD SUPPORT AND MAINTENANCE COURT ORDERS,

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

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

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

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

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

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

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

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

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

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

(b) Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer; [and]

(c) Answer all reasonable inquiries by the probation officer and notify the probation officer prior to any change in address or employment[.]; AND

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

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