

2506

2009-2010 Regular Sessions

I N S E N A T E

February 23, 2009

Introduced by Sens. DeFRANCISCO, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to forfeiture proceedings and imposing a child victim fee on persons convicted of certain offenses and using such fee to supplement a fund of the state

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

1 Section 1. Paragraph (a) of subdivision 1 of section 60.35 of the
2 penal law is amended by adding a new subparagraph (vi) to read as
3 follows:

4 (VI) A PERSON CONVICTED OF A SEX OFFENSE, A SEXUALLY VIOLENT OFFENSE
5 OR A DESIGNATED OFFENSE, AS EACH CATEGORY OF OFFENSE IS DEFINED BY
6 REFERENCE IN SUBPARAGRAPH (IV) OR (V) OF THIS PARAGRAPH, AND SUCH
7 CONVICTED OFFENSE INVOLVES A CHILD VICTIM, SHALL, IN ADDITION TO ANY
8 OTHER SURCHARGES AND FEES, PAY A CHILD VICTIM FEE OF FIFTY DOLLARS. FOR
9 PURPOSES OF THIS SECTION, "CHILD VICTIM" MEANS A VICTIM UNDER THE AGE OF
10 EIGHTEEN YEARS.

11 S 2. Subdivisions 3, 4, 5 and 8 of section 60.35 of the penal law, as
12 amended by section 1 of part E of chapter 56 of the laws of 2004, are
13 amended to read as follows:

14 3. The mandatory surcharge, sex offender registration fee, DNA data-
15 bank fee, crime victim assistance fee, [and] supplemental sex offender
16 victim fee, AND CHILD VICTIM FEE provided for in subdivision one of this
17 section shall be paid to the clerk of the court or administrative tribu-
18 nal that rendered the conviction. Within the first ten days of the month
19 following collection of the mandatory surcharge, crime victim assistance
20 fee, [and] supplemental sex offender victim fee, AND THE CHILD VICTIM
21 FEE, the collecting authority shall determine the amount of mandatory
22 surcharge, crime victim assistance fee, [and] supplemental sex offender
23 victim fee, AND CHILD VICTIM FEE collected and, if it is an administra-
24 tive tribunal, or a town or village justice court, it shall then pay

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

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1 such money to the state comptroller who shall deposit such money in the
2 state treasury pursuant to section one hundred twenty-one of the state
3 finance law to the credit of the criminal justice improvement account
4 established by section ninety-seven-bb of the state finance law;
5 PROVIDED, HOWEVER, THAT THE CHILD VICTIM FEE SHALL BE DEPOSITED IN THE
6 CHILDREN AND FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION
7 NINETY-SEVEN-YYY OF THE STATE FINANCE LAW. Within the first ten days of
8 the month following collection of the sex offender registration fee and
9 DNA databank fee, the collecting authority shall determine the amount of
10 the sex offender registration fee and DNA databank fee collected and, if
11 it is an administrative tribunal, or a town or village justice court, it
12 shall then pay such money to the state comptroller who shall deposit
13 such money in the state treasury pursuant to section one hundred twen-
14 ty-one of the state finance law to the credit of the general fund. If
15 such collecting authority is any other court of the unified court
16 system, it shall, within such period, pay such money attributable to the
17 mandatory surcharge or crime victim assistance fee to the state commis-
18 sioner of taxation and finance to the credit of the criminal justice
19 improvement account established by section ninety-seven-bb of the state
20 finance law. If such collecting authority is any other court of the
21 unified court system, it shall, within such period, pay such money
22 attributable to the sex offender registration fee and the DNA databank
23 fee to the state commissioner of taxation and finance to the credit of
24 the general fund. IF SUCH COLLECTING AUTHORITY IS ANY OTHER COURT OF
25 THE UNIFIED COURT SYSTEM, IT SHALL, WITHIN SUCH PERIOD, PAY SUCH MONEY
26 ATTRIBUTABLE TO THE CHILD VICTIM FEE TO THE STATE COMMISSIONER OF TAXA-
27 TION AND FINANCE TO THE CREDIT OF THE CHILDREN AND FAMILY SERVICES
28 ENHANCEMENT FUND.

29 4. Any person who has paid a mandatory surcharge, sex offender regis-
30 tration fee, DNA databank fee, a crime victim assistance fee [or], a
31 supplemental sex offender victim fee OR A CHILD VICTIM FEE under the
32 authority of this section based upon a conviction that is subsequently
33 reversed or who paid a mandatory surcharge, sex offender registration
34 fee, DNA databank fee, a crime victim assistance fee [or], supplemental
35 sex offender victim fee OR CHILD VICTIM FEE under the authority of this
36 section which is ultimately determined not to be required by this
37 section shall be entitled to a refund of such mandatory surcharge, sex
38 offender registration fee, DNA databank fee, crime victim assistance fee
39 [or], supplemental sex offender victim fee OR CHILD VICTIM FEE upon
40 application to the state comptroller. The state comptroller shall
41 require such proof as is necessary in order to determine whether a
42 refund is required by law.

43 5. (a) When a person who is convicted of a crime or violation and
44 sentenced to a term of imprisonment has failed to pay the mandatory
45 surcharge, sex offender registration fee, DNA databank fee, crime victim
46 assistance fee [or], supplemental sex offender victim fee OR CHILD
47 VICTIM FEE required by this section, the clerk of the court that
48 rendered the conviction shall notify the superintendent or the municipal
49 official of the facility where the person is confined. The superinten-
50 dent or the municipal official shall cause any amount owing to be
51 collected from such person during his or her term of imprisonment from
52 moneys to the credit of an inmates' fund or such moneys as may be earned
53 by a person in a work release program pursuant to section eight hundred
54 sixty of the correction law. Such moneys attributable to the mandatory
55 surcharge or crime victim assistance fee shall be paid over to the state
56 comptroller to the credit of the criminal justice improvement account

1 established by section ninety-seven-bb of the state finance law and such
2 moneys attributable to the sex offender registration fee or DNA databank
3 fee shall be paid over to the state comptroller to the credit of the
4 general fund, AND MONEYS ATTRIBUTABLE TO THE CHILD VICTIM FEE SHALL BE
5 PAID OVER TO THE STATE COMPTROLLER TO THE CREDIT OF THE CHILDREN AND
6 FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION NINETY-SEVEN-YYY
7 OF THE STATE FINANCE LAW, except that any such moneys collected which
8 are surcharges, sex offender registration fees, DNA databank fees, crime
9 victim assistance fees [or], supplemental sex offender victim fees OR
10 CHILD VICTIM FEES levied in relation to convictions obtained in a town
11 or village justice court shall be paid within thirty days after the
12 receipt thereof by the superintendent or municipal official of the
13 facility to the justice of the court in which the conviction was
14 obtained. For the purposes of collecting such mandatory surcharge, sex
15 offender registration fee, DNA databank fee, crime victim assistance
16 fee, [and] supplemental sex offender victim fee AND THE CHILD VICTIM
17 FEE, the state shall be legally entitled to the money to the credit of
18 an inmates' fund or money which is earned by an inmate in a work release
19 program. For purposes of this subdivision, the term "inmates' fund"
20 shall mean moneys in the possession of an inmate at the time of his or
21 her admission into such facility, funds earned by him or her as provided
22 for in section one hundred eighty-seven of the correction law and any
23 other funds received by him or her or on his or her behalf and deposited
24 with such superintendent or municipal official.

25 (b) The incarceration fee provided for in subdivision two of section
26 one hundred eighty-nine of the correction law shall not be assessed or
27 collected if any order of restitution or reparation, fine, mandatory
28 surcharge, sex offender registration fee, DNA databank fee, crime victim
29 assistance fee [or], supplemental sex offender victim fee OR CHILD
30 VICTIM FEE remains unpaid. In such circumstances, any monies which may
31 lawfully be withheld from the compensation paid to a prisoner for work
32 performed while housed in a general confinement facility in satisfaction
33 of such an obligation shall first be applied toward satisfaction of such
34 obligation.

35 8. Subdivision one of section 130.10 of the criminal procedure law
36 notwithstanding, at the time that the mandatory surcharge, sex offender
37 registration fee or DNA databank fee, crime victim assistance fee [or],
38 supplemental sex offender victim fee OR CHILD VICTIM FEE is imposed a
39 town or village court may, and all other courts shall, issue and cause
40 to be served upon the person required to pay the mandatory surcharge,
41 sex offender registration fee or DNA databank fee, crime victim assist-
42 ance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE,
43 a summons directing that such person appear before the court regarding
44 the payment of the mandatory surcharge, sex offender registration fee or
45 DNA databank fee, crime victim assistance fee [or], supplemental sex
46 offender victim fee OR CHILD VICTIM FEE, if after sixty days from the
47 date it was imposed it remains unpaid. The designated date of appearance
48 on the summons shall be set for the first day court is in session fall-
49 ing after the sixtieth day from the imposition of the mandatory
50 surcharge, sex offender registration fee or DNA databank fee, crime
51 victim assistance fee [or], supplemental sex offender victim fee OR
52 CHILD VICTIM FEE. The summons shall contain the information required by
53 subdivision two of section 130.10 of the criminal procedure law except
54 that in substitution for the requirement of paragraph (c) of such subdi-
55 vision the summons shall state that the person served must appear at a
56 date, time and specific location specified in the summons if after sixty

1 days from the date of issuance the mandatory surcharge, sex offender
2 registration fee or DNA databank fee, crime victim assistance fee [or],
3 supplemental sex offender victim fee OR CHILD VICTIM FEE remains unpaid.
4 The court shall not issue a summons under this subdivision to a person
5 who is being sentenced to a term of confinement in excess of sixty days
6 in jail or in the department of correctional services. The mandatory
7 surcharges, sex offender registration fee and DNA databank fees, crime
8 victim assistance fees [and], supplemental sex offender victim fees AND
9 CHILD VICTIM FEES for those persons shall be governed by the provisions
10 of section 60.30 of this article.

11 S 3. Subdivision 5 of section 60.35 of the penal law, as amended by
12 section 2 of part E of chapter 56 of the laws of 2004, is amended to
13 read as follows:

14 5. When a person who is convicted of a crime or violation and
15 sentenced to a term of imprisonment has failed to pay the mandatory
16 surcharge, sex offender registration fee, DNA databank fee, crime victim
17 assistance fee [or], supplemental sex offender victim fee OR CHILD
18 VICTIM FEE required by this section, the clerk of the court that
19 rendered the conviction shall notify the superintendent or the municipal
20 official of the facility where the person is confined. The superinten-
21 dent or the municipal official shall cause any amount owing to be
22 collected from such person during his or her term of imprisonment from
23 moneys to the credit of an inmates' fund or such moneys as may be earned
24 by a person in a work release program pursuant to section eight hundred
25 sixty of the correction law. Such moneys attributable to the mandatory
26 surcharge or crime victim assistance fee shall be paid over to the state
27 comptroller to the credit of the criminal justice improvement account
28 established by section ninety-seven-bb of the state finance law and such
29 moneys attributable to the sex offender registration fee or DNA databank
30 fee shall be paid over to the state comptroller to the credit of the
31 general fund AND SUCH MONEYS ATTRIBUTABLE TO THE CHILD VICTIM FEE SHALL
32 BE PAID OVER TO THE STATE COMPTROLLER TO THE CREDIT OF THE CHILDREN AND
33 FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION NINETY-SEVEN-YYY
34 OF THE STATE FINANCE LAW, except that any such moneys collected which
35 are surcharges, sex offender registration fees, DNA databank fees, crime
36 victim assistance fees [or], supplemental sex offender victim fees OR
37 CHILD VICTIM FEES levied in relation to convictions obtained in a town
38 or village justice court shall be paid within thirty days after the
39 receipt thereof by the superintendent or municipal official of the
40 facility to the justice of the court in which the conviction was
41 obtained. For the purposes of collecting such mandatory surcharge, sex
42 offender registration fee, DNA databank fee, crime victim assistance fee
43 [and], supplemental sex offender victim fee AND CHILD VICTIM FEE, the
44 state shall be legally entitled to the money to the credit of an
45 inmates' fund or money which is earned by an inmate in a work release
46 program. For purposes of this subdivision, the term "inmates' fund"
47 shall mean moneys in the possession of an inmate at the time of his or
48 her admission into such facility, funds earned by him or her as provided
49 for in section one hundred eighty-seven of the correction law and any
50 other funds received by him or her or on his or her behalf and deposited
51 with such superintendent or municipal official.

52 S 4. The penal law is amended by adding a new article 413 to read as
53 follows:

ARTICLE 413

55 SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME

56 SECTION 413.00 SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME.

1 S 413.00 SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME.

2 1. ANY PEACE OFFICER, ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES, OR
3 POLICE OFFICER OF THIS STATE MAY SEIZE ANY INSTRUMENTALITIES OF CRIME
4 USED IN FURTHERANCE OF A CRIME INVOLVING A SEX OFFENSE, AS DEFINED BY
5 SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION
6 LAW OR A SEXUALLY VIOLENT OFFENSE AS DEFINED BY SUBDIVISION THREE OF
7 SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW OR A DESIGNATED
8 OFFENSE, AS DEFINED BY SUBDIVISION SEVEN OF SECTION NINE HUNDRED NINE-
9 TY-FIVE OF THE EXECUTIVE LAW, THAT ALSO INVOLVES A CHILD VICTIM. FOR
10 PURPOSES OF THIS SECTION, "INSTRUMENTALITIES OF CRIME" MEANS ANY TANGI-
11 BLE PERSONAL AND/OR REAL PROPERTY USED IN THE FURTHERANCE OF PLANNING,
12 COMMITTING OR ATTEMPTING TO COMMIT A SEX OFFENSE, A SEXUALLY VIOLENT
13 OFFENSE, OR A DESIGNATED OFFENSE; AND "CHILD VICTIM" MEANS A VICTIM
14 UNDER THE AGE OF EIGHTEEN YEARS. SUCH INSTRUMENTALITIES OF CRIME SHALL
15 BE SUBJECT TO FORFEITURE AS PROVIDED IN THIS SECTION.

16 2. THE SEIZED TANGIBLE PERSONAL PROPERTY SHALL BE DELIVERED BY THE
17 POLICE OFFICER OR PEACE OFFICER HAVING MADE THE SEIZURE TO THE CUSTODY
18 OF THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE SEIZURE WAS MADE,
19 EXCEPT THAT IN THE CITIES OF NEW YORK, YONKERS AND BUFFALO, THE SEIZED
20 PROPERTY SHALL BE DELIVERED TO THE CUSTODY OF THE POLICE DEPARTMENT OF
21 SUCH CITIES, TOGETHER WITH A REPORT OF ALL THE FACTS AND CIRCUMSTANCES
22 OF THE SEIZURE.

23 3. IT SHALL BE THE DUTY OF THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN
24 THE SEIZURE WAS MADE, IF ELSEWHERE THAN IN THE CITIES OF NEW YORK OR
25 BUFFALO, AND WHERE THE SEIZURE IS MADE IN EITHER SUCH CITY IT SHALL BE
26 THE DUTY OF THE CORPORATION COUNSEL OF THE CITY, TO INQUIRE INTO THE
27 FACTS OF THE SEIZURE SO REPORTED TO HIM OR HER AND IF IT APPEARS PROBA-
28 BLE THAT A FORFEITURE HAS BEEN INCURRED, FOR THE DETERMINATION OF WHICH
29 THE INSTITUTION OF PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO
30 CAUSE THE PROPER PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME
31 AFTER THIRTY DAYS FROM THE DATE OF SEIZURE, TO DECLARE SUCH FORFEITURE,
32 UNLESS, UPON INQUIRY AND EXAMINATION SUCH DISTRICT ATTORNEY OR CORPO-
33 RATION COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE
34 SUSTAINED OR THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY
35 SHOULD BE INSTITUTED OR PROSECUTED, IN WHICH CASE, THE DISTRICT ATTORNEY
36 OR CORPORATION COUNSEL SHALL CAUSE SUCH SEIZED PROPERTY TO BE RETURNED
37 TO THE OWNER THEREOF.

38 4. NOTICE OF THE INSTITUTION OF THE FORFEITURE PROCEEDING SHALL BE
39 SERVED EITHER (A) PERSONALLY ON THE OWNERS OF THE SEIZED PROPERTY OR (B)
40 BY REGISTERED MAIL TO THE OWNERS' LAST KNOWN ADDRESS AND BY PUBLICATION
41 OF THE NOTICE ONCE A WEEK FOR TWO SUCCESSIVE WEEKS IN A NEWSPAPER
42 PUBLISHED OR CIRCULATED IN THE COUNTY WHEREIN THE SEIZURE WAS MADE.

43 5. FORFEITURE SHALL NOT BE ADJUDGED WHERE THE OWNERS ESTABLISHED BY
44 PREPONDERANCE OF THE EVIDENCE THAT (A) THE USE OF SUCH SEIZED PROPERTY
45 WAS NOT INTENTIONAL ON THE PART OF ANY OWNER, OR (B) SAID SEIZED PROPER-
46 TY WAS USED BY ANY PERSON OTHER THAN AN OWNER THEREOF, WHILE SUCH SEIZED
47 PROPERTY WAS UNLAWFULLY IN THE POSSESSION OF A PERSON WHO ACQUIRED
48 POSSESSION THEREOF IN VIOLATION OF THE CRIMINAL LAWS OF THE UNITED
49 STATES, OR OF ANY STATE.

50 6. THE DISTRICT ATTORNEY OR THE POLICE DEPARTMENT HAVING CUSTODY OF
51 THE SEIZED PROPERTY, AFTER SUCH JUDICIAL DETERMINATION OF FORFEITURE,
52 SHALL, BY A PUBLIC NOTICE OF AT LEAST FIVE DAYS, SELL SUCH FORFEITED
53 PROPERTY AT PUBLIC SALE. THE NET PROCEEDS OF ANY SUCH SALE, AFTER
54 DEDUCTION OF THE LAWFUL EXPENSES INCURRED, SHALL BE PAID TO THE CLERK OF
55 THE COURT OR ADMINISTRATIVE TRIBUNAL THAT RENDERED THE FORFEITURE. WITH-
56 IN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION OF THE FORFEI-

1 TURE FUNDS, THE COLLECTING AUTHORITY SHALL DETERMINE THE AMOUNT OF FUNDS
2 COLLECTED AND, IF IT IS AN ADMINISTRATIVE TRIBUNAL, OR A TOWN OR VILLAGE
3 JUSTICE COURT, IT SHALL THEN PAY SUCH MONEY TO THE STATE COMPTROLLER WHO
4 SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY PURSUANT TO SECTION ONE
5 HUNDRED TWENTY-ONE OF THE STATE FINANCE LAW TO THE CREDIT OF THE CHIL-
6 DREN AND FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION NINE-
7 TY-SEVEN-YYY OF THE STATE FINANCE LAW. IF SUCH COLLECTING AUTHORITY IS
8 ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT SHALL, WITHIN SUCH PERI-
9 OD, PAY SUCH MONEY ATTRIBUTABLE TO THE FORFEITURE PROCEEDINGS TO THE
10 STATE COMMISSIONER OF TAXATION AND FINANCE TO THE CREDIT OF THE CHILDREN
11 AND FAMILY SERVICES ENHANCEMENT FUND.

12 7. WHENEVER ANY PERSON INTERESTED IN ANY PROPERTY WHICH IS SEIZED AND
13 DECLARED FORFEITED UNDER THE PROVISIONS OF THIS SECTION FILES WITH A
14 JUSTICE OF THE SUPREME COURT A PETITION FOR THE RECOVERY OF SUCH
15 FORFEITED PROPERTY, THE JUSTICE OF THE SUPREME COURT MAY RESTORE SAID
16 FORFEITED PROPERTY UPON SUCH TERMS AND CONDITIONS AS HE OR SHE DEEMS
17 REASONABLE AND JUST, IF THE PETITIONER ESTABLISHED EITHER OF THE AFFIR-
18 MATIVE DEFENSES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION AND THAT
19 THE PETITIONER WAS WITHOUT PERSONAL OR ACTUAL KNOWLEDGE OF THE FORFEI-
20 TURE PROCEEDING. IF THE PETITION IS FILED AFTER THE SALE OF THE
21 FORFEITED PROPERTY, ANY JUDGMENT IN FAVOR OF THE PETITIONER SHALL BE
22 LIMITED TO THE NET PROCEEDS OF SUCH SALE, AFTER DEDUCTION OF THE LAWFUL
23 EXPENSES AND COSTS INCURRED BY THE DISTRICT ATTORNEY, POLICE DEPARTMENT
24 OR CORPORATION COUNSEL.

25 8. NO SUIT OR ACTION UNDER THIS SECTION FOR WRONGFUL SEIZURE SHALL BE
26 INSTITUTED UNLESS SUCH SUIT OR ACTION IS COMMENCED WITHIN TWO YEARS
27 AFTER THE TIME WHEN THE PROPERTY WAS SEIZED.

28 S 5. This act shall take effect on the one hundred eightieth day after
29 it shall have become a law, provided that the amendments to subdivision
30 5 of section 60.35 of the penal law made by section two of this act
31 shall be subject to the expiration and reversion of such subdivision
32 pursuant to subdivision h of section 74 of chapter 3 of the laws of
33 1995, as amended, when upon such date the provisions of section three of
34 this act shall take effect.