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

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:

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

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

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

3. The mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, [and] supplemental sex offender victim fee, AND CHILD VICTIM FEE provided for in subdivision one of this section shall be paid to the clerk of the court or administrative tribunal that rendered the conviction. Within the first ten days of the month following collection of the mandatory surcharge, crime victim assistance fee, [and] supplemental sex offender victim fee, AND THE CHILD VICTIM FEE, the collecting authority shall determine the amount of mandatory surcharge, crime victim assistance fee, [and] supplemental sex offender victim fee, AND CHILD VICTIM FEE collected and, if it is an administrative 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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such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law; PROVIDED, HOWEVER, THAT THE CHILD VICTIM FEE SHALL BE DEPOSITED IN THE CHILDREN AND FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION NINETY-SEVEN-YYY OF THE STATE FINANCE LAW. Within the first ten days of the month following collection of the sex offender registration fee and DNA databank fee, the collecting authority shall determine the amount of the sex offender registration fee and DNA databank fee collected and, if it is an administrative tribunal, or a town or village justice court, it shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the general fund. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the mandatory surcharge or crime victim assistance fee to the state commissioner of taxation and finance to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the sex offender registration fee and the DNA databank fee to the state commissioner of taxation and finance to the credit of the general fund. IF SUCH COLLECTING AUTHORITY IS ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT SHALL, WITHIN SUCH PERIOD, PAY SUCH MONEY ATTRIBUTABLE TO THE CHILD VICTIM FEE TO THE STATE COMMISSIONER OF TAXATION AND FINANCE TO THE CREDIT OF THE CHILDREN AND FAMILY SERVICES ENHANCEMENT FUND.

4. Any person who has paid a mandatory surcharge, sex offender registration fee, DNA databank fee, a crime victim assistance fee [or], a supplemental sex offender victim fee OR A CHILD VICTIM FEE under the authority of this section based upon a conviction that is subsequently reversed or who paid a mandatory surcharge, sex offender registration fee, DNA databank fee, a crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE under the authority of this section which is ultimately determined not to be required by this section shall be entitled to a refund of such mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE upon application to the state comptroller. The state comptroller shall require such proof as is necessary in order to determine whether a refund is required by law.

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

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

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

8. Subdivision one of section 130.10 of the criminal procedure law notwithstanding, at the time that the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE is imposed a town or village court may, and all other courts shall, issue and cause to be served upon the person required to pay the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE, a summons directing that such person appear before the court regarding the payment of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE, if after sixty days from the date it was imposed it remains unpaid. The designated date of appearance on the summons shall be set for the first day court is in session falling after the sixtieth day from the imposition of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee [or], supplemental sex offender victim fee OR CHILD VICTIM FEE. The summons shall contain the information required by subdivision two of section 130.10 of the criminal procedure law except that in substitution for the requirement of paragraph (c) of such subdivision the summons shall state that the person served must appear at a date, time and specific location specified in the summons if after sixty

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

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

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

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

ARTICLE 413
SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME

SECTION 413.00 SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME.

S 413.00 SEIZURE AND FORFEITURE OF INSTRUMENTALITIES OF CRIME.

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

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

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

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

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

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

TURE FUNDS, THE COLLECTING AUTHORITY SHALL DETERMINE THE AMOUNT OF FUNDS COLLECTED AND, IF IT IS AN ADMINISTRATIVE TRIBUNAL, OR A TOWN OR VILLAGE JUSTICE COURT, IT SHALL THEN PAY SUCH MONEY TO THE STATE COMPTROLLER WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY PURSUANT TO SECTION ONE HUNDRED TWENTY-ONE OF THE STATE FINANCE LAW TO THE CREDIT OF THE CHILDREN AND FAMILY SERVICES ENHANCEMENT FUND ESTABLISHED BY SECTION NINETY-SEVEN-YYY OF THE STATE FINANCE LAW. IF SUCH COLLECTING AUTHORITY IS ANY OTHER COURT OF THE UNIFIED COURT SYSTEM, IT SHALL, WITHIN SUCH PERIOD, PAY SUCH MONEY ATTRIBUTABLE TO THE FORFEITURE PROCEEDINGS TO THE STATE COMMISSIONER OF TAXATION AND FINANCE TO THE CREDIT OF THE CHILDREN AND FAMILY SERVICES ENHANCEMENT FUND.

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

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

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