

7286

2011-2012 Regular Sessions

I N A S S E M B L Y

April 27, 2011

Introduced by M. of A. BURLING, KOLB, FINCH, CALHOUN, GIGLIO, McKEVITT, J. MILLER, TOBACCO, MONTESANO -- Multi-Sponsored by -- M. of A. BARCLAY, BUTLER, CASTELLI, DUPREY, HAWLEY, JORDAN, McDONOUGH, MOLINARO, OAKS, RAIA, SPANO, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the state finance law, in relation to increasing the crime victim's assistance fee, creating a crime victim's lien and creating a crime victim's assistance account

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

1 Section 1. Section 80.00 of the penal law is amended by adding a new
2 subdivision 8 to read as follows:
3 8. THE TERM "FINE" AS DEFINED IN THIS SECTION SHALL NOT INCLUDE A
4 MANDATORY SURCHARGE OR A CRIME VICTIM'S ASSISTANCE FEE AS DEFINED IN
5 SECTION 60.35 OF THIS TITLE.
6 S 2. Section 80.05 of the penal law is amended by adding a new subdi-
7 vision 7 to read as follows:
8 7. THE TERM "FINE" AS DEFINED IN THIS SECTION SHALL NOT INCLUDE A
9 MANDATORY SURCHARGE OR A CRIME VICTIM'S ASSISTANCE FEE AS DEFINED IN
10 SECTION 60.35 OF THIS TITLE.
11 S 3. Section 60.35 of the penal law, as amended by section 1 of part E
12 of chapter 56 of the laws of 2004, subparagraphs (i), (ii) and (iii) of
13 paragraph (a) of subdivision 1 as amended by section 1 of part DD and
14 subdivision 10 as amended by section 2 of part Y of chapter 56 of the
15 laws of 2008 and paragraph b of subdivision 1 as amended by chapter 320
16 of the laws of 2006, is amended to read as follows:
17 S 60.35 Mandatory surcharge, sex offender registration fee, DNA databank
18 fee, supplemental sex offender victim fee and crime victim
19 assistance fee required in certain cases.
20 1. (a) Except as provided in section eighteen hundred nine of the
21 vehicle and traffic law and section 27.12 of the parks, recreation and

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

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1 historic preservation law, whenever proceedings in an administrative
2 tribunal or a court of this state result in a conviction for a felony, a
3 misdemeanor, or a violation, as these terms are defined in section 10.00
4 of this chapter, there shall be levied at sentencing a mandatory
5 surcharge, sex offender registration fee, DNA databank fee and a crime
6 victim assistance fee in addition to any sentence required or permitted
7 by law, in accordance with the following schedule:

8 (i) a person convicted of a felony, EXCLUDING THOSE FELONIES SET FORTH
9 IN CLAUSES (A) AND (B) OF THIS SUBPARAGRAPH, shall pay a mandatory
10 surcharge of three hundred dollars and a crime victim assistance fee of
11 [twenty-five] FIVE HUNDRED dollars;

12 (A) A PERSON CONVICTED OF A FELONY OFFENSE OF HOMICIDE, AS DEFINED IN
13 SECTION 125.00 OF THIS CHAPTER, SHALL PAY A MANDATORY SURCHARGE OF FIVE
14 HUNDRED DOLLARS AND A CRIME VICTIM ASSISTANCE FEE OF TWO THOUSAND FIVE
15 HUNDRED DOLLARS FOR EVERY MONTH OF WHICH SUCH PERSON IS SENTENCED TO
16 SERVE TIME IN A CORRECTIONAL FACILITY, AS DEFINED IN SECTION FORTY OF
17 THE CORRECTION LAW;

18 (B) A PERSON CONVICTED OF A VIOLENT FELONY OFFENSE, AS DEFINED IN
19 ARTICLE 70.02 OF THIS CHAPTER, SHALL PAY A MANDATORY SURCHARGE OF TWO
20 HUNDRED FIFTY DOLLARS AND A CRIME VICTIM ASSISTANCE FEE OF ONE THOUSAND
21 DOLLARS FOR EVERY MONTH OF WHICH SUCH PERSON IS SENTENCED TO SERVE TIME
22 IN A CORRECTIONAL FACILITY, AS DEFINED IN SECTION FORTY OF THE
23 CORRECTION LAW;

24 (ii) a person convicted of a misdemeanor shall pay a mandatory
25 surcharge of one hundred seventy-five dollars and a crime victim assist-
26 ance fee of [twenty-five] TWO HUNDRED FIFTY dollars;

27 (iii) a person convicted of a violation shall pay a mandatory
28 surcharge of [ninety-five] ONE HUNDRED dollars and a crime victim
29 assistance fee of twenty-five dollars;

30 (iv) a person convicted of a sex offense as defined by subdivision two
31 of section one hundred sixty-eight-a of the correction law or a sexually
32 violent offense as defined by subdivision three of section one hundred
33 sixty-eight-a of the correction law shall, in addition to a mandatory
34 surcharge and crime victim assistance fee, pay a sex offender registra-
35 tion fee of fifty dollars.

36 (v) a person convicted of a designated offense as defined by subdivi-
37 sion seven of section nine hundred ninety-five of the executive law
38 shall, in addition to a mandatory surcharge and crime victim assistance
39 fee, pay a DNA databank fee of fifty dollars.

40 (b) When the felony or misdemeanor conviction in subparagraphs (i),
41 (ii) or (iv) of paragraph (a) of this subdivision results from an
42 offense contained in article one hundred thirty of this chapter, incest
43 in the third, second or first degree as defined in sections 255.25,
44 255.26 and 255.27 of this chapter or an offense contained in article two
45 hundred sixty-three of this chapter, the person convicted shall pay a
46 supplemental sex offender victim fee of one thousand dollars in addition
47 to the mandatory surcharge and any other fee.

48 2. Where a person is convicted of two or more crimes or violations
49 committed through a single act or omission, or through an act or omis-
50 sion which in itself constituted one of the crimes or violations and
51 also was a material element of the other, the court shall impose a
52 mandatory surcharge and a crime victim assistance fee, and where appro-
53 priate a supplemental sex offender victim fee, in accordance with the
54 provisions of this section for the crime or violation which carries the
55 highest classification, and no other sentence to pay a mandatory
56 surcharge, crime victim assistance fee or supplemental sex offender

1 victim fee required by this section shall be imposed. Where a person is
2 convicted of two or more sex offenses or sexually violent offenses, as
3 defined by subdivisions two and three of section one hundred sixty-
4 eight-a of the correction law, committed through a single act or omis-
5 sion, or through an act or omission which in itself constituted one of
6 the offenses and also was a material element of the other, the court
7 shall impose only one sex offender registration fee. Where a person is
8 convicted of two or more designated offenses, as defined by subdivision
9 seven of section nine hundred ninety-five of the executive law, commit-
10 ted through a single act or omission, or through an act or omission
11 which in itself constituted one of the offenses and also was a material
12 element of the other, the court shall impose only one DNA databank fee.

13 3. The mandatory surcharge, sex offender registration fee, DNA data-
14 bank fee[, crime victim assistance fee,] and supplemental sex offender
15 victim fee provided for in subdivision one of this section shall be paid
16 to the clerk of the court or administrative tribunal that rendered the
17 conviction. Within the first ten days of the month following collection
18 of the mandatory surcharge[, crime victim assistance fee,] and supple-
19 mental sex offender victim fee, the collecting authority shall determine
20 the amount of mandatory surcharge, crime victim assistance fee, and
21 supplemental sex offender victim fee collected and, if it is an adminis-
22 trative tribunal, or a town or village justice court, it shall then pay
23 such money to the state comptroller who shall deposit such money in the
24 state treasury pursuant to section one hundred twenty-one of the state
25 finance law to the credit of the criminal justice improvement account
26 established by section ninety-seven-bb of the state finance law. Within
27 the first ten days of the month following collection of the sex offender
28 registration fee and DNA databank fee, the collecting authority shall
29 determine the amount of the sex offender registration fee and DNA data-
30 bank fee collected and, if it is an administrative tribunal, or a town
31 or village justice court, it shall then pay such money to the state
32 comptroller who shall deposit such money in the state treasury pursuant
33 to section one hundred twenty-one of the state finance law to the credit
34 of the general fund. If such collecting authority is any other court of
35 the unified court system, it shall, within such period, pay such money
36 attributable to the mandatory surcharge or crime victim assistance fee
37 to the state commissioner of taxation and finance to the credit of the
38 criminal justice improvement account established by section ninety-sev-
39 en-bb of the state finance law. If such collecting authority is any
40 other court of the unified court system, it shall, within such period,
41 pay such money attributable to the sex offender registration fee and the
42 DNA databank fee to the state commissioner of taxation and finance to
43 the credit of the general fund.

44 3-A. WITHIN THE FIRST TEN DAYS FOLLOWING THE PRONOUNCEMENT OF
45 SENTENCE OF THE CONVICTED OFFENDER, THE CLERK OF THE COURT PRONOUNCING
46 THE SENTENCE SHALL CALCULATE AND DETERMINE THE AMOUNT OF THE CRIME
47 VICTIM ASSISTANCE FEE PROVIDED FOR IN SUBDIVISION ONE OF THIS SECTION.
48 IMMEDIATELY THEREAFTER, THE CONVICTED OFFENDER SHALL PAY TO THE CLERK OF
49 THE COURT OR ADMINISTRATIVE TRIBUNAL THAT RENDERED THE CONVICTION THE
50 FULL AMOUNT OF THE CRIME VICTIM'S ASSISTANCE FEE SO CALCULATED AND
51 DETERMINED, AND SUCH COURT SHALL THEREUPON ACT AS THE COLLECTING AUTHOR-
52 ITY. IF SUCH COLLECTING AUTHORITY IS AN ADMINISTRATIVE TRIBUNAL, OR A
53 TOWN OR VILLAGE JUSTICE COURT, IT SHALL THEN PAY SUCH MONEY TO THE STATE
54 COMPTROLLER WHO SHALL DEPOSIT SUCH MONEY IN THE STATE TREASURY PURSUANT
55 TO SECTION ONE HUNDRED TWENTY-ONE OF THE STATE FINANCE LAW TO THE CREDIT
56 OF THE CRIME VICTIM'S ASSISTANCE ACCOUNT ESTABLISHED BY SECTION NINETY-

1 FOUR-E OF THE STATE FINANCE LAW. IF SUCH COLLECTING AUTHORITY IS ANY
2 OTHER COURT OF THE UNIFIED COURT SYSTEM, IT SHALL, WITHIN SUCH PERIOD,
3 PAY SUCH MONEY TO THE STATE COMMISSIONER OF TAXATION AND FINANCE TO THE
4 CREDIT OF THE CRIME VICTIM'S ASSISTANCE ACCOUNT ESTABLISHED BY SECTION
5 NINETY-FOUR-E OF THE STATE FINANCE LAW.

6 3-B. UPON THE PRONOUNCEMENT OF SENTENCE UPON A CONVICTED OFFENDER,
7 THE CLERK OF THE COURT PRONOUNCING SUCH SENTENCE SHALL CREATE A CRIME
8 VICTIM'S LIST. THIS LIST SHALL PROVIDE THE NAME OF THE CONVICTED OFFEN-
9 DER AND THE OFFENSES FOR WHICH HE WAS CONVICTED, AS WELL AS THE NAME,
10 ADDRESS, AND TELEPHONE NUMBER OF EVERY INDIVIDUAL WHOM THE COURT DEEMS A
11 VICTIM OF THE CRIME OR CRIMES FOR WHICH THE CONVICTED OFFENDER WAS
12 CONVICTED. A VICTIM OF THE CRIME SHALL INCLUDE ANYONE AGAINST WHOM A
13 CRIME OR VIOLENT ACT IN FURTHERANCE OF A CRIME WAS COMMITTED, OR IN THE
14 CASE OF A HOMICIDE ALL FAMILY MEMBERS OF THE DECEASED VICTIM WITHIN ONE
15 DEGREE OF CONSANGUINITY. THIS LIST SHALL BE FILED WITH THE ATTORNEY
16 GENERAL AND SHALL BE SEALED FROM PUBLIC INSPECTION SO AS TO PROTECT
17 CRIME VICTIMS FROM HAVING THEIR NAMES AND IDENTITIES MADE KNOWN TO THE
18 PUBLIC AND THE PRESS.

19 4. Any person who has paid a mandatory surcharge, sex offender regis-
20 tration fee, DNA databank fee, a crime victim assistance fee or a
21 supplemental sex offender victim fee under the authority of this section
22 based upon a conviction that is subsequently reversed or who paid a
23 mandatory surcharge, sex offender registration fee, DNA databank fee, a
24 crime victim assistance fee or supplemental sex offender victim fee
25 under the authority of this section which is ultimately determined not
26 to be required by this section shall be entitled to a refund of such
27 mandatory surcharge, sex offender registration fee, DNA databank fee,
28 crime victim assistance fee or supplemental sex offender victim fee upon
29 application to the state comptroller. The state comptroller shall
30 require such proof as is necessary in order to determine whether a
31 refund is required by law.

32 5. (a) When a person who is convicted of a crime or violation and
33 sentenced to a term of imprisonment has failed to pay the mandatory
34 surcharge, sex offender registration fee, DNA databank fee, crime victim
35 assistance fee or supplemental sex offender victim fee required by this
36 section, the clerk of the court that rendered the conviction shall noti-
37 fy the superintendent or the municipal official of the facility where
38 the person is confined. The superintendent or the municipal official
39 shall cause any amount owing to be collected from such person during his
40 or her term of imprisonment from moneys to the credit of an inmates'
41 fund or such moneys as may be earned by a person in a work release
42 program pursuant to section eight hundred sixty of the correction law OR
43 AS THEY MAY BE AWARDED TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLE-
44 MENT OF LITIGATION. Such moneys attributable to the mandatory surcharge
45 or crime victim assistance fee shall be paid over to the state comp-
46 troller to the credit of the criminal justice improvement account estab-
47 lished by section ninety-seven-bb of the state finance law and such
48 moneys attributable to the sex offender registration fee or DNA databank
49 fee shall be paid over to the state comptroller to the credit of the
50 general fund, except that any such moneys collected which are
51 surcharges, sex offender registration fees, DNA databank fees[, crime
52 victim assistance fees] or supplemental sex offender victim fees levied
53 in relation to convictions obtained in a town or village justice court
54 shall be paid within thirty days after the receipt thereof by the super-
55 intendent or municipal official of the facility to the justice of the
56 court in which the conviction was obtained. SUCH MONEYS, WITH RESPECT TO

1 THE PAYMENT OF THE CRIME VICTIM'S ASSISTANCE FEE, SHALL BE PAID OVER TO
2 THE STATE COMPTROLLER TO THE CREDIT OF THE CRIME VICTIM'S ASSISTANCE
3 ACCOUNT ESTABLISHED BY SECTION NINETY-FOUR-E OF THE STATE FINANCE LAW.
4 For the purposes of collecting such mandatory surcharge, sex offender
5 registration fee, DNA databank fee, crime victim assistance fee, and
6 supplemental sex offender victim fee, the state shall be legally enti-
7 tled to the money to the credit of an inmates' fund or money which is
8 earned by an inmate in a work release program OR AS THEY MAY BE AWARDED
9 TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLEMENT OF LITIGATION. For
10 purposes of this subdivision, the term "inmates' fund" shall mean moneys
11 in the possession of an inmate at the time of his or her admission into
12 such facility, funds earned by him or her as provided for in section one
13 hundred eighty-seven of the correction law and any other funds received
14 by him or her or on his or her behalf and deposited with such super-
15 intendent or municipal official, OR FUNDS RECEIVED INCLUDING ANY FUNDS
16 THAT MAY BE AWARDED TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLEMENT
17 OF LITIGATION.

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

27 5-A. FOR THE PURPOSES OF COLLECTING SUCH MANDATORY SURCHARGE OR CRIME
28 VICTIM'S ASSISTANCE FEE, THE STATE SHALL BE LEGALLY ENTITLED TO FILE A
29 CRIME VICTIM'S LIEN AGAINST THE CONVICTED OFFENDER, IN THE AMOUNT OF THE
30 UNPAID PORTION OF SUCH MANDATORY SURCHARGE OR CRIME VICTIM'S ASSISTANCE
31 FEE. SUCH LIEN MAY BE FILED ANY TIME AFTER A SENTENCE IS PRONOUNCED UPON
32 THE OFFENDER, AND SHALL EXIST FROM THE DATE OF THE PRONOUNCEMENT OF SUCH
33 SENTENCE UNTIL THE CONVICTED OFFENDER PAYS THE FULL AMOUNT OF THE MANDA-
34 TORY SURCHARGE AND CRIME VICTIM'S ASSISTANCE FEE, OR FOR TWENTY-FIVE
35 YEARS FROM THE DATE OF THE PRONOUNCEMENT OF THE CONVICTED OFFENDER'S
36 SENTENCE, WHICHEVER IS LESS. SUCH LIEN SHALL BE FILED WITH THE ATTORNEY
37 GENERAL BY THE CLERK OF THE COURT FROM WHICH THE OFFENDER IS CONVICTED.
38 UPON THE FILING OF SUCH LIEN, THE ATTORNEY GENERAL MAY AT ANYTIME THERE-
39 AFTER EXECUTE AND ENFORCE SUCH LIEN AGAINST THE CONVICTED OFFENDER, FOR
40 THE COLLECTION OF THE MANDATORY SURCHARGE AND/OR THE CRIME VICTIM'S
41 ASSISTANCE FEE. SUCH LIEN SHALL EMPOWER THE ATTORNEY GENERAL, WITHOUT
42 PRIOR APPLICATION TO ANY COURT OR ADMINISTRATIVE TRIBUNAL, TO TAKE ANY
43 ACTION NECESSARY TO COLLECT SUCH MANDATORY SURCHARGE AND/OR CRIME
44 VICTIM'S ASSISTANCE FEE, INCLUDING, BUT NOT LIMITED TO, THE ATTACHMENT,
45 SEIZURE AND SALE OF THE CONVICTED OFFENDER'S ASSETS, INCLUDING REAL
46 PROPERTY, PERSONAL TANGIBLE PROPERTY AND/OR PERSONAL INTANGIBLE PROPER-
47 TY, AS WELL AS THE GARNISHMENT OF UP TO TWENTY-FIVE PERCENT OF THE
48 CONVICTED OFFENDER'S WAGES. THIS COLLECTION SHALL BE ENFORCEABLE WHETHER
49 OR NOT SUCH OFFENDER IS INCARCERATED AT THE TIME OF ITS EXECUTION, AND
50 WHETHER OR NOT SUCH OFFENDER HAS COMPLETELY OR PARTIALLY SERVED THE
51 SENTENCE PRONOUNCED UPON HIM.

52 5-B. ALL MONIES COLLECTED PURSUANT TO THE ENFORCEMENT AND EXECUTION OF
53 THE STATE'S CRIME VICTIM'S LIEN AGAINST A CONVICTED OFFENDER, AS SET
54 FORTH IN SUBDIVISION FIVE OF THIS SECTION, SHALL BE DELIVERED BY THE
55 ATTORNEY GENERAL TO THE COMPTROLLER. THE COMPTROLLER SHALL DEPOSIT INTO
56 THE INTERNAL SERVICE FUND ACCOUNT FOR THE DEPARTMENT OF LAW, AN AMOUNT

1 EQUAL TO NINETEEN PERCENT OF THE MONIES SO COLLECTED, IN ORDER TO OFFSET
2 THE COSTS AND EXPENSES OF PERFORMING SUCH COLLECTION, LIEN ENFORCEMENT
3 AND EXECUTION. ALL REMAINING MONIES, IF COLLECTED FROM THE FAILURE OF
4 THE CONVICTED OFFENDER TO PAY A MANDATORY SURCHARGE, SHALL BE DEPOSITED
5 BY THE COMPTROLLER INTO THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT, AS
6 DEFINED IN SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW, AND IF
7 COLLECTED FROM THE FAILURE OF THE CONVICTED OFFENDER TO PAY A CRIME
8 VICTIM'S ASSISTANCE FEE SHALL BE DEPOSITED BY THE COMPTROLLER INTO THE
9 CRIME VICTIM'S ASSISTANCE ACCOUNT, AS DEFINED IN SECTION NINETY-FOUR-E
10 OF THE STATE FINANCE LAW. UPON THE COLLECTION OF MONIES UNDER THIS
11 SECTION, THE ATTORNEY GENERAL SHALL PROVIDE WRITTEN NOTICE TO THE CRIME
12 VICTIM OR VICTIMS ON THE CRIME VICTIM'S LIST FOR THE CONVICTED OFFENDER
13 WHICH WAS PREPARED BY THE COURT OR ADMINISTRATIVE TRIBUNAL AND FILED
14 WITH THE ATTORNEY GENERAL PURSUANT TO SUBDIVISION THREE-B OF THIS
15 SECTION.

16 6. Notwithstanding any other provision of this section, where a person
17 has made restitution or reparation pursuant to section 60.27 of this
18 article, such person [shall] AT THE DISCRETION OF THE COURT, MAY not be
19 required to pay a mandatory surcharge or a crime victim assistance fee.

20 7. Notwithstanding the provisions of subdivision one of section 60.00
21 of this article, the provisions of subdivision one of this section shall
22 not apply to a violation under any law other than this chapter.

23 8. Subdivision one of section 130.10 of the criminal procedure law
24 notwithstanding, at the time that the mandatory surcharge, sex offender
25 registration fee or DNA databank fee, crime victim assistance fee or
26 supplemental sex offender victim fee is imposed a town or village court
27 may, and all other courts shall, issue and cause to be served upon the
28 person required to pay the mandatory surcharge, sex offender registra-
29 tion fee or DNA databank fee, crime victim assistance fee or supple-
30 mental sex offender victim fee, a summons directing that such person
31 appear before the court regarding the payment of the mandatory
32 surcharge, sex offender registration fee or DNA databank fee, crime
33 victim assistance fee or supplemental sex offender victim fee, if after
34 sixty days from the date it was imposed it remains unpaid. The desig-
35 nated date of appearance on the summons shall be set for the first day
36 court is in session falling after the sixtieth day from the imposition
37 of the mandatory surcharge, sex offender registration fee or DNA data-
38 bank fee, crime victim assistance fee or supplemental sex offender
39 victim fee. The summons shall contain the information required by subdivi-
40 sion two of section 130.10 of the criminal procedure law except that
41 in substitution for the requirement of paragraph (c) of such subdivision
42 the summons shall state that the person served must appear at a date,
43 time and specific location specified in the summons if after sixty days
44 from the date of issuance the mandatory surcharge, sex offender regis-
45 tration fee or DNA databank fee, crime victim assistance fee or supple-
46 mental sex offender victim fee remains unpaid. The court shall not issue
47 a summons under this subdivision to a person who is being sentenced to a
48 term of confinement in excess of sixty days in jail or in the department
49 of correctional services. The mandatory surcharges, sex offender regis-
50 tration fee and DNA databank fees, crime victim assistance fees and
51 supplemental sex offender victim fees for those persons shall be
52 governed by the provisions of section 60.30 of this article.

53 9. Notwithstanding the provisions of subdivision one of this section,
54 in the event a proceeding is in a town or village court, such court
55 shall add an additional five dollars to the surcharges imposed by such
56 subdivision one.

10. The provisions of this section shall apply to sentences imposed upon a youthful offender finding; provided, however that the court shall not impose the sex offender registration fee, DNA databank fee or supplemental sex offender victim fee, as defined in subparagraphs (iv) and (v) of paragraph (a) and paragraph (b) of subdivision one of this section, for an offense in which the conviction was substituted with a youthful offender finding.

S 4. 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 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 OR AS THEY MAY BE AWARDED TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLEMENT OF LITIGATION. 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, 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 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. SUCH MONEYS, WITH RESPECT TO THE PAYMENT OF THE CRIME VICTIM'S ASSISTANCE FEE, SHALL BE PAID OVER TO THE STATE COMPTROLLER TO THE CREDIT OF THE CRIME VICTIM'S ASSISTANCE ACCOUNT ESTABLISHED BY SECTION NINETY-FOUR-E OF THE STATE FINANCE LAW. 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, 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 OR AS THEY MAY BE AWARDED TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLEMENT OF LITIGATION. 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, OR FUNDS RECEIVED, INCLUDING ANY FUNDS THAT MAY BE AWARDED TO SUCH INMATE PURSUANT TO LITIGATION OR SETTLEMENT OF LITIGATION.

S 5. The state finance law is amended by adding a new section 94-e to read as follows:

S 94-E. CRIME VICTIM'S ASSISTANCE ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE ATTORNEY

1 GENERAL A SPECIAL REVENUE FUND TO BE KNOWN AS THE "CRIME VICTIM'S
2 ASSISTANCE ACCOUNT."

3 2. THE CRIME VICTIM'S ASSISTANCE ACCOUNT SHALL CONSIST OF ALL MONIES
4 RECEIVED BY THE STATE PURSUANT TO SECTION 60.35 OF THE PENAL LAW AND ALL
5 OTHER FEES, FINES, GRANTS, BEQUESTS OR OTHER MONIES CREDITED, APPROPRI-
6 ATED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

7 3. MONIES OF THE CRIME VICTIM'S ASSISTANCE ACCOUNT SHALL BE MADE
8 AVAILABLE FOR THE FOLLOWING PURPOSES:

9 A. FOR STATE OPERATION EXPENSES AND LOCAL ASSISTANCE SERVICES TO
10 PROVIDE SERVICES TO CRIME VICTIMS AND WITNESSES; AND

11 B. FOR GRANTS AND EXPENSES TO PRIVATE ASSOCIATIONS, SERVICES AND
12 PROGRAMS WHICH PROVIDE SERVICES TO CRIME VICTIMS AND WITNESSES; AND

13 C. FOR COMPENSATION PAYMENTS TO CRIME VICTIMS AND THEIR FAMILIES.

14 4. MONIES ALLOCATED FROM THE CRIME VICTIM'S ASSISTANCE ACCOUNT FOR
15 STATE OPERATION EXPENSES AND LOCAL ASSISTANCE SERVICES, TO PROVIDE
16 SERVICES TO CRIME VICTIMS AND WITNESSES, SHALL NOT, IN THE AGGREGATE,
17 ANNUALLY EXCEED TEN PERCENT OF THE FUNDS OF THE ACCOUNT'S PREVIOUS
18 YEAR'S ANNUAL CASH BALANCE. THE ATTORNEY GENERAL SHALL MAKE AN ANNUAL
19 RECOMMENDATION TO THE GOVERNOR AND THE LEGISLATURE AS TO THE ALLOCATION
20 OF THESE MONIES.

21 5. MONIES ALLOCATED FROM THE CRIME VICTIM'S ASSISTANCE ACCOUNT FOR
22 GRANTS AND EXPENSES TO PRIVATE ASSOCIATIONS, SERVICES AND PROGRAMS,
23 WHICH PROVIDE SERVICES TO CRIME VICTIMS AND WITNESSES, SHALL NOT, IN THE
24 AGGREGATE, ANNUALLY EXCEED TEN PERCENT OF THE FUNDS OF THE ACCOUNT'S
25 PREVIOUS YEAR'S ANNUAL CASH BALANCE. THE ATTORNEY GENERAL SHALL MAKE AN
26 ANNUAL RECOMMENDATION TO THE GOVERNOR AND THE LEGISLATURE AS TO THE
27 ALLOCATION OF THESE MONIES.

28 6. UPON THE PAYMENT OR COLLECTION OF A CRIME VICTIM'S ASSISTANCE FEE,
29 OR A PORTION THEREOF, FROM A CONVICTED OFFENDER, AND UPON THE DEPOSIT OF
30 SUCH MONIES INTO THE CRIME VICTIM'S ASSISTANCE ACCOUNT BY THE COMP-
31 TROLLER, A CRIME VICTIM, WHO IS SET FORTH ON A CRIME VICTIM'S LIST FOR
32 THE CONVICTED OFFENDER AS DEFINED IN SUBDIVISION FIVE OF SECTION 60.35
33 OF THE PENAL LAW, SHALL BE ELIGIBLE TO APPLY TO THE ATTORNEY GENERAL FOR
34 CRIME VICTIM'S ASSISTANCE. UPON VERIFICATION OF THE ATTORNEY GENERAL
35 FROM THE CRIME VICTIM'S LIST THAT SUCH APPLICANT IS A CRIME VICTIM OF
36 THE CONVICTED OFFENDER, AND UPON VERIFICATION FROM THE STATE COMPTROLLER
37 THAT PAYMENT OR COLLECTION OF MONIES WERE MADE AGAINST SUCH CONVICTED
38 OFFENDER AND THAT SUCH MONIES WERE DEPOSITED INTO THE CRIME VICTIM'S
39 ASSISTANCE ACCOUNT AND THE AMOUNT OF SUCH MONIES, IF ANY, THAT HAVE BEEN
40 PREVIOUSLY PAID BY OR COLLECTED FROM, SUCH CONVICTED OFFENDER, THE
41 ATTORNEY GENERAL SHALL CERTIFY TO THE COMPTROLLER THAT SUCH APPLICANT IS
42 ELIGIBLE TO RECEIVE CRIME VICTIM'S ASSISTANCE. SUCH CERTIFICATION SHALL
43 SPECIFY THE CURRENT NAME AND ADDRESS OF THE CRIME VICTIM, AND THE AMOUNT
44 OF THE MONIES DEPOSITED INTO THE CRIME VICTIM'S ASSISTANCE ACCOUNT AS A
45 RESULT OF THE PAYMENT BY, OR THE COLLECTION OF MONIES FROM, THE
46 CONVICTED OFFENDER. PURSUANT TO THE ISSUANCE OF THE ATTORNEY GENERAL'S
47 CERTIFICATION OR CERTIFICATIONS, THE COMPTROLLER SHALL WITHIN THIRTY
48 DAYS OF RECEIPT OF SUCH CERTIFICATION OR CERTIFICATIONS, ISSUE AND
49 PROVIDE A PRO RATA PAYMENT TO EACH CRIME VICTIM IN THE AMOUNT OF SEVEN-
50 TY-FIVE PERCENT OF THE AMOUNT OF MONEY SO CERTIFIED AS HAVING BEEN
51 DEPOSITED IN THE CRIME VICTIM'S ASSISTANCE ACCOUNT AS A RESULT OF THE
52 PAYMENT BY, OR THE COLLECTION OF MONIES FROM, THE CONVICTED OFFENDER.

53 S 6. This act shall take effect on the ninetieth day after it shall
54 have become a law and shall apply to all convictions occurring on or
55 after such date, provided that the amendments to subdivision 5 of
56 section 60.35 of the penal law made by section three of this act shall

1 be subject to the expiration and reversion of such subdivision pursuant
2 to section 74 of chapter 3 of the laws of 1995, as amended, when upon
3 such date the provisions of section four of this act shall take effect.