

4805

2011-2012 Regular Sessions

I N S E N A T E

April 25, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law and the criminal procedure law, in relation to probation administrative fees; and to amend chapter 55 of the laws of 1992, amending the tax law and other laws relating to taxes, surcharges, fees and funding, in relation to extending the expiration of certain provisions of such chapter

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

1 Section 1. Section 257-c of the executive law, as added by chapter 55
2 of the laws of 1992 and subdivision 5 as amended by section 58 of part A
3 of chapter 56 of the laws of 2010, is amended to read as follows:
4 S 257-c. Probation administrative [fee] FEES. 1. (A) Notwithstanding
5 any other provision of law, every county and the city of New York[,] may
6 adopt a local law requiring individuals currently serving or who shall
7 be sentenced to a period of probation upon conviction of any crime
8 [under article thirty-one of the vehicle and traffic law], AS DEFINED IN
9 SUBDIVISION SIX OF SECTION 10.00 OF THE PENAL LAW, OR WHO HAVE BEEN
10 CONDITIONALLY RELEASED PURSUANT TO SUBDIVISION TWO OF SECTION 70.40 OF
11 THE PENAL LAW FOLLOWING CONVICTION OF SUCH A CRIME, to pay to the local
12 probation department with the responsibility of supervising the proba-
13 tioner OR RELEASEE an administrative fee of UP TO thirty dollars per
14 month, PROVIDED, HOWEVER, THAT WHERE SUCH ADMINISTRATIVE FEES ESTAB-
15 LISHED AS OF AUGUST FIRST, TWO THOUSAND ELEVEN EXCEED THE AMOUNT AUTHOR-
16 IZED HEREIN, SUCH FEES MAY BE CONTINUED DURING THE PERIOD FROM AUGUST
17 FIRST, TWO THOUSAND NINE THROUGH JUNE THIRTIETH, TWO THOUSAND TWELVE.
18 [The department shall waive all or part of such fee where, because of
19 the indigence of the offender, the payment of said surcharge would work
20 an unreasonable hardship on the person convicted, his or her immediate

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

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1 family, or any other person who is dependent on such person for finan-
2 cial support.]

3 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY COUNTY AND THE
4 CITY OF NEW YORK MAY ADOPT A LOCAL LAW AUTHORIZING ITS PROBATION DEPART-
5 MENT, WHICH PERFORMS DRUG TESTING AS A CONDITION OF PROBATION OR CONDI-
6 TIONAL RELEASE PURSUANT TO SUBDIVISION TWO OF SECTION 70.40 OF THE PENAL
7 LAW, TO BE ENTITLED TO ASSESS A FEE TO THE PROBATIONER OR RELEASEE OF
8 THE ACTUAL COST OF SUCH TESTING, BUT IN NO EVENT MORE THAN EIGHT DOLLARS
9 FOR EACH TEST OR PANEL OF TESTS ADMINISTERED. FEES FOR DRUG TESTING
10 SHALL NOT EXCEED SIX HUNDRED DOLLARS PER PROBATIONER OR RELEASEE PER
11 YEAR.

12 FOR PURPOSES OF THIS PARAGRAPH, "ACTUAL COST" SHALL INCLUDE THE
13 REASONABLE COST FOR EQUIPMENT ACTUALLY CONSUMED IN CONDUCTING SUCH TEST
14 AND FOR ANALYSIS ACTUALLY PERFORMED BY A LABORATORY OR SIMILAR ENTITY.

15 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY COUNTY AND THE
16 CITY OF NEW YORK MAY ADOPT A LOCAL LAW AUTHORIZING ITS PROBATION DEPART-
17 MENT TO BE ENTITLED TO ASSESS AN ELECTRONIC MONITORING FEE OF THE ACTUAL
18 PER DIEM COST OF ELECTRONIC MONITORING, WHERE AUTHORIZED PURSUANT TO
19 SUBDIVISION FOUR OF SECTION 65.10 OF THE PENAL LAW, TO A MAXIMUM OF
20 EIGHT DOLLARS PER DAY TO A PROBATIONER SUBJECT TO ELECTRONIC MONITORING
21 AS A CONDITION OF PROBATION. FEES FOR ELECTRONIC MONITORING SHALL NOT
22 EXCEED NINE HUNDRED DOLLARS PER PROBATIONER.

23 (D) BEFORE IMPOSING ANY FEE AUTHORIZED BY THIS SECTION, THE PROBATION
24 DEPARTMENT SHALL NOTIFY THE PROBATIONER OR RELEASEE ORALLY AND IN WRIT-
25 ING OF: (I) EACH PROPOSED FEE AND THE AMOUNT OF SUCH FEE; AND (II) THE
26 OPPORTUNITY TO MEET WITH THE DIRECTOR OF THE DEPARTMENT OR, CONSISTENT
27 WITH SUBDIVISION SEVEN OF THIS SECTION, THE DIRECTOR'S DESIGNEE CONCERN-
28 ING ANY SUCH FEE, AND TO OFFER THE DIRECTOR OR DESIGNEE INFORMATION
29 TENDING TO SHOW THAT, BECAUSE OF THE PROBATIONER'S OR RELEASEE'S FINAN-
30 CIAL CIRCUMSTANCES OR A CHANGE IN SUCH CIRCUMSTANCES, SUCH PROPOSED FEE
31 AND/OR FEE AMOUNT WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER
32 OR RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS
33 ON HIM OR HER FOR FINANCIAL SUPPORT. SUCH NOTIFICATION, WHICH SHALL
34 INCLUDE THE WRITTEN NOTICE PROMULGATED BY THE OFFICE OF PROBATION AND
35 CORRECTIONAL ALTERNATIVES PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION,
36 SHALL ALSO INFORM THE PROBATIONER OR RELEASEE OF THE RIGHT AND PROCEDURE
37 TO BE HEARD IN THE COURT THAT IMPOSED THE SENTENCE REGARDING THE DEPART-
38 MENTAL DETERMINATION OF FEE PAYMENT, PURSUANT TO SECTION 410.15 OF THE
39 CRIMINAL PROCEDURE LAW.

40 (E) THE PROBATION DEPARTMENT SHALL WAIVE ALL OR PART OF SUCH ADMINIS-
41 TRATIVE, DRUG TESTING AND ELECTRONIC MONITORING FEES WHERE, BECAUSE OF
42 THE FINANCIAL CIRCUMSTANCES OF THE PROBATIONER OR RELEASEE, THE PAYMENT
43 OF SAID FEE WOULD WORK AN UNREASONABLE HARDSHIP ON THE PROBATIONER OR
44 RELEASEE, HIS OR HER IMMEDIATE FAMILY OR ANY OTHER PERSON WHO DEPENDS ON
45 SUCH PERSON FOR FINANCIAL SUPPORT. SUCH DETERMINATION SHALL BE MADE BY
46 THE PROBATION DEPARTMENT BASED ON REGULATIONS PROMULGATED BY THE OFFICE
47 OF PROBATION AND CORRECTIONAL ALTERNATIVES.

48 2. The provisions of subdivision six of section 420.10 of the criminal
49 procedure law shall govern for purposes of collection of the administra-
50 tive [fee], DRUG TESTING AND ELECTRONIC MONITORING FEES, EXCEPT THAT,
51 CONSISTENT WITH SUBDIVISION SEVEN OF THIS SECTION, ANOTHER OFFICIAL OR
52 AGENCY MAY BE DESIGNATED TO COLLECT SUCH FEE WHEN SUCH FEES ARE DUE AND
53 OWING AND HAVING NOT BEEN PAID. THE SUPERVISING PROBATION DEPARTMENT
54 SHALL ISSUE A WRITTEN FEE DETERMINATION CONTAINING THE AMOUNT REQUIRED
55 TO BE PAID BY THE PROBATIONER OR RELEASEE.

1 3. The probation administrative fee, DRUG TESTING FEE, AND ELECTRONIC
2 MONITORING FEE authorized by this section shall not constitute nor be
3 imposed as a condition of probation.

4 4. In the event of non-payment of any fees which have not been waived
5 by the local probation department, the county or the city of New York
6 may seek to enforce payment in any manner permitted by law for enforce-
7 ment of a debt.

8 5. Monies collected pursuant to this section shall be utilized for
9 probation services by the local probation department. Such moneys shall
10 not be considered by the [division] OFFICE OF PROBATION AND CORRECTIONAL
11 ALTERNATIVES when determining state aid pursuant to section two hundred
12 forty-six of [the executive law] THIS CHAPTER. Monies collected shall
13 not be used to replace federal funds otherwise utilized for probation
14 services.

15 6. THE DIRECTOR OF THE OFFICE OF PROBATION AND CORRECTIONAL ALTERNA-
16 TIVES SHALL SUBMIT A REPORT, WITH RECOMMENDATIONS, TO THE GOVERNOR,
17 TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, TO THE
18 CHAIRPERSONS OF THE SENATE CRIME VICTIMS, CRIME AND CORRECTION COMMIT-
19 TEE, AND ASSEMBLY CORRECTION COMMITTEE, SENATE CODES COMMITTEE AND
20 ASSEMBLY CODES COMMITTEE ON OR BEFORE JANUARY FIRST, TWO THOUSAND TWELVE
21 AND JANUARY FIRST, TWO THOUSAND THIRTEEN. THE REPORT SHALL INCLUDE, BUT
22 NOT BE LIMITED TO, RATES OF PAYMENT FOR DIFFERENT CATEGORIES OF
23 CONVICTIONS AND TYPES OF OFFENDERS, AND DATA FROM EACH COUNTY AND THE
24 CITY OF NEW YORK SPECIFYING THE FEES OR RANGES OF FEES IMPOSED AND
25 COLLECTED FOR SPECIFICALLY ADMINISTRATIVE, DRUG TESTING AND ELECTRONIC
26 MONITORING PURPOSES, NUMBERS AND PERCENTAGES OF WAIVERS FOR FINANCIAL
27 CIRCUMSTANCES REQUESTED AND GRANTED BY COUNTY, SHOWING AMOUNTS THEREOF,
28 COSTS AND TYPES OF DRUG TESTS ADMINISTERED, ANNUAL REVENUE COLLECTED
29 FROM SUCH FEES AND EFFECTIVENESS OF SUCH FEES IN ENHANCING THE DELIVERY
30 OF PROBATION SERVICES.

31 7. THE DIRECTOR OF THE OFFICE OF PROBATION AND CORRECTIONAL ALTERNA-
32 TIVES SHALL PROMULGATE REGULATIONS IMPLEMENTING THE IMPOSITION AND
33 COLLECTION OF ADMINISTRATIVE, DRUG TESTING, AND ELECTRONIC MONITORING
34 FEES. SUCH REGULATIONS SHALL UTILIZE A MEANS TEST BASED ON TWO HUNDRED
35 PERCENT OF THE FEDERAL POVERTY GUIDELINES PROMULGATED ANNUALLY BY THE
36 FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AND IF THE PROBATIONER
37 OR RELEASEE FALLS BELOW SUCH PERCENTAGE THEN NO FEE SHALL BE CHARGED,
38 AND EARNINGS ABOVE SUCH PERCENTAGE SHALL BE CONSIDERED ON A SLIDING
39 SCALE. SUCH REGULATIONS SHALL ALSO PROVIDE THAT PROBATION DEPARTMENTS
40 CONSIDER ANY ADDITIONAL TEST OR INDICIA THAT DEMONSTRATES THE INABILITY
41 OF A PROBATIONER OR RELEASEE TO PAY SUCH FEES. THE DIRECTOR OF SUCH
42 OFFICE SHALL ALSO PROMULGATE REGULATIONS PROHIBITING THE COLLECTION OF
43 PROBATION RELATED FEES BY PROBATION OFFICERS, SENIOR PROBATION OFFICERS
44 OR PROBATION SUPERVISORS.

45 S 2. The criminal procedure law is amended by adding a new section
46 410.15 to read as follows:

47 S 410.15 MOTION REGARDING PROBATION-RELATED FEES.

48 WHEN THE COURT WHICH IMPOSED SENTENCE RECEIVES A MOTION CONCERNING A
49 FEE DETERMINATION ISSUED BY A PROBATION DEPARTMENT PURSUANT TO SECTION
50 TWO HUNDRED FIFTY-SEVEN-C OF THE EXECUTIVE LAW, THE PROCEDURAL
51 PROVISIONS OF SUBDIVISION ONE OF SECTION 410.20 OF THIS ARTICLE SHALL
52 APPLY, CONSISTENT WITH SUBDIVISION THREE OF SUCH SECTION TWO HUNDRED
53 FIFTY-SEVEN-C. THE MOVANT AND PROBATION DEPARTMENT SHALL HAVE AN OPPOR-
54 TUNITY TO BE HEARD. AFTER DECIDING THE MOTION, THE COURT SHALL REMIT THE
55 MATTER FOR A FINAL DETERMINATION BY THE PROBATION DEPARTMENT, WHICH
56 SHALL BE CONSISTENT WITH THE COURT'S RULING.

1 S 3. Subdivision (aa) of section 427 of chapter 55 of the laws of
2 1992, amending the tax law and other laws relating to taxes, surcharges,
3 fees and funding, as amended by section 11 of part A of chapter 57 of
4 the laws of 2011, is amended to read as follows:

5 (aa) the provisions of sections three hundred eighty-two, three
6 hundred eighty-three and three hundred eighty-four of this act shall
7 expire on September 1, [2013] 2014;

8 S 4. This act shall take effect immediately, provided, however that

9 (a) the provisions of this act shall apply to probationers and releasees
10 presently paying such fees; (b) the provisions of this act shall apply
11 to probationers and releasees directed to pay such fees after the effec-
12 tive date of this act pursuant to local law; and (c) the amendments to
13 section 257-c of the executive law made by section one of this act shall
14 not affect the expiration of such section and shall be deemed to expire
15 therewith.