

5201

2015-2016 Regular Sessions

I N   S E N A T E

May 7, 2015

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Introduced by Sens. CROCI, ORTT -- 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 creating the crime of  
stolen valor

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

1     Section 1. Section 10.00 of the penal law is amended by adding new  
2     subdivisions 22 and 23 to read as follows:  
3     22. "MEMBER OF THE MILITARY OR RESERVES" MEANS (A) A MEMBER OF THE  
4     UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, ARMY NATIONAL  
5     GUARD, AIR NATIONAL GUARD AND/OR RESERVES THEREOF OR (B) A MEMBER OF THE  
6     NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA.  
7     23. "VETERAN" MEANS A PERSON WHO WAS A MEMBER OF THE MILITARY OR  
8     RESERVES AS DEFINED IN SUBDIVISION TWENTY-TWO OF THIS SECTION, BUT WHO  
9     HAS SINCE BEEN DISCHARGED FROM SUCH SERVICES.  
10    S 2. The penal law is amended by adding a new section 190.28 to read  
11    as follows:  
12    S 190.28 STOLEN VALOR.  
13    A PERSON IS GUILTY OF STOLEN VALOR WHEN HE OR SHE PRETENDS TO BE A  
14    MEMBER OF THE MILITARY OR RESERVES AS DEFINED BY SUBDIVISION TWENTY-TWO  
15    OF SECTION 10.00 OF THIS CHAPTER, OR PRETENDS TO BE A VETERAN AS DEFINED  
16    BY SUBDIVISION TWENTY-THREE OF SECTION 10.00 OF THIS CHAPTER, OR WEARS  
17    OR DISPLAYS WITHOUT AUTHORITY, ANY UNIFORM, BADGE OR OTHER INSIGNIA OR  
18    FACSIMILE THEREOF, BY WHICH SUCH MEMBER OF THE MILITARY OR VETERAN IS  
19    LAWFULLY DISTINGUISHED OR EXPRESSES BY HIS OR HER WORDS OR ACTIONS THAT  
20    HE OR SHE IS ACTING WITH THE APPROVAL OR AUTHORITY OF ANY DEPARTMENT OF  
21    DEFENSE BRANCH OR THE UNITED STATES COAST GUARD FOR THE PURPOSE OF  
22    OBTAINING MONEY OR OTHER BENEFITS.  
23    STOLEN VALOR IS A CLASS E FELONY.  
24    S 3. Subdivisions 1, 2 and 3 of section 60.35 of the penal law, as  
25    amended by section 1 of part E of chapter 56 of the laws of 2004,

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

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subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as amended by section 1 of part DD of chapter 56 of the laws of 2008 and paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of 2006, are amended to read as follows:

1. (a) Except as provided in section eighteen hundred nine of the vehicle and traffic law and section 27.12 of the parks, recreation and historic preservation law, whenever proceedings in an administrative tribunal or a court of this state result in a conviction for a felony, a misdemeanor, or a violation, as these terms are defined in section 10.00 of this chapter, there shall be levied at sentencing a mandatory surcharge, sex offender registration fee, DNA databank fee [and], a crime victim assistance fee, AND A STOLEN VALOR FEE in addition to any sentence required or permitted by law, in accordance with the following schedule:

(i) a person convicted of a felony shall pay a mandatory surcharge of three hundred dollars and a crime victim assistance fee of twenty-five dollars;

(ii) a person convicted of a misdemeanor shall pay a mandatory surcharge of one hundred seventy-five dollars and a crime victim assistance fee of twenty-five dollars;

(iii) a person convicted of a violation shall pay a mandatory surcharge of ninety-five dollars and a crime victim assistance fee of twenty-five dollars;

(iv) a person convicted of 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 shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a sex offender registration fee of fifty dollars[.];

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

(VI) A PERSON CONVICTED OF ANY OFFENSE PURSUANT TO SECTION 190.28 OF THE PENAL LAW SHALL, IN ADDITION TO A MANDATORY SURCHARGE AND CRIME VICTIM ASSISTANCE FEE, PAY ANY OTHER FEE REQUIRED BY THIS ARTICLE, AND PAY A STOLEN VALOR FEE IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS.

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

2. Where a person is convicted of two or more crimes or violations committed through a single act or omission, or through an act or omission which in itself constituted one of the crimes or violations and also was a material element of the other, the court shall impose a mandatory surcharge and a crime victim assistance fee, and where appropriate a supplemental sex offender victim fee OR A STOLEN VALOR FEE, in accordance with the provisions of this section for the crime or violation which carries the highest classification, and no other sentence to pay a mandatory surcharge, crime victim assistance fee [or], supplemental sex offender victim fee, OR A STOLEN VALOR FEE required by this section shall be imposed. Where a person is convicted of two or

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

12 3. The mandatory surcharge, sex offender registration fee, DNA data-  
13 bank fee, crime victim assistance fee, [and] supplemental sex offender  
14 victim fee, AND STOLEN VALOR FEE provided for in subdivision one of this  
15 section shall be paid to the clerk of the court or administrative tribu-  
16 nal that rendered the conviction. Within the first ten days of the month  
17 following collection of the mandatory surcharge, crime victim assistance  
18 fee, and supplemental sex offender victim fee, the collecting authority  
19 shall determine the amount of mandatory surcharge, crime victim assist-  
20 ance fee, [and] supplemental sex offender victim fee, AND STOLEN VALOR  
21 FEE collected and, if it is an administrative tribunal, or a town or  
22 village justice court, it shall then pay such money to the state comp-  
23 troller who shall deposit such money in the state treasury pursuant to  
24 section one hundred twenty-one of the state finance law to the credit of  
25 the criminal justice improvement account established by section ninety-  
26 seven-bb of the state finance law. Within the first ten days of the  
27 month following collection of the sex offender registration fee and DNA  
28 databank fee, the collecting authority shall determine the amount of the  
29 sex offender registration fee and DNA databank fee collected and, if it  
30 is an administrative tribunal, or a town or village justice court, it  
31 shall then pay such money to the state comptroller who shall deposit  
32 such money in the state treasury pursuant to section one hundred twen-  
33 ty-one of the state finance law to the credit of the general fund. If  
34 such collecting authority is any other court of the unified court  
35 system, it shall, within such period, pay such money attributable to the  
36 mandatory surcharge or crime victim assistance fee to the state commis-  
37 sioner of taxation and finance to the credit of the criminal justice  
38 improvement account established by section ninety-seven-bb of the state  
39 finance law. If such collecting authority is any other court of the  
40 unified court system, it shall, within such period, pay such money  
41 attributable to the sex offender registration fee and the DNA databank  
42 fee to the state commissioner of taxation and finance to the credit of  
43 the general fund. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVI-  
44 SION, ALL MONIES PAID TO THE STATE COMPTROLLER OR TO THE COMMISSIONER OF  
45 TAXATION AND FINANCE WHICH ARE ATTRIBUTABLE TO MONIES COLLECTED FOR THE  
46 STOLEN VALOR FEE SHALL BE CREDITED TO THE VETERANS REMEMBRANCE AND CEME-  
47 TERY MAINTENANCE AND OPERATION FUND ESTABLISHED PURSUANT TO SECTION  
48 NINETY-SEVEN-MMMM OF THE STATE FINANCE LAW.

49 S 4. This act shall take effect immediately.