STATE OF NEW YORK

5318

2017-2018 Regular Sessions

IN ASSEMBLY

February 8, 2017

Introduced by M. of A. DiPIETRO -- 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:

Section 1. Section 80.00 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. The term "fine" as defined in this section shall not include a mandatory surcharge or a crime victim's assistance fee as defined in section 60.35 of this title.

§ 2. Section 80.05 of the penal law is amended by adding a new subdivision 7 to read as follows:

7. The term "fine" as defined in this section shall not include a mandatory surcharge or a crime victim's assistance fee as defined in section 60.35 of this title.

§ 3. Section 60.35 of the penal law, as amended by section 1 of part E of chapter 56 of the laws of 2004, subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as amended by section 1 of part DD and subdivision 10 as amended by section 2 of part Y of chapter 56 of the laws of 2008, paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of 2006, subdivision 4 as amended by chapter 525 of the laws of 2013, and subdivision 8 as amended by section 121 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 60.35 Mandatory surcharge, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee and crime victim assistance fee required in certain cases.

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

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

LBD05878-01-7

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 in addition to any sentence required or permitted by law, in accordance with the following schedule:

(i) a person convicted of a felony**, excluding those felonies set forth in clauses (A) and (B) of this subparagraph,** shall pay a mandatory surcharge of three hundred dollars and a crime victim assistance fee of [~~twenty-five~~] **five hundred** dollars;

(A) A person convicted of a felony offense of homicide, as defined in section 125.00 of this chapter, shall pay a mandatory surcharge of five hundred dollars and a crime victim assistance fee of two thousand five hundred dollars for every month of which such person is sentenced to serve time in a correctional facility, as defined in section forty of the correction law;

(B) A person convicted of a violent felony offense, as defined in section 70.02 of this chapter, shall pay a mandatory surcharge of two hundred fifty dollars and a crime victim assistance fee of one thousand dollars for every month of which such person is sentenced to serve time in a correctional facility, as defined in section forty of the correction law;

(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~~] **two hundred fifty** dollars;

(iii) a person convicted of a violation shall pay a mandatory surcharge of [~~ninety-five~~] **one hundred** 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.

(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, 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 required by this section shall be imposed. Where a person is

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

3. The mandatory surcharge, sex offender registration fee, DNA databank fee[~~, crime victim assistance fee,~~] and supplemental sex offender 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, the collecting authority shall determine the amount of mandatory surcharge, crime victim assistance fee, and supplemental sex offender victim 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 criminal justice improvement account established by section ninety-seven-bb 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.

3-a. Within the first ten days following the pronouncement of sentence of the convicted offender, the clerk of the court pronouncing the sentence shall calculate and determine the amount of the crime victim assistance fee provided for in subdivision one of this section. Immediately thereafter, the convicted offender shall pay to the clerk of the court or administrative tribunal that rendered the conviction the full amount of the crime victim's assistance fee so calculated and determined, and such court shall thereupon act as the collecting authority. If such collecting authority 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 crime victim's assistance account established by section ninety-four-c 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 to the state commissioner of taxation and finance to the credit of the crime victim's assistance account established by section ninety-four-c of the state finance law.

3-b. Upon the pronouncement of sentence upon a convicted offender, the clerk of the court pronouncing such sentence shall create a crime victim's list. This list shall provide the name of the convicted offender and the offenses for which he was convicted, as well as the name, address, and telephone number of every individual whom the court deems a victim of the crime or crimes for which the convicted offender was convicted. A victim of the crime shall include anyone against whom a crime or violent act in furtherance of a crime was committed, or in the case of a homicide all family members of the deceased victim within one degree of consanguinity. This list shall be filed with the attorney general and shall be sealed from public inspection so as to protect crime victims from having their names and identities made known to the public and the press.

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 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 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 upon application, in the case of a town or village court, 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. In all other cases, such application shall be made to the department, agency or court that collected such surcharge or fee. Such department, agency or court shall initiate the refund process and the state comptroller shall pay the refund pursuant to subdivision fifteen of section eight of the state finance 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 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-c 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**.

(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 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.

5-a. For the purposes of collecting such mandatory surcharge or crime victim's assistance fee, the state shall be legally entitled to file a crime victim's lien against the convicted offender, in the amount of the unpaid portion of such mandatory surcharge or crime victim's assistance fee. Such lien may be filed any time after a sentence is pronounced upon the offender, and shall exist from the date of the pronouncement of such sentence until the convicted offender pays the full amount of the mandatory surcharge and crime victim's assistance fee, or for twenty-five years from the date of the pronouncement of the convicted offender's sentence, whichever is less. Such lien shall be filed with the attorney general by the clerk of the court from which the offender is convicted. Upon the filing of such lien, the attorney general may at any time thereafter execute and enforce such lien against the convicted offender, for the collection of the mandatory surcharge and/or the crime victim's assistance fee. Such lien shall empower the attorney general, without prior application to any court or administrative tribunal, to take any action necessary to collect such mandatory surcharge and/or crime victim's assistance fee, including, but not limited to, the attachment, seizure and sale of the convicted offender's assets, including real property, personal tangible property and/or personal intangible property, as well as the garnishment of up to twenty-five percent of the convicted offender's wages. This collection shall be enforceable whether or not such offender is incarcerated at the time of its execution, and whether or not such offender has completely or partially served the sentence pronounced upon him.

5-b. All monies collected pursuant to the enforcement and execution of the state's crime victim's lien against a convicted offender, as set forth in subdivision five of this section, shall be delivered by the attorney general to the comptroller. The comptroller shall deposit into the internal service fund account for the department of law, an amount equal to nineteen percent of the monies so collected, in order to offset the costs and expenses of performing such collection, lien enforcement and execution. All remaining monies, if collected from the failure of the convicted offender to pay a mandatory surcharge, shall be deposited by the comptroller into the criminal justice improvement account, as defined in section ninety-seven-bb of the state finance law, and if collected from the failure of the convicted offender to pay a crime victim's assistance fee shall be deposited by the comptroller into the crime victim's assistance account, as defined in section ninety-four-c of the state finance law. Upon the collection of monies under this section, the attorney general shall provide written notice to the crime victim or victims on the crime victim's list for the convicted offender which was prepared by the court or administrative tribunal and filed with the attorney general pursuant to subdivision three-b of this section.

6. Notwithstanding any other provision of this section, where a person has made restitution or reparation pursuant to section 60.27 of this article, such person [~~**shall**~~] **at the discretion of the court, may** not be required to pay a mandatory surcharge or a crime victim assistance fee.

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

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 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, 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, 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. 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 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 corrections and community supervision. The mandatory surcharges, sex offender registration fee and DNA databank fees, crime victim assistance

fees and supplemental sex offender victim fees for those persons shall be governed by the provisions of section 60.30 of this article.

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

§ 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-c 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.

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

§ 94-c. Crime victim's assistance account. 1. There is hereby established in the joint custody of the state comptroller and the attorney general a special revenue fund to be known as the "crime victim's assistance account."

2. The crime victim's assistance account shall consist of all monies received by the state pursuant to section 60.35 of the penal law and all other fees, fines, grants, bequests or other monies credited, appropriated or transferred thereto from any other fund or source.

3. Monies of the crime victim's assistance account shall be made available for the following purposes:

a. For state operation expenses and local assistance services to provide services to crime victims and witnesses; and

b. For grants and expenses to private associations, services and programs which provide services to crime victims and witnesses; and

c. For compensation payments to crime victims and their families.

4. Monies allocated from the crime victim's assistance account for state operation expenses and local assistance services, to provide services to crime victims and witnesses, shall not, in the aggregate, annually exceed ten percent of the funds of the account's previous year's annual cash balance. The attorney general shall make an annual recommendation to the governor and the legislature as to the allocation of these monies.

5. Monies allocated from the crime victim's assistance account for grants and expenses to private associations, services and programs, which provide services to crime victims and witnesses, shall not, in the aggregate, annually exceed ten percent of the funds of the account's previous year's annual cash balance. The attorney general shall make an annual recommendation to the governor and the legislature as to the allocation of these monies.

6. Upon the payment or collection of a crime victim's assistance fee, or a portion thereof, from a convicted offender, and upon the deposit of such monies into the crime victim's assistance account by the comptroller, a crime victim, who is set forth on a crime victim's list for the convicted offender as defined in subdivision five of section 60.35 of the penal law, shall be eligible to apply to the attorney general for crime victim's assistance. Upon verification of the attorney general from the crime victim's list that such applicant is a crime victim of the convicted offender, and upon verification from the state comptroller that payment or collection of monies were made against such convicted offender and that such monies were deposited into the crime victim's assistance account and the amount of such monies, if any, that have been previously paid by or collected from, such convicted offender, the attorney general shall certify to the comptroller that such applicant is eligible to receive crime victim's assistance. Such certification shall specify the current name and address of the crime victim, and the amount of the monies deposited into the crime victim's assistance account as a result of the payment by, or the collection of monies from, the convicted offender. Pursuant to the issuance of the attorney general's certification or certifications, the comptroller shall within thirty days of receipt of such certification or certifications, issue and provide a pro rata payment to each crime victim in the amount of seventy-five percent of the amount of money so certified as having been

deposited in the crime victim's assistance account as a result of the payment by, or the collection of monies from, the convicted offender.

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