STATE OF NEW YORK

3681

2019-2020 Regular Sessions

IN ASSEMBLY

January 30, 2019

Introduced by M. of A. DINOWITZ, BENEDETTO, MOSLEY, M. G. MILLER, GALEF, COLTON, PEOPLES-STOKES, GUNTHER, DenDEKKER, BLAKE, WOERNER, CAHILL, RIVERA, RODRIGUEZ, STECK, GOTTFRIED -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, GLICK, RAMOS -- read once and referred 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 Assembly, do enact as follows:

Section 1. Section 10.00 of the penal law is amended by adding two new subdivisions 22 and 23 to read as follows:

22. "Member of the military or reserves" means (a) a member of the United States army, navy, air force, marines, coast guard, army national guard, air national guard and/or reserves thereof or (b) a member of the New York guard or the New York naval militia.

23. "Veteran" means a person who was a member of the military or reserves as defined in subdivision twenty-two of this section, but who has since been discharged from such services.

§ 2. The penal law is amended by adding a new section 190.28 to read as follows:

§ 190.28 Stolen valor.

A person is guilty of stolen valor when he or she pretends to be a member of the military or reserves as defined by subdivision twenty-two of section 10.00 of this chapter, or pretends to be a veteran as defined by subdivision twenty-three of section 10.00 of this chapter, or wears or displays without authority, any uniform, badge or other insignia or facsimile thereof, by which such member of the military or veteran is lawfully distinguished or expresses by his or her words or actions that he or she is acting with the approval or authority of any department of defense branch or the United States Coast Guard for the purpose of fraudulently obtaining money or other benefits.

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

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Stolen valor is a class A misdemeanor.

§ 3. Subdivisions 1, 2 and 3 of 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 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 this chapter 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 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, and stolen valor 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, and stolen valor 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. Notwithstanding any other provision of this subdivision, all monies paid to the state comptroller or to the commissioner of taxation and finance which are attributable to monies collected for the stolen valor fee shall be credited to the veterans remembrance and cemetery maintenance and operation fund established pursuant to section ninety-seven-mmmm of the state finance law.

§ 4. This act shall take effect immediately.