

STATE OF NEW YORK

5193

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

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 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 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 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.

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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]~~ as a designated ~~[offense]~~ offender 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 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

1 other court of the unified court system, it shall, within such period,
2 pay such money to the state commissioner of taxation and finance to the
3 credit of the crime victim's assistance account established by section
4 ninety-four-c of the state finance law.

5 3-b. Upon the pronouncement of sentence upon a convicted offender,
6 the clerk of the court pronouncing such sentence shall create a crime
7 victim's list. This list shall provide the name of the convicted offen-
8 der and the offenses for which he was convicted, as well as the name,
9 address, and telephone number of every individual whom the court deems a
10 victim of the crime or crimes for which the convicted offender was
11 convicted. A victim of the crime shall include anyone against whom a
12 crime or violent act in furtherance of a crime was committed, or in the
13 case of a homicide all family members of the deceased victim within one
14 degree of consanguinity. This list shall be filed with the attorney
15 general and shall be sealed from public inspection so as to protect
16 crime victims from having their names and identities made known to the
17 public and the press.

18 4. Any person who has paid a mandatory surcharge, sex offender regis-
19 tration fee, DNA databank fee, a crime victim assistance fee or a
20 supplemental sex offender victim fee under the authority of this section
21 based upon a conviction that is subsequently reversed or who paid a
22 mandatory surcharge, sex offender registration fee, DNA databank fee, a
23 crime victim assistance fee or supplemental sex offender victim fee
24 under the authority of this section which is ultimately determined not
25 to be required by this section shall be entitled to a refund of such
26 mandatory surcharge, sex offender registration fee, DNA databank fee,
27 crime victim assistance fee or supplemental sex offender victim fee upon
28 application, in the case of a town or village court, to the state comp-
29 troller. The state comptroller shall require such proof as is necessary
30 in order to determine whether a refund is required by law. In all other
31 cases, such application shall be made to the department, agency or court
32 that collected such surcharge or fee. Such department, agency or court
33 shall initiate the refund process and the state comptroller shall pay
34 the refund pursuant to subdivision fifteen of section eight of the state
35 finance law.

36 5. (a) When a person who is convicted of a crime or violation and
37 sentenced to a term of imprisonment has failed to pay the mandatory
38 surcharge, sex offender registration fee, DNA databank fee, crime victim
39 assistance fee or supplemental sex offender victim fee required by this
40 section, the clerk of the court that rendered the conviction shall noti-
41 fy the superintendent or the municipal official of the facility where
42 the person is confined. The superintendent or the municipal official
43 shall cause any amount owing to be collected from such person during his
44 or her term of imprisonment from moneys to the credit of an inmates'
45 fund or such moneys as may be earned by a person in a work release
46 program pursuant to section eight hundred sixty of the correction law or
47 as they may be awarded to such inmate pursuant to litigation or settle-
48 ment of litigation. Such moneys attributable to the mandatory surcharge
49 or crime victim assistance fee shall be paid over to the state comp-
50 troller to the credit of the criminal justice improvement account estab-
51 lished by section ninety-seven-bb of the state finance law and such
52 moneys attributable to the sex offender registration fee or DNA databank
53 fee shall be paid over to the state comptroller to the credit of the
54 general fund, except that any such moneys collected which are
55 surcharges, sex offender registration fees, DNA databank fees[~~,-crime~~
56 ~~victim assistance fees~~] or supplemental sex offender victim fees levied

1 in relation to convictions obtained in a town or village justice court
2 shall be paid within thirty days after the receipt thereof by the super-
3 intendent or municipal official of the facility to the justice of the
4 court in which the conviction was obtained. Such moneys, with respect to
5 the payment of the crime victim assistance fee, shall be paid over to
6 the state comptroller to the credit of the crime victim's assistance
7 account established by section ninety-four-c of the state finance law.
8 For the purposes of collecting such mandatory surcharge, sex offender
9 registration fee, DNA databank fee, crime victim assistance fee, and
10 supplemental sex offender victim fee, the state shall be legally enti-
11 tled to the money to the credit of an inmates' fund or money which is
12 earned by an inmate in a work release program or as they may be awarded
13 to such inmate pursuant to litigation or settlement of litigation. For
14 purposes of this subdivision, the term "inmates' fund" shall mean moneys
15 in the possession of an inmate at the time of his or her admission into
16 such facility, funds earned by him or her as provided for in section one
17 hundred eighty-seven of the correction law and any other funds received
18 by him or her or on his or her behalf and deposited with such super-
19 intendent or municipal official, or funds received including any funds
20 that may be awarded to such inmate pursuant to litigation or settlement
21 of litigation.

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

31 5-a. For the purposes of collecting such mandatory surcharge or crime
32 victim assistance fee, the state shall be legally entitled to file a
33 crime victim's lien against the convicted offender, in the amount of the
34 unpaid portion of such mandatory surcharge or crime victim assistance
35 fee. Such lien may be filed any time after a sentence is pronounced upon
36 the offender, and shall exist from the date of the pronouncement of such
37 sentence until the convicted offender pays the full amount of the manda-
38 tory surcharge and crime victim assistance fee, or for twenty-five years
39 from the date of the pronouncement of the convicted offender's sentence,
40 whichever is less. Such lien shall be filed with the attorney general by
41 the clerk of the court from which the offender is convicted. Upon the
42 filing of such lien, the attorney general may at any time thereafter
43 execute and enforce such lien against the convicted offender, for the
44 collection of the mandatory surcharge and/or the crime victim assistance
45 fee. Such lien shall empower the attorney general, without prior appli-
46 cation to any court or administrative tribunal, to take any action
47 necessary to collect such mandatory surcharge and/or crime victim
48 assistance fee, including, but not limited to, the attachment, seizure
49 and sale of the convicted offender's assets, including real property,
50 personal tangible property and/or personal intangible property, as well
51 as the garnishment of up to twenty-five percent of the convicted
52 offender's wages. This collection shall be enforceable whether or not
53 such offender is incarcerated at the time of its execution, and whether
54 or not such offender has completely or partially served the sentence
55 pronounced upon him.

1 5-b. All monies collected pursuant to the enforcement and execution of
2 the state's crime victim's lien against a convicted offender, as set
3 forth in subdivision five of this section, shall be delivered by the
4 attorney general to the comptroller. The comptroller shall deposit into
5 the internal service fund account for the department of law, an amount
6 equal to nineteen percent of the monies so collected, in order to offset
7 the costs and expenses of performing such collection, lien enforcement
8 and execution. All remaining monies, if collected from the failure of
9 the convicted offender to pay a mandatory surcharge, shall be deposited
10 by the comptroller into the criminal justice improvement account, as
11 defined in section ninety-seven-bb of the state finance law, and if
12 collected from the failure of the convicted offender to pay a crime
13 victim assistance fee shall be deposited by the comptroller into the
14 crime victim's assistance account, as defined in section ninety-four-c
15 of the state finance law. Upon the collection of monies under this
16 section, the attorney general shall provide written notice to the crime
17 victim or victims on the crime victim's list for the convicted offender
18 which was prepared by the court or administrative tribunal and filed
19 with the attorney general pursuant to subdivision three-b of this
20 section.

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

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

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

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

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

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

14 § 4. Subdivision 5 of section 60.35 of the penal law, as amended by
15 section 2 of part E of chapter 56 of the laws of 2004, is amended to
16 read as follows:

17 5. When a person who is convicted of a crime or violation and
18 sentenced to a term of imprisonment has failed to pay the mandatory
19 surcharge, sex offender registration fee, DNA databank fee, crime victim
20 assistance fee or supplemental sex offender victim fee required by this
21 section, the clerk of the court that rendered the conviction shall noti-
22 fy the superintendent or the municipal official of the facility where
23 the person is confined. The superintendent or the municipal official
24 shall cause any amount owing to be collected from such person during his
25 or her term of imprisonment from moneys to the credit of an inmates'
26 fund or such moneys as may be earned by a person in a work release
27 program pursuant to section eight hundred sixty of the correction law or
28 as they may be awarded to such inmate pursuant to litigation or settle-
29 ment of litigation. Such moneys attributable to the mandatory surcharge
30 or crime victim assistance fee shall be paid over to the state comp-
31 troller to the credit of the criminal justice improvement account estab-
32 lished by section ninety-seven-bb of the state finance law and such
33 moneys attributable to the sex offender registration fee or DNA databank
34 fee shall be paid over to the state comptroller to the credit of the
35 general fund, except that any such moneys collected which are
36 surcharges, sex offender registration fees, DNA databank fees, ~~crime~~
37 ~~victim assistance fees~~ or supplemental sex offender victim fees levied
38 in relation to convictions obtained in a town or village justice court
39 shall be paid within thirty days after the receipt thereof by the super-
40 intendent or municipal official of the facility to the justice of the
41 court in which the conviction was obtained. Such moneys, with respect to
42 the payment of the crime victim assistance fee, shall be paid over to
43 the state comptroller to the credit of the crime victim's assistance
44 account established by section ninety-four-c of the state finance law.
45 For the purposes of collecting such mandatory surcharge, sex offender
46 registration fee, DNA databank fee, crime victim assistance fee and
47 supplemental sex offender victim fee, the state shall be legally enti-
48 tled to the money to the credit of an inmates' fund or money which is
49 earned by an inmate in a work release program or as they may be awarded
50 to such inmate pursuant to litigation or settlement of litigation. For
51 purposes of this subdivision, the term "inmates' fund" shall mean moneys
52 in the possession of an inmate at the time of his or her admission into
53 such facility, funds earned by him or her as provided for in section one
54 hundred eighty-seven of the correction law and any other funds received
55 by him or her or on his or her behalf and deposited with such super-
56 intendent or municipal official, or funds received, including any funds

1 that may be awarded to such inmate pursuant to litigation or settlement
2 of litigation.

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

5 § 94-c. Crime victim's assistance account. 1. There is hereby estab-
6 lished in the joint custody of the state comptroller and the attorney
7 general a special revenue fund to be known as the "crime victim's
8 assistance account."

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

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

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

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

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

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

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

34 6. Upon the payment or collection of a crime victim assistance fee, or
35 a portion thereof, from a convicted offender, and upon the deposit of
36 such monies into the crime victim's assistance account by the comp-
37 troller, a crime victim, who is set forth on a crime victim's list for
38 the convicted offender as defined in subdivision five of section 60.35
39 of the penal law, shall be eligible to apply to the attorney general for
40 crime victim's assistance. Upon verification of the attorney general
41 from the crime victim's list that such applicant is a crime victim of
42 the convicted offender, and upon verification from the state comptroller
43 that payment or collection of monies were made against such convicted
44 offender and that such monies were deposited into the crime victim's
45 assistance account and the amount of such monies, if any, that have been
46 previously paid by or collected from, such convicted offender, the
47 attorney general shall certify to the comptroller that such applicant is
48 eligible to receive crime victim's assistance. Such certification shall
49 specify the current name and address of the crime victim, and the amount
50 of the monies deposited into the crime victim's assistance account as a
51 result of the payment by, or the collection of monies from, the
52 convicted offender. Pursuant to the issuance of the attorney general's
53 certification or certifications, the comptroller shall within thirty
54 days of receipt of such certification or certifications, issue and
55 provide a pro rata payment to each crime victim in the amount of seven-
56 ty-five percent of the amount of money so certified as having been

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

3 § 6. This act shall take effect on the ninetieth day after it shall
4 have become a law and shall apply to all convictions occurring on or
5 after such date, provided that the amendments to subdivision 5 of
6 section 60.35 of the penal law made by section three of this act shall
7 be subject to the expiration and reversion of such subdivision pursuant
8 to subdivision h of section 74 of chapter 3 of the laws of 1995, as
9 amended, when upon such date the provisions of section four of this act
10 shall take effect.