

# STATE OF NEW YORK

5045

2019-2020 Regular Sessions

## IN ASSEMBLY

February 7, 2019

Introduced by M. of A. DAVILA, AUBRY, GOTTFRIED, SIMON, BARRON, ARROYO, TAYLOR, LAVINE, ORTIZ, CAHILL, O'DONNELL, SEAWRIGHT, PICHARDO, MOSLEY, PERRY, RIVERA, JAFFEE, QUART, DICKENS, McDONOUGH, BLAKE, WALKER, WRIGHT -- Multi-Sponsored by -- M. of A. COOK, DE LA ROSA -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to allowing a court to waive certain surcharges and fees; and to repeal certain provisions of the penal law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 420.35 of the criminal procedure  
2 law, as amended by chapter 189 of the laws of 2018, is amended and a new  
3 subdivision 2-a is added to read as follows:

4 2. [~~Under~~] Except as provided in this subdivision or subdivision two-a  
5 of this section, under no circumstances shall the mandatory surcharge,  
6 sex offender registration fee, DNA databank fee or the crime victim  
7 assistance fee be waived [~~provided, however, that a court may waive the~~  
8 ~~crime victim assistance fee if such defendant is an eligible youth as~~  
9 ~~defined in subdivision two of section 720.10 of this chapter, and the~~  
10 ~~imposition of such fee would work an unreasonable hardship on the~~  
11 ~~defendant, his or her immediate family, or any other person who is~~  
12 ~~dependent on such defendant for financial support~~]. A court shall waive

13 any mandatory surcharge, DNA databank fee and crime victim assistance  
14 fee when: (i) the defendant is convicted of loitering for the purpose of  
15 engaging in prostitution under section 240.37 of the penal law (provided  
16 that the defendant was not convicted of loitering for the purpose of  
17 patronizing a person for prostitution); (ii) the defendant is convicted  
18 of prostitution under section 230.00 of the penal law; (iii) the defend-  
19 ant is convicted of a violation in the event such conviction is in lieu  
20 of a plea to or conviction for loitering for the purpose of engaging in  
21 prostitution under section 240.37 of the penal law (provided that the

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

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1 defendant was not alleged to be loitering for the purpose of patronizing  
2 a person for prostitution) or prostitution under section 230.00 of the  
3 penal law; or (iv) the court finds that a defendant is a victim of sex  
4 trafficking under section 230.34 of the penal law or a victim of traf-  
5 ficking in persons under the trafficking victims protection act (United  
6 States Code, Title 22, Chapter 78); or (v) the court finds that the  
7 defendant is a victim of sex trafficking of a child under section  
8 230.34-a of the penal law.

9 2-a. A court may waive any mandatory surcharge, additional surcharge,  
10 town or village surcharge, the crime victim assistance fee, DNA databank  
11 fee, sex offender registration fee and/or supplemental sex offender  
12 victim fee when the court finds that the defendant was under the age of  
13 twenty-one at the time the offense was committed and:

14 (a) the imposition of such surcharge or fee would work an unreasonable  
15 hardship on the defendant, his or her immediate family, or any other  
16 person who is dependent on such defendant for financial support; or

17 (b) after considering the goal of promoting successful and productive  
18 reentry and reintegration as set forth in subdivision six of section  
19 1.05 of the penal law, the imposition of such surcharge or fee would  
20 adversely impact the defendant's reintegration into society; or

21 (c) the interests of justice.

22 § 2. Subdivision 3 of section 420.30 of the criminal procedure law, as  
23 amended by section 5 of part F of chapter 56 of the laws of 2004, is  
24 amended to read as follows:

25 3. Restrictions. [~~It~~] Except as provided for in subdivision two-a of  
26 section 420.35 of this article, in no event shall a mandatory surcharge,  
27 sex offender registration fee, DNA databank fee or crime victim assist-  
28 ance fee be remitted [~~provided, however, that a court may waive the~~  
29 ~~crime victim assistance fee if such defendant is an eligible youth as~~  
30 ~~defined in subdivision two of section 720.10 of this chapter, and the~~  
31 ~~imposition of such fee would work an unreasonable hardship on the~~  
32 ~~defendant, his or her immediate family, or any other person who is~~  
33 ~~dependent on such defendant for financial support~~].

34 § 3. Subdivision 10 of section 60.35 of the penal law is REPEALED.

35 § 4. Subdivision 3 of section 60.02 of the penal law is REPEALED.

36 § 5. This act shall take effect immediately.