STATE OF NEW YORK

6847

2019-2020 Regular Sessions

IN SENATE

November 8, 2019

Introduced by Sens. GAUGHRAN, BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, the penal law and the state finance law, in relation to establishing the child victim foundation fund and implementing a supplemental child victim fee

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

Section 1. The tax law is amended by adding a new section 209-N to read as follows:

§ 209-N. Gift for the child victim foundation fund. Effective for any tax year commencing on or after January first, two thousand twenty, a taxpayer in any taxable year may elect to contribute to the support of the child victim foundation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the corporate income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the child victim foundation fund and shall be used only for the purposes enumerated in section ninety-nine-hh of the state finance law.

§ 2. The tax law is amended by adding a new section 630-h to read as follows:

§ 630-h. Gift for the child victim foundation fund. Effective for any tax year commencing on or after January first, two thousand twenty, a taxpayer in any taxable year may elect to contribute to the support of the child victim foundation fund. Such contribution shall be in any whole dollar amount and shall not reduce the amount of the state tax owed by such taxpayer. The commissioner shall include space on the personal income tax return to enable a taxpayer to make such contribution. Notwithstanding any other provision of law, all revenues collected pursuant to this section shall be credited to the child victim

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

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foundation fund and shall be used only for the purposes enumerated in section ninety-nine-hh of the state finance law.

§ 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 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, subdivision 8 as amended by section 121 of subpart B of part C of chapter 62 of the laws of 2011, and subdivision 10 as amended by section 2 of part Y of chapter 56 of the laws of 2008, is amended to read as follows:

§ 60.35 Mandatory surcharge, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee**, supplemental child 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 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 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.

(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.

(c) When the felony or misdemeanor conviction in subparagraphs (i), (ii) or (iv) of paragraph (a) of this subdivision results from an offense defined by subdivision two of section one hundred sixty-eight-a of the correction law, a sexually motivated violent offense as defined by subdivision three of section one hundred sixty-eight-a of the

correction law, any 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, and the person against whom the crime was committed was under the age of eighteen at the time of the criminal act, the person convicted shall pay a supplemental child victim fee of one thousand dollars in addition to the mandatory surcharge and any other fee or supplemental 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 and a supplemental child 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 or a supplemental child 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, and only one supplemental child victim 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 supplemental child 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, and supplemental child 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.

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 **or supplemental child 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. 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, **such moneys attributable to the supplemental child victim fee shall be paid over to the state comptroller to the credit of the child victim foundation fund established by section ninety-nine-hh 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. 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**, and supplemental child 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. 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.

(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 **or supplemental child 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.

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 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 **or supplemental child 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 **or supplemental child 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 **or supplemental child 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 **or supplemental child 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 **or supplemental child 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 **and supplemental child 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 **or supplemental child victim fee**, as defined in subparagraphs (iv) and (v) of paragraph (a) [~~and~~], paragraph (b) **and paragraph (c)** 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 **or supplemental child 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. 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, **such moneys attributable to the supplemental child victim fee shall be paid over to the state comptroller to the credit of the child victim foundation fund established by section ninety-nine-hh 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. 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 **and supplemental child 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. 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.

§ 5. Subdivision 3 of section 60.02 of the penal law, as amended by section 1 of part Y of chapter 56 of the laws of 2008, is amended to read as follows:

(3) The provisions of section 60.35 of this article shall apply to a sentence imposed upon a youthful offender finding and the amount of the mandatory surcharge and crime victim assistance fee which shall be levied at sentencing shall be equal to the amount specified in such section for the offense of conviction for which the youthful offender finding was substituted; provided, however that the court shall not impose the sex offender registration fee, DNA databank fee [~~or~~], supplemental sex offender victim fee **or a supplemental child victim fee**, as defined in subparagraphs (iv) and (v) of paragraph (a) [~~and~~], paragraph (b) **and paragraph (c)** of subdivision one of section 60.35 of this article, for an offense in which the conviction was substituted with a youthful offender finding.

§ 6. The state finance law is amended by adding a new section 99-hh to read as follows:

§ 99-hh. Child victim foundation fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance, the comptroller, and the commissioner of the division of criminal justice services, a special fund to be known as the "child victim foundation fund". Monies in the fund shall be kept separate from and not commingled with other funds.

2. Such funds shall consist of the revenues received by the department of taxation and finance, pursuant to the provisions of sections two hundred nine-N and six hundred thirty-h of the tax law, revenues received from the supplemental child victim fee pursuant to the provisions of section 60.35 of the penal law, and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts, or bequests for the purpose of the fund as defined in this section and depositing them into the fund according to law.

3. On or before the first day of February each year, the commissioner of the division of criminal justice services shall provide a written report to the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the comptroller, and the public. Such report shall include how the monies of the fund were utilized during the preceding calendar year, and shall include:

(i) the amount of money disbursed from the fund and the award process for such disbursement;

(ii) recipients of awards from the fund;

(iii) the amount awarded to each recipient;

(iv) the purpose for which such awards were granted; and

(v) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

4. Monies of the fund shall be expended only to not-for-profit organizations providing civil legal services to victims of childhood sexual abuse.

5. Monies shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of the division of criminal justice services.

6. To the extent practicable, the commissioner of the division of criminal justice services shall ensure that all monies received during a fiscal year are expended prior to the end of that fiscal year.

§ 7. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2020, 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 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.