

STATE OF NEW YORK

1210--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

3 § 209-P. Gift for the child victim foundation fund. Effective for any
4 tax year commencing on or after January first, two thousand twenty-
5 three, a taxpayer in any taxable year may elect to contribute to the
6 support of the child victim foundation fund. Such contribution shall be
7 in any whole dollar amount and shall not reduce the amount of the state
8 tax owed by such taxpayer. The commissioner shall include space on the
9 corporate income tax return to enable a taxpayer to make such contrib-
10 ution. Notwithstanding any other provision of law, all revenues
11 collected pursuant to this section shall be credited to the child victim
12 foundation fund and shall be used only for the purposes enumerated in
13 section ninety-nine-00 of the state finance law.

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

16 § 630-k. Gift for the child victim foundation fund. Effective for any
17 tax year commencing on or after January first, two thousand twenty-
18 three, a taxpayer in any taxable year may elect to contribute to the
19 support of the child victim foundation fund. Such contribution shall be
20 in any whole dollar amount and shall not reduce the amount of the state
21 tax owed by such taxpayer. The commissioner shall include space on the

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

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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 foundation fund and shall be used only for the purposes enumerated in section ninety-nine-00 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, paragraph (a) of subdivision 5 as amended by section 103 of chapter 322 of the laws of 2021, 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, 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

1 of the general fund. If such collecting authority is any other court of
2 the unified court system, it shall, within such period, pay such money
3 attributable to the mandatory surcharge or crime victim assistance fee
4 to the state commissioner of taxation and finance to the credit of the
5 criminal justice improvement account established by section ninety-seven-
6 en-bb of the state finance law. If such collecting authority is any
7 other court of the unified court system, it shall, within such period,
8 pay such money attributable to the sex offender registration fee and the
9 DNA databank fee to the state commissioner of taxation and finance to
10 the credit of the general fund.

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

29 5. (a) When a person who is convicted of a crime or violation and
30 sentenced to a term of imprisonment has failed to pay the mandatory
31 surcharge, sex offender registration fee, DNA databank fee, crime victim
32 assistance fee ~~[or]~~, supplemental sex offender victim fee or supple-
33 mental child victim fee required by this section, the clerk of the court
34 that rendered the conviction shall notify the superintendent or the
35 municipal official of the facility where the person is confined. The
36 superintendent or the municipal official shall cause any amount owing to
37 be collected from such person during his or her term of imprisonment
38 from moneys to the credit of an incarcerated individuals' fund or such
39 moneys as may be earned by a person in a work release program pursuant
40 to section eight hundred sixty of the correction law. Such moneys
41 attributable to the mandatory surcharge or crime victim assistance fee
42 shall be paid over to the state comptroller to the credit of the criminal
43 justice improvement account established by section ninety-seven-bb
44 of the state finance law, such moneys attributable to the supplemental
45 child victim fee shall be paid over to the state comptroller to the
46 credit of the child victim foundation fund established by section nine-
47 ty-nine-00 of the state finance law and such moneys attributable to the
48 sex offender registration fee or DNA databank fee shall be paid over to
49 the state comptroller to the credit of the general fund, except that any
50 such moneys collected which are surcharges, sex offender registration
51 fees, DNA databank fees, crime victim assistance fees or supplemental
52 sex offender victim fees levied in relation to convictions obtained in a
53 town or village justice court shall be paid within thirty days after the
54 receipt thereof by the superintendent or municipal official of the
55 facility to the justice of the court in which the conviction was
56 obtained. For the purposes of collecting such mandatory surcharge, sex

1 offender registration fee, DNA databank fee, crime victim assistance
2 fee, ~~and~~ supplemental sex offender victim fee, and supplemental child
3 victim fee, the state shall be legally entitled to the money to the
4 credit of an incarcerated individuals' fund or money which is earned by
5 an incarcerated individual in a work release program. For purposes of
6 this subdivision, the term "incarcerated individuals' fund" shall mean
7 moneys in the possession of an incarcerated individual at the time of
8 his or her admission into such facility, funds earned by him or her as
9 provided for in section one hundred eighty-seven of the correction law
10 and any other funds received by him or her or on his or her behalf and
11 deposited with such superintendent or municipal official.

12 (b) The incarceration fee provided for in subdivision two of section
13 one hundred eighty-nine of the correction law shall not be assessed or
14 collected if any order of restitution or reparation, fine, mandatory
15 surcharge, sex offender registration fee, DNA databank fee, crime victim
16 assistance fee ~~or~~, supplemental sex offender victim fee or supple-
17 mental child victim fee remains unpaid. In such circumstances, any
18 monies which may lawfully be withheld from the compensation paid to a
19 prisoner for work performed while housed in a general confinement facil-
20 ity in satisfaction of such an obligation shall first be applied toward
21 satisfaction of such obligation.

22 6. Notwithstanding any other provision of this section, where a person
23 has made restitution or reparation pursuant to section 60.27 of this
24 article, such person shall not be required to pay a mandatory surcharge
25 or a crime victim assistance fee.

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

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

1 excess of sixty days in jail or in the department of corrections and
2 community supervision. The mandatory surcharges, sex offender registra-
3 tion fee and DNA databank fees, crime victim assistance fees [~~and~~],
4 supplemental sex offender victim fees and supplemental child victim fees
5 for those persons shall be governed by the provisions of section 60.30
6 of this article.

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

11 § 4. Subdivision 5 of section 60.35 of the penal law, as amended by
12 section 103-a of part E of chapter 322 of the laws of 2021, is amended
13 to read as follows:

14 5. When a person who is convicted of a crime or violation and
15 sentenced to a term of imprisonment has failed to pay the mandatory
16 surcharge, sex offender registration fee, DNA databank fee, crime victim
17 assistance fee [~~or~~], supplemental sex offender victim fee or supple-
18 mental child victim fee required by this section, the clerk of the court
19 that rendered the conviction shall notify the superintendent or the
20 municipal official of the facility where the person is confined. The
21 superintendent or the municipal official shall cause any amount owing to
22 be collected from such person during his or her term of imprisonment
23 from moneys to the credit of an incarcerated individuals' fund or such
24 moneys as may be earned by a person in a work release program pursuant
25 to section eight hundred sixty of the correction law. Such moneys
26 attributable to the mandatory surcharge or crime victim assistance fee
27 shall be paid over to the state comptroller to the credit of the crimi-
28 nal justice improvement account established by section ninety-seven-bb
29 of the state finance law, such moneys attributable to the supplemental
30 child victim fee shall be paid over to the state comptroller to the
31 credit of the child victim foundation fund established by section nine-
32 ty-nine-00 of the state finance law and such moneys attributable to the
33 sex offender registration fee or DNA databank fee shall be paid over to
34 the state comptroller to the credit of the general fund, except that any
35 such moneys collected which are surcharges, sex offender registration
36 fees, DNA databank fees, crime victim assistance fees or supplemental
37 sex offender victim fees levied in relation to convictions obtained in a
38 town or village justice court shall be paid within thirty days after the
39 receipt thereof by the superintendent or municipal official of the
40 facility to the justice of the court in which the conviction was
41 obtained. For the purposes of collecting such mandatory surcharge, sex
42 offender registration fee, DNA databank fee, crime victim assistance fee
43 [~~and~~], supplemental sex offender victim fee and supplemental child
44 victim fee, the state shall be legally entitled to the money to the
45 credit of an incarcerated individuals' fund or money which is earned by
46 an incarcerated individual in a work release program. For purposes of
47 this subdivision, the term "incarcerated individuals' fund" shall mean
48 moneys in the possession of an incarcerated individual at the time of
49 his or her admission into such facility, funds earned by him or her as
50 provided for in section one hundred eighty-seven of the correction law
51 and any other funds received by him or her or on his or her behalf and
52 deposited with such superintendent or municipal official.

53 § 5. The state finance law is amended by adding a new section 99-00 to
54 read as follows:

55 § 99-00. Child victim foundation fund. 1. There is hereby established
56 in the joint custody of the commissioner of taxation and finance, the

1 comptroller, and the commissioner of the division of criminal justice
2 services, a special fund to be known as the "child victim foundation
3 fund". Monies in the fund shall be kept separate from and not commingled
4 with other funds.

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

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

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

24 (ii) recipients of awards from the fund;

25 (iii) the amount awarded to each recipient;

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

27 (v) a summary financial plan for such monies which shall include esti-
28 mates of all receipts and all disbursements for the current and succeed-
29 ing fiscal years, along with the actual results from the prior fiscal
30 year.

31 4. Monies of the fund shall be expended only to not-for-profit organ-
32 izations providing civil legal services to victims of childhood sexual
33 abuse.

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

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

40 § 6. This act shall take effect immediately and shall apply to taxable
41 years commencing on or after January 1, 2023, provided that the amend-
42 ments to subdivision 5 of section 60.35 of the penal law made by section
43 three of this act shall be subject to the expiration and reversion of
44 such subdivision pursuant to section 74 of chapter 3 of the laws of
45 1995, as amended, when upon such date the provisions of section four of
46 this act shall take effect.