

STATE OF NEW YORK

1088--A

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. GAUGHRAN, BIAGGI, COMRIE, HINCHEY, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- recommitted to the Committee on Budget and Revenue in accordance with Senate Rule 6, sec. 8 -- 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:

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

§ 209-P. Gift for the child victim foundation fund. Effective for any tax year commencing on or after January first, two thousand twenty-three, 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-oo of the state finance law.

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

§ 630-k. Gift for the child victim foundation fund. Effective for any tax year commencing on or after January first, two thousand twenty-three, 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

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

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1 tax owed by such taxpayer. The commissioner shall include space on the
2 personal income tax return to enable a taxpayer to make such contrib-
3 ution. Notwithstanding any other provision of law, all revenues
4 collected pursuant to this section shall be credited to the child victim
5 foundation fund and shall be used only for the purposes enumerated in
6 section ninety-nine-oo of the state finance law.

7 § 3. Section 60.35 of the penal law, as amended by section 1 of part E
8 of chapter 56 of the laws of 2004, subparagraphs (i), (ii) and (iii) of
9 paragraph (a) of subdivision 1 as amended by section 1 of part DD of
10 chapter 56 of the laws of 2008, paragraph (b) of subdivision 1 as
11 amended by chapter 320 of the laws of 2006, subdivision 4 as amended by
12 chapter 525 of the laws of 2013, paragraph (a) of subdivision 5 as
13 amended by section 103 of chapter 322 of the laws of 2021, and subdivi-
14 sion 8 as amended by section 121 of subpart B of part C of chapter 62 of
15 the laws of 2011, is amended to read as follows:

16 § 60.35 Mandatory surcharge, sex offender registration fee, DNA databank
17 fee, supplemental sex offender victim fee, supplemental child
18 victim fee and crime victim assistance fee required in certain
19 cases.

20 1. (a) Except as provided in section eighteen hundred nine of the
21 vehicle and traffic law and section 27.12 of the parks, recreation and
22 historic preservation law, whenever proceedings in an administrative
23 tribunal or a court of this state result in a conviction for a felony, a
24 misdemeanor, or a violation, as these terms are defined in section 10.00
25 of this chapter, there shall be levied at sentencing a mandatory
26 surcharge, sex offender registration fee, DNA databank fee and a crime
27 victim assistance fee in addition to any sentence required or permitted
28 by law, in accordance with the following schedule:

29 (i) a person convicted of a felony shall pay a mandatory surcharge of
30 three hundred dollars and a crime victim assistance fee of twenty-five
31 dollars;

32 (ii) a person convicted of a misdemeanor shall pay a mandatory
33 surcharge of one hundred seventy-five dollars and a crime victim assist-
34 ance fee of twenty-five dollars;

35 (iii) a person convicted of a violation shall pay a mandatory
36 surcharge of ninety-five dollars and a crime victim assistance fee of
37 twenty-five dollars;

38 (iv) a person convicted of a sex offense as defined by subdivision two
39 of section one hundred sixty-eight-a of the correction law or a sexually
40 violent offense as defined by subdivision three of section one hundred
41 sixty-eight-a of the correction law shall, in addition to a mandatory
42 surcharge and crime victim assistance fee, pay a sex offender registra-
43 tion fee of fifty dollars.

44 (v) a person convicted of a designated offense as defined by subdivi-
45 sion seven of section nine hundred ninety-five of the executive law
46 shall, in addition to a mandatory surcharge and crime victim assistance
47 fee, pay a DNA databank fee of fifty dollars.

48 (b) When the felony or misdemeanor conviction in subparagraphs (i),
49 (ii) or (iv) of paragraph (a) of this subdivision results from an
50 offense contained in article one hundred thirty of this chapter, incest
51 in the third, second or first degree as defined in sections 255.25,
52 255.26 and 255.27 of this chapter or an offense contained in article two
53 hundred sixty-three of this chapter, the person convicted shall pay a
54 supplemental sex offender victim fee of one thousand dollars in addition
55 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

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

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

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

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

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

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

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

31 8. Subdivision one of section 130.10 of the criminal procedure law
32 notwithstanding, at the time that the mandatory surcharge, sex offender
33 registration fee or DNA databank fee, crime victim assistance fee ~~[or]~~,
34 supplemental sex offender victim fee or supplemental child victim fee is
35 imposed a town or village court may, and all other courts shall, issue
36 and cause to be served upon the person required to pay the mandatory
37 surcharge, sex offender registration fee or DNA databank fee, crime
38 victim assistance fee ~~[or]~~, supplemental sex offender victim fee or
39 supplemental child victim fee, a summons directing that such person
40 appear before the court regarding the payment of the mandatory
41 surcharge, sex offender registration fee or DNA databank fee, crime
42 victim assistance fee ~~[or]~~, supplemental sex offender victim fee or
43 supplemental child victim fee, if after sixty days from the date it was
44 imposed it remains unpaid. The designated date of appearance on the
45 summons shall be set for the first day court is in session falling after
46 the sixtieth day from the imposition of the mandatory surcharge, sex
47 offender registration fee or DNA databank fee, crime victim assistance
48 fee ~~[or]~~, supplemental sex offender victim fee or supplemental child
49 victim fee. The summons shall contain the information required by
50 subdivision two of section 130.10 of the criminal procedure law except
51 that in substitution for the requirement of paragraph (c) of such subdivi-
52 sion the summons shall state that the person served must appear at a
53 date, time and specific location specified in the summons if after sixty
54 days from the date of issuance the mandatory surcharge, sex offender
55 registration fee or DNA databank fee, crime victim assistance fee ~~[or]~~,
56 supplemental sex offender victim fee or supplemental child victim fee

1 remains unpaid. The court shall not issue a summons under this subdivi-
2 sion to a person who is being sentenced to a term of confinement in
3 excess of sixty days in jail or in the department of corrections and
4 community supervision. The mandatory surcharges, sex offender registra-
5 tion fee and DNA databank fees, crime victim assistance fees [~~and~~],
6 supplemental sex offender victim fees and supplemental child victim fees
7 for those persons shall be governed by the provisions of section 60.30
8 of this article.

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

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

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

55 § 5. The state finance law is amended by adding a new section 99-oo to
56 read as follows:

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

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

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

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

26 (ii) recipients of awards from the fund;

27 (iii) the amount awarded to each recipient;

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

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

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

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

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

42 § 6. This act shall take effect immediately and shall apply to taxable
43 years commencing on or after January 1, 2023, provided that the amend-
44 ments to subdivision 5 of section 60.35 of the penal law made by section
45 three of this act shall be subject to the expiration and reversion of
46 such subdivision pursuant to section 74 of chapter 3 of the laws of
47 1995, as amended, when upon such date the provisions of section four of
48 this act shall take effect.