**§ 420.35 Mandatory surcharge and crime victim assistance fee; applicability to sentences mandating payment of fines.**

1. The provisions of section 420.10 of this article governing the collection of fines and the provisions of section 420.40 of this article governing deferral of mandatory surcharges, sex offender registration fees, DNA databank fees and financial hardship hearings and the provisions of section 430.20 of this chapter governing the commitment of a defendant for failure to pay a fine shall be applicable to a mandatory surcharge, sex offender registration fee, DNA databank fee and a crime victim assistance fee imposed pursuant to subdivision one of section 60.35 of the penal law, subdivision twenty-a of section three hundred eighty-five of the vehicle and traffic law, subdivision nineteen-a of section four hundred one of the vehicle and traffic law, or a mandatory surcharge imposed pursuant to section eighteen hundred nine of the vehicle and traffic law or section 27.12 of the parks, recreation and historic preservation law. When the court directs that the defendant be imprisoned until the mandatory surcharge, sex offender registration fee or DNA databank fee is satisfied, it must specify a maximum period of imprisonment not to exceed fifteen days; provided, however, a court may not direct that a defendant be imprisoned until the mandatory surcharge, sex offender registration fee, or DNA databank fee is satisfied or otherwise for failure to pay the mandatory surcharge, sex offender registration fee or DNA databank fee unless the court makes a contemporaneous finding on the record, after according defendant notice and an opportunity to be heard, that the payment of the mandatory surcharge, sex offender registration fee or DNA databank fee upon defendant will not work an unreasonable hardship upon him or her or his or her immediate family.

2. Except as provided in this subdivision or subdivision two-a of this section, under no circumstances shall the mandatory surcharge, sex offender registration fee, DNA databank fee or the crime victim assistance fee be waived. A court shall waive any mandatory surcharge, DNA databank fee and crime victim assistance fee when: (i) the defendant is convicted of prostitution under section 230.00 of the penal law; (ii) the defendant is convicted of a violation in the event such conviction

is in lieu of a plea to or conviction for prostitution under section 230.00 of the penal law; (iii) the court finds that a defendant is a victim of sex trafficking under section 230.34 of the penal law or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78); or (iv) the court finds that the defendant is a victim of sex trafficking of a child under section 230.34-a of the penal law.

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

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

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

(c) the interests of justice.

3. It shall be the duty of a court of record or administrative tribunal to report to the division of criminal justice services on the disposition and collection of mandatory surcharges, sex offender registration fees or DNA databank fees and crime victim assistance fees. Such report shall include, for all cases, whether the surcharge, sex offender registration fee, DNA databank fee or crime victim assistance fee levied pursuant to subdivision one of section 60.35 of the penal law or section eighteen hundred nine of the vehicle and traffic law has been imposed pursuant to law, collected, or is to be collected by probation or corrections or other officials. The form, manner and frequency of such reports shall be determined by the commissioner of the division of criminal justice services after consultation with the chief administrator of the courts and the commissioner of the department of motor vehicles.