

FORDHAM UNIVERSITY SCHOOL OF LAW
THE FEERICK CENTER FOR SOCIAL JUSTICE
APRIL 2009

FINANCIAL CONSEQUENCES OF CRIMINAL CONVICTIONS CHART

This chart provides a summary of the financial consequences that people who are convicted of a crime may face as a result of that conviction. Often times, convictions have various fines, fees and surcharges that are included with them automatically or restitution and child support obligations that are ordered by the court. If this debt is not paid, it can accumulate, become very difficult to pay and affect a person's employment options, credit applications, and one's ability to obtain loans and housing. **Understanding that there are financial consequences of convictions can help people avoid the potential negative consequences that result from unpaid fines, fees, surcharges, child support and restitution.**

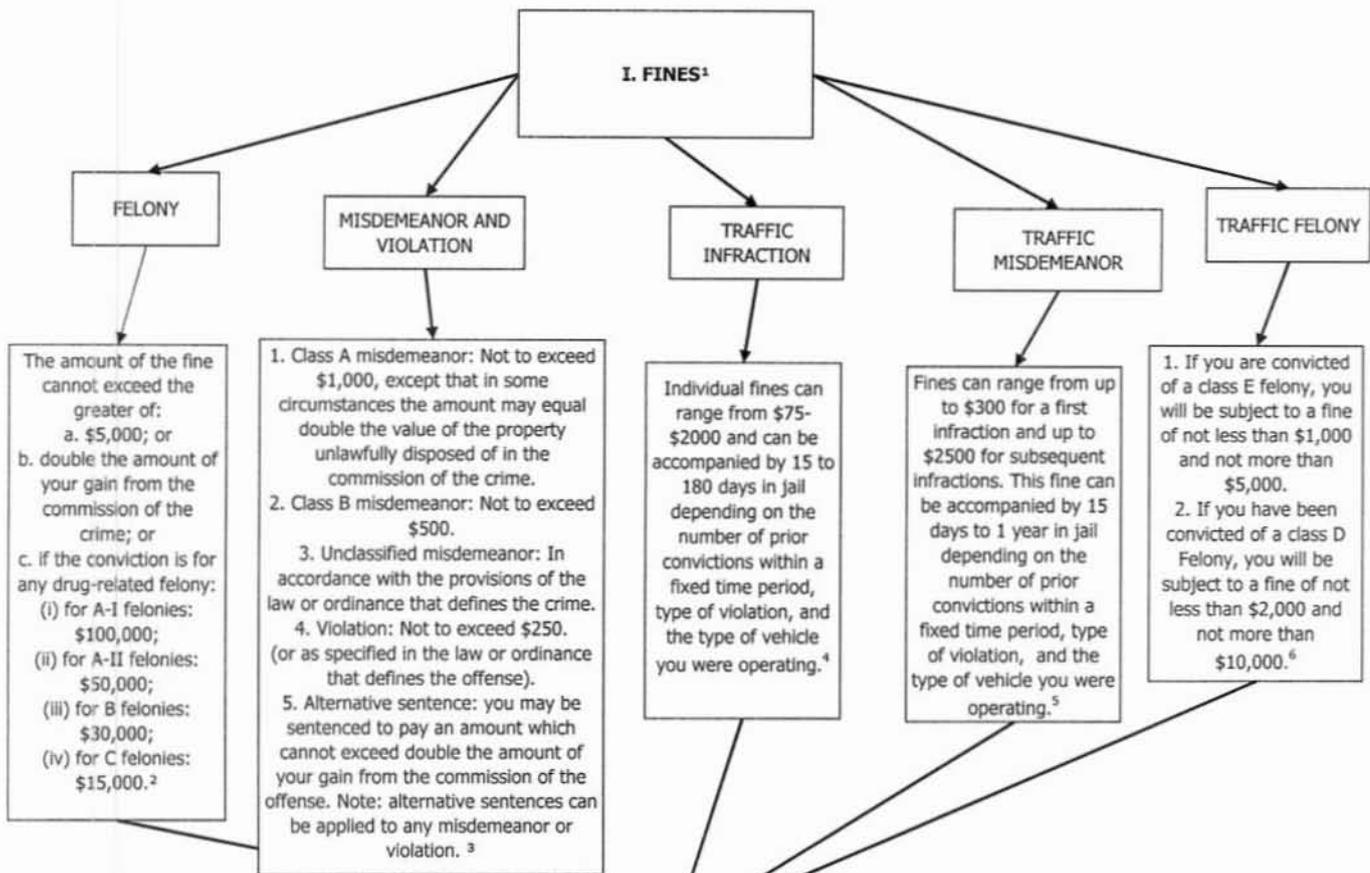
This chart contains information regarding the range of debt that is allowed by law as well as options to have that amount reduced or waived. Each page of the chart references the range of fines, fees or surcharges that may be relevant depending on your conviction. It then provides the specific consequences that may result if that debt is left unpaid. Lastly, it provides options, if available, to have the debt reduced or waived. The chart also contains legal definitions and citations which will help provide you with a full picture of the relevant laws. Each page has its own references, by number, at the end of the document (citations). Please refer to the appropriate section and number to find the relevant information. Please Note: each fine, fee and surcharge is separate and receiving one as part of a conviction does not mean you will not receive others as result of the same or different convictions.

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DISCLAIMER: This memorandum is for information only and is not intended as legal advice. It is solely for the purposes of providing a general overview of financial consequences of a conviction and is not meant to be exhaustive. Please review the law cited for all of the specific financial consequences of a conviction. Please contact your local community-based organization that provides services for individuals who have been convicted of a crime or an attorney for legal advice relating to the collateral consequences of a conviction.

FINANCIAL CONSEQUENCES CHART



WHAT CAN YOU DO?

Request to be resented: If the court is satisfied that you cannot pay the fine, it can: (1) adjust the terms of payment; (2) lower the amount of fine; (3) revoke the part of the sentence imposing the fine; or (4) revoke the entire sentence and resentence you.⁷

Caution: When you ask the court to resentence you, the court may impose any sentence it could have originally imposed, except that the amount of any fine imposed may not be in excess of the amount you are able to pay.⁸ Therefore, it is possible that the court may sentence you to a longer term of imprisonment, while reducing your financial penalties.

**WHAT HAPPENS IF YOU DON'T PAY:
TERM OF IMPRISONMENT, CIVIL JUDGMENT & GARNISHMENT OF YOUR INMATE ACCOUNT⁹**

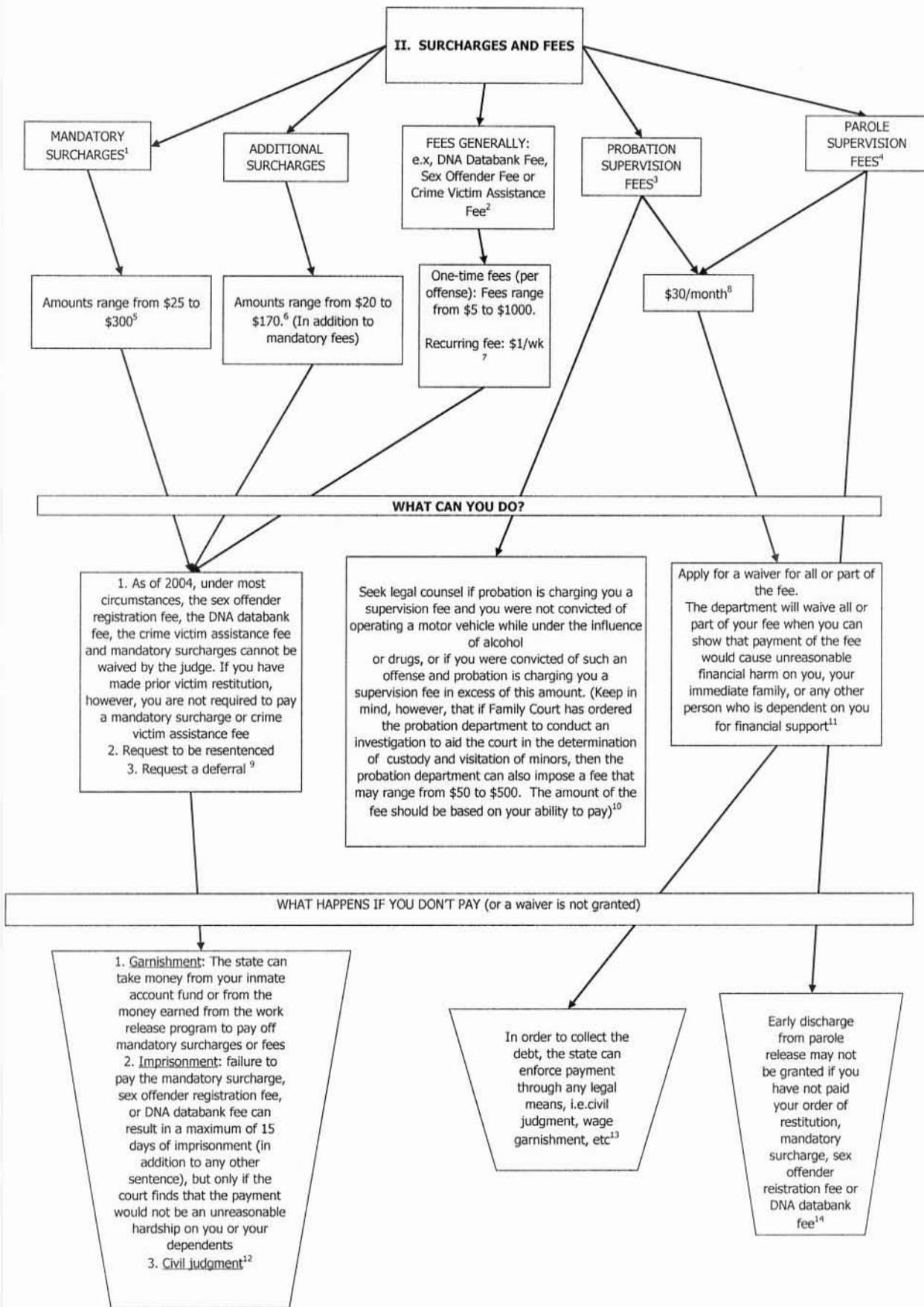
Term of Imprisonment:
Felony: Term of imprisonment may not exceed one year.¹⁰
Misdemeanor: Term of imprisonment may not exceed 1/3 of the maximum authorized term of imprisonment.¹¹
Violations and traffic infractions: Term of imprisonment may not exceed fifteen days.¹²

Civil Judgment:
 A civil judgment is an order by the court mandating that you pay a certain amount and constitutes a debt that takes priority over all of your other obligations except taxes and previous judgments.

Garnishment of your Inmate Account/Income Execution -
 Wage garnishment is a legal procedure in which a person's earnings are required by court order to be withheld by an employer for the payment of a debt. In New York City, wage garnishment is also known as "income execution." Garnishment can also occur while you are incarcerated, as the correctional department can take money out of your inmate account to satisfy a debt.

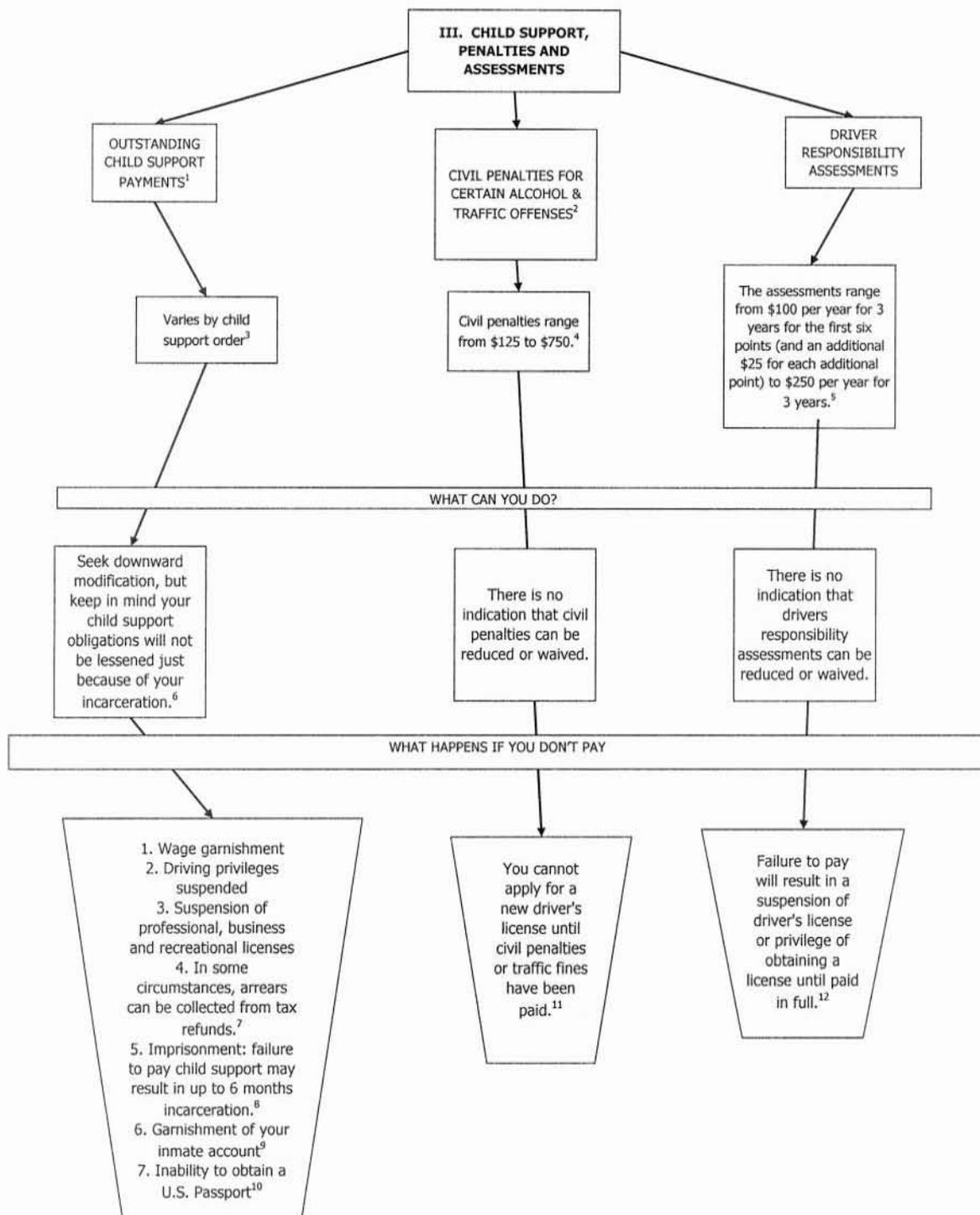
Please see the "Definitions" and "Citations" pages at the end of the chart for further explanations.

FINANCIAL CONSEQUENCES CHART



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**FINANCIAL
CONSEQUENCES CHART
DEFINITIONS**

Term	Meaning
Civil Judgment	<p>A civil judgment is an order by the court mandating that you pay a certain amount and constitutes a debt that takes priority over all of your other obligations except taxes and previous judgments. (Columbia Encyclopedia, http://www.answers.com/topic/judgment). Even if you serve a prison term for failure to pay, you remain responsible for paying your financial penalties. Unpaid fines, fees, mandatory surcharges, child support orders, and restitution can become a civil judgment subject to civil collection which means nonpayment may affect your credit. Debts that show up on your credit report can affect employment opportunities since many employers are using credit reports to screen applicants. Your credit report can also affect housing as landlords are also using credit reports to screen tenants. N.Y. C.P.L. § 420.10; Alan Rosenthal, et al., "Sentencing For Dollars: The Financial Consequences of a Criminal Conviction" (Bankruptcy is not applicable to debts incurred through the financial penalties of your conviction, which means that these penalties will remain on your credit report until you make payment in full.); New York State Unified Court System, New York City Civil</p> <p>Court: Collecting the Judgment, http://www.nycourts.gov/courts/nyc/civil/collectingjudg.shtml#collecting; N.Y. C.P.L.R. § 5004 ("Interests shall be at the rate of nine per centum per annum, except where otherwise provided by statute.")</p> <p>Other possible outcomes: your bank account or wages may be garnished (see wage garnishment definition) until judgment is paid; lien, seizure and/or sale of your real property and/or personal property, including automobiles; suspension of your license until the judgment is paid (if your case was based on your ownership or operation of a car, the judgment is more than \$1,000 and unpaid for more than 15 days). There is a 9% statutory interest on civil judgments.</p>
Civil Penalties	<p>Additional charges for people who have been convicted of certain alcohol or automobile offenses. Alan Rosenthal, et al., "Sentencing For Dollars: The Financial Consequences of a Criminal Conviction" (Center For Community Alternatives, Justice Strategies) (February 2007) at page 12.</p>
Deferral	<p>Postponement; delay. (Black's Law Dictionary). If you are indigent, you can ask to defer the payment of the mandatory surcharge due to the hardship it would pose you and your family. Even if deferred, the amount owed becomes a civil judgment and you still owe it. N.Y. C.P.L. § 420.40.</p>
Downward Modification	<p>Decrease the amount that you are required to pay.</p>
Driver Responsibility Assessments	<p>Any person who accumulates 6 or more points on their driving record within 18 months is liable to pay a driver responsibility assessment to the Department of Motor Vehicles. N.Y. Veh. & Traff. § 503(4)(a).</p>
Felony	<p>A serious crime usually punishable by imprisonment for more than one year or by death. (Black's Law Dictionary); N.Y. Penal Law § 10.00.</p>
Fine	<p>A monetary criminal punishment payable to the public treasury. (Black's Law Dictionary)</p>

Imprisonment for failure to pay fine, restitution, or reparation	Confinement in prison. (Black's Law Dictionary). When the court directs that the defendant be imprisoned until the fine, restitution or reparation be satisfied, it must specify a maximum period of imprisonment, subject to the following limitations: (1) For a felony, the period may not exceed one year; (2) For a misdemeanor, the period may not exceed 1/3 of the maximum authorized term of imprisonment; (3) For a petty offense, the period may not exceed fifteen days; (4) The prison sentence for failure to pay restitution plus the prison sentence for the underlying crime cannot exceed the maximum authorized term of imprisonment for the underlying crime. N.Y. C.P.L. § 420.10; see <i>Bearden v. Georgia</i> , 461 U.S. 660 (1983) (holding that a court must find willful non-payment to use imprisonment as a sanction to enforce collection, and that if you prove that you are unable to pay and have made bona fide efforts to do so the court must consider alternative measures.); see also <i>People v. Amorosi</i> , 96 N.Y.2d 180 (N.Y. 2001) (holding that where a monetary sanction is imposed as a condition of your probation and you fail to make payment without requesting resentencing or asserting an inability to pay, the court can sentence you to a period of imprisonment for violation of probation, which is not subject to N.Y. C.P.L. § 420.10(4) (which sets up the limitations for a sentence of imprisonment for failure to pay your financial penalty), but is considered an alternative sentence after revocation of probation for violating a condition of your sentence.)
Mandatory Surcharge	A mandatory additional tax, charge, or cost. (Black's Law Dictionary).
Misdemeanor	"Misdemeanor" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed. N.Y. Penal Law § 10.00.
Outstanding Child Support Payments	A parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education. The obligation is enforceable both civilly and criminally. In a custody or divorce action, the money legally owed by one parent to the other for the expenses incurred for children of the marriage. (Black's Law Dictionary).
Parole Supervision Fee	"New York State has enacted a law (Executive Law, Section 259-a [9]) requiring every parolee to pay a monthly supervision fee. Generally, parolees are expected to pay \$30 per month. Your Parole Officer will discuss this fee with you, how the fee is to be paid, and in certain circumstances, may be able to waive the fee if you are unemployed or if paying the fee would cause a hardship." New York State Parole Handbook: Questions and Answers Concerning Parole (September 2007), http://parole.state.ny.us/handbook.pdf .
Probation Supervision Fee	New York State has enacted a law (N.Y. Veh. & Traff. § 1192) which allows probation to require individuals with DWI-related convictions to pay this administrative fee to the local probation department. N.Y. Veh. & Traf. § 1192.
Resentence	A new or revised criminal sentence. (Black's Law Dictionary). If you are sentenced to be imprisoned for failure to pay a financial penalty, you have a right, at any time, to apply to the court to be resentenced. The court cannot determine that you are unable to pay the financial penalty solely due to the incarceration but will consider all of your sources of income. N.Y. C.P.L. § 420.10.

Restitution	Compensation for loss; full or partial compensation paid by the convicted person to a victim, ordered as part of a criminal sentence or as a condition of probation. (Black's Law Dictionary). See N.Y. Penal Law § 60.27(1). When a court directs you to pay restitution, it must tell you the name and address or the person or organization to whom it is to be paid. N.Y. C.P.L. § 420.10(1)(d). The court may direct that you pay the entire amount at the time the sentence is pronounced, at a later date or that you pay a specified portion at designated periodic intervals. N.Y. C.P.L. § 420.10(1)(a). "County probation departments are often designated as the agency responsible for the collection and administration of restitution and reparation payments and for the payment of such money to crime victims (see, CPL §420.10[8])." Office of the State Comptroller, Opinion 90-29 (1990) http://www.osc.state.ny.us/legal/1990/legalop/op90-29.htm .
Victim	A person harmed by a crime, tort or other wrong. Blacks Law Dictionary. The term victim shall include the victim of the offense, the representative of a crime victim (including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor), an individual whose identity was assumed or whose personal information was used unlawfully (identity theft), or any person who has suffered a financial loss as a direct result of the acts of the defendant as a result of identity theft, a Good Samaritan, and the crime victims' board or other governmental agency that has received an application for or has provided financial assistance or compensation to the victim. N.Y. Penal Law § 60.27(4)(b).
Violation	"Violation" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. N.Y. Penal Law § 10.00.
Wage garnishment/ Income execution	"Wage garnishment is a legal procedure in which a person's earnings are required by court order to be withheld by an employer for the payment of a debt ...". (U.S. Department of Labor, http://www.dol.gov/dol/topic/wages/garnishments.htm). In New York City, wage garnishment is also known as "income execution." New York City Marshalls Handbook, Chapter V, Section I. Garnishment can also occur while you are incarcerated, as the corrections department can take money out of your inmate account to satisfy a debt. State of New York Department of Correctional Services Directive #2788.
Waiver	A court order which abandons the court's right to collect a specified amount of money from you. Regarding probation or parole fees, you can request that your probation or parole officer waive all or part of the parole or probation fee. Even though there is no formal waiver process, you can request a waiver by showing how payment of the fee would create a financial hardship. N.Y. Exec. Law § 257-c ("The department shall waive all or part of such fee where, because of the indigence of the offender, the payment of said surcharge would work an unreasonable hardship on the person convicted, his or her immediate family, or any other person who is dependent on such person for financial support."); N.Y. Exec. Law § 259-a(9)(a). Regarding restitution, if you apply for a waiver, the judge can determine that any amount in excess of a 5% administration fee is a burden on you and will not charge that additional amount. N.Y. C.P.L. § 420.40.

**FINANCIAL CONSEQUENCES
CHART- LEGAL CITATIONS**

FINES CHART

1 A fine is a financial penalty for violating a law; it is a sentence to pay a fixed amount and is part of an order of the court that can be reinforced. The Judge can impose a fine at the time and is part of an order of the court that can be reinforced. The Judge can impose a fine at the time of sentencing to be paid immediately, at some future time, or even in periodic payments. N.Y. C.P.L. § 420.10(1)(a). According to the New York State Unified Court System website: "Fines...are paid according to the status of your case. If you have an adjourned date to pay your fine...and you want to pay before the scheduled date, you can do so by going to the Clerk's Office of the part where your case is pending. If you have an adjourned date to pay your fine..., you must return to court on that date even if you do not have the money. If you have not been assigned a court date on which to pay your fine...or you failed to report on your assigned date, report to the central clerk's office. If you paid the monies before your scheduled adjourned date, you do not have to return on that day."

See "Where do I go to pay a fine, a mandatory surcharge, and a crime victim assistance fee?", New York City Criminal Court: Frequently Asked Questions, New York Unified Court System, <http://www.nycourts.gov/courts/nyc/criminal/faqs>.

2 N.Y. Penal Law § 80.00(1) ("When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate in which defendant engaged, its impact on any victims, and defendant's economic circumstances, to the conduct including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support.")

3 N.Y. Penal Law § 80.05. Note: For alternative sentences, the law states that you may be sentenced to pay an amount which cannot exceed double the amount of your gain from the commission of the offense, "provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence." Id. In addition, the amount is not to exceed \$1,000 except that "a sentence imposed for a violation of section 215.80 of this chapter (unlawful disposition of assets subject to forfeiture) may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime." Id.

4 N.Y. Veh. & Traf. Law § 1800, the punishment will either be a fine, imprisonment, or both; N.Y. Veh. & Traf. Law §1193(1)(a).

5 N.Y. Veh. & Traf. Law § 1801, the punishment will either be a fine, imprisonment, or both; N.Y. Veh. & Traf. §1193(1)(b)

6 N.Y. Veh. & Traf. Law § 1193 (1)(c)(i) & (ii)

7 N.Y. C.P.L. § 420.10(5). If you are not able to pay a fine, you have a right, at any time, to apply to the court to be resentenced. The court cannot determine that you are unable to pay the fine solely due to your incarceration, but shall consider all of your sources of income including, but not limited to, moneys in your possession at the time of your admission into your incarceration facility, funds earned by you in a work release program, funds earned by you, and any other funds received by you or on your behalf and deposited with the superintendent or the municipal official of the facility where you were or are confined. Id.

8 N.Y. C.P.L. § 420.10(5)(d).

9 If you do not pay the fines that have been placed against you, the court can impose one or a combination of the following as a consequence: an increased term of imprisonment, a civil judgment or garnishment of your inmate account. For definitions of these terms please see the definitions page. N.Y. C.P.L. § 420.10. According to State of New York Department of Correctional Services Directive #2788 entitled "Collection & Repayment of Inmate Advances and Obligations", the Inmate Commissary and Accounting System (ICAS) will collect unpaid fines from your inmate's account.

10 N.Y. C.P.L. § 420.10(4)(a).

11 N.Y. C.P.L. § 420.10(4)(b).

12 N.Y. C.P.L. § 420.10(4)(c); N.Y. C.P.L. § 1.20(39) (defining "petty offense" as a violation or a traffic infraction).

SURCHARGES AND FEES CHART

- 1 N.Y. Penal Law § 60.35. Every conviction in the State of New York carries with it a mandatory surcharge, except a traffic infraction involving standing, stopping, or parking or violations by pedestrians or bicyclists, or other than an adjudication of liability of a driver for not using proper "red signal" procedure; Alan Rosenthal, et al., "Sentencing For Dollars: The Financial Consequences of a Criminal Conviction" (Center For Community Alternatives, Justice Strategies) (February 2007) at page 9. "The mandatory surcharge...shall be paid to the clerk of the court or administrative tribunal that rendered the conviction." N.Y. Penal Law § 60.35. If the convicted in a town or village court, there will be an additional mandatory surcharge of \$5. N.Y. Veh. & Traf. § 1809(9).
- 2 A fee is an amount charged by the government for certain services and data collection procedures. The state can collect many types of fees including: sex offender registration fee (SORA), SORA change of address fee, DNA databank fee, crime victim assistance fees, termination of license revocation fees, termination of license suspension fees, incarceration fee, and a supplemental sex offender victim fee. N.Y. Penal Law § 60.35(1); N.Y. Veh. & Traf. § 1809(1); N.Y. Correction Law § 168-b(8); N.Y. Veh. & Traf. § 503(2); N.Y. Correction Law § 189(2). "The ... sex offender registration fee, DNA databank fee, crime victim assistance fee, and supplemental sex offender victim fee... shall be paid to the clerk of the court or administrative tribunal that rendered the conviction." N.Y. Penal Law § 60.35. Note: Youth Offenders are subject to the Mandatory Surcharge fee and the Crime Victim Assistance Fee, but not to the Sex Offender Registration fee, the DNA Databank fee, or the Supplemental Sex Offender fee, see Penal Law §§ 60.02(3) and 60.35(10).
- 3 All counties and New York City may require individuals convicted under N.Y. Veh. & Traff. § 1192 (DWI-related convictions) to pay this administrative fee to the local probation department. N.Y. Exec. Law § 257-c. This law is effective from April 10, 1992 to Sept. 1, 2009. Thus, convictions before or after this date may not have a probation supervision fee or may require a fee of a different amount.
- 4 The New York State Division of Parole shall collect this fee from anyone over eighteen years old who is supervised on presumptive release, parole, conditional release or post-release supervision by the Division. N.Y. Exec. Law § 259-a(9)(a) (This law is effective from April 23, 2008 to January 22, 2009. Thus, convictions before or after this date may not have a parole supervision fee or may require a fee of a different amount.); N.Y. Exec Law § 259-a(9)(d) (Prior to a transfer of parole supervision from New York to another state, the division shall eliminate any supervision fee imposed. The division may collect a fee from any person whose parole supervision is transferred to New York from another).
- 5 N.Y. Penal Law § 60.27; N.Y. Penal Law § 60.35; N.Y. Veh. & Traf Law Article 9; N.Y. Veh. & Traf. Law §1809; N.Y. Veh. & Traf. Law §1809-c.
- 6 N.Y. Veh. & Traf. Law §1809-c; N.Y. Veh. & Traf. Law §1809-e.
- 7 N.Y. Penal Law § 60.35; N.Y. Veh. & Traf. Law § 1809; N.Y. Veh. & Traf. Law § 503(2); N.Y. Correction Law §§ 168 (b)(8), 189(2).
- 8 N.Y. Exec. Law §257-c (re: probation); N.Y. Exec. Law § 259-a(9)(a) (re: parole).
- 9 N.Y. Penal Law § 60.35(6) (stating that a person who has previously paid restitution or reparations, is not required to pay a mandatory surcharge or the crime victim assistance fee). Also, 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 based upon a conviction that is later reversed or who paid any of the above fees which are ultimately determined not to be required shall be entitled to a refund of the fees upon application 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 (N.Y. Penal Law § 60.35(4); N.Y. C.P.L. § 420.10(5) (referring to resentencing); N.Y. C.P.L. § 420.40 (referring to deferral).
- 10 For related offenses see N.Y. Veh. & Traf. 1192, N.Y. Exec. Law § 257-c(1); N.Y. Fam. Ct. Act § 252-a; New York State Attorney General (Opinion No. 2003-4, April 7, 2003), available at http://www.oag.state.ny.us/bureaus/appeals_opinions/opinions/2003/informal/2003-4.pdf; Knights v. Knights, 71 N.Y.2d 865 (1988).

11 N.Y. Exec. Law § 257-c ("The department shall waive all or part of such fee where, because of the indigence of the offender, the payment of said surcharge would work an unreasonable hardship on the person convicted, his or her immediate family, or any other person who is dependent on such person for financial support."); N.Y. Exec. Law § 259-a(9)(a) ("The division shall waive all or part of such fee where, because of the indigence of the offender, the payment of said fee would work an unreasonable hardship on the person convicted, his or her immediate family, or any other person who is dependent on such person for financial support."). Please note that there is no statutory standard for indigence. However, the court should determine indigence through a balancing of financial factors. Therefore when applying for a waiver, you should provide the court with as much of the following information as applicable: disability status, housing status, job status, reliance on public assistance, total amount of debt, total amount of income, total amount of assets, number of dependents in household and any other relevant financial hardships.

Some courts determine indigence as income that totals less than 120% of the federal poverty line. To determine the relevant poverty guidelines, see <http://www.uscourts.gov>.

12 N.Y. Penal Law § 60.35(5), N.Y. Veh. & Traf. Law § 1809(5) (Both stating that your inmate account can be garnished by the superintendent of the prison in order to pay for unpaid fees), but see *People v. Brian*, 842 N.Y.S.2d 874 (N.Y. City Ct. Sept. 28, 2007) (holding that N.Y. C.P.L. § 420.35 is unconstitutional because it violates the Due Process Clause by failing to provide a pre-assessment waiver of the mandatory crime victim assistance fee, Sex Offender Registration Fee, and DNA Databank fee for adults whose permanent mental and/or physical disabilities prohibit them from engaging in any income-producing activities, but this case's ruling is limited to the jurisdiction of the City of Watertown, N.Y. and is therefore not controlling in New York City.); N.Y. C.P.L. § 420.35 (referring to imprisonment); N.Y. C.P.L. § 420.40(5)(referring to civil penalties).

13 N.Y. Exec. Law § 257-c(4) (re: probation), N.Y. Exec. Law § 259-a(9)(c) (re:parole).

14 N.Y. Exec. Law § 259-j(4) ("No such discharge shall be granted unless the board of parole is satisfied that the parolee or releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge, sex offender registration fee or DNA databank fee previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.")

CHILD SUPPORT AND CIVIL PENALTIES CHART

1 If past child support payments have not yet been paid, they will be considered outstanding payments. While in prison, a person who has been ordered to pay child support is not relieved of this obligation. A child support order directs the noncustodial parent to pay child support to the Support Collection Unit (SCU). The SCU collects, tracks, and disburses payments to the custodial parent. Payments can be made online at: <https://newyorkchildsupport.com/DCSE/viewPaymentsAndDisbursements.do> or sent to PO Box 15363, Albany, NY 12212. Division of Child Support Enforcement: Child Support Services, New York State Department of Temporary and Disability Assistance, https://newyorkchildsupport.com/child_support_services.html#supportCollection.

2 N.Y. Veh. & Traf. Law §§ 319(5), 1194(2)(d)(2), 1194-a(2). Additional charges for people who have been convicted of certain alcohol or automobile offenses including violation of the zero tolerance law, operating with no insurance or underinsured, and chemical test refusal. Alan Rosenthal, et al., "Sentencing For Dollars:(Center For Community Alternatives, Justice Strategies) (February 2007) at page 12; The Financial Consequences of a Criminal Conviction." You can pay the civil penalty with "cash, a money order, a certified check or a credit card at most local DMV offices. If a DMV office cannot process the payment, you will see the words "No enforcement" below the address of the office in the local DMV office list at the DMV web site", available at: <http://www.nydmv.state.ny.us/offices.htm>.

3 N.Y. Fam. Ct. Act § 413 (providing the formula to be used in determining your child support obligations).

4 N.Y. Veh. & Traf. Law §1194-a(2); N.Y. Veh. & Traf. Law § 319(5); N.Y. Veh. & Traf. Law § 1194(2)(d)(2);

5 N.Y. Veh. & Traf. Law § 503(4)(b).

6 In order to apply for a downward modification, you must file with the clerk of courts a written application including a sworn statement of net worth. N.Y. Fam Court Act §424-a. The term "net worth" means your total assets including income minus your total financial liabilities including fixed financial costs. Id. The statement of net worth must include all income and assets including those

transferred in the past three years, or the length of the marriage, whichever is shorter. All such sworn statements of net worth shall be accompanied by a current and representative paycheck stub and the most recently filed state and federal income tax returns including a copy of the W-2 wage and tax statement(s) submitted with the returns. You must also provide information regarding any health plans available for the provision of care of the child. See N.Y. Fam. Ct. Act § 424-a for express requirements. Note: In deciding whether to modify a child support order, the court may consider various factors, including loss of income and assets.

In doing so, the court may consider whether financial difficulties are the result of the parents' unilateral conduct. Courts have found that incarceration alone does not warrant reduction of child support obligation or suspension of the payments due that built up over time while the parent was in prison. See *Knights v. Knights*, 71 N.Y.2d 865 (1988).

7 N.Y. F.C.A. § 454; N.Y. C.P.L.R. § 5242; N.Y. F.C.A. § 458a; N.Y. F.C.A. § 458(b)-(c); Social Security Act §§ 402(a)(6), 471(a)(7).

8 N.Y. Fam. Ct. Act § 440; In order to be imprisoned for failure to meet your child support obligations, the court must find that you "failed to obey" an order and that the failure was "willful." N.Y. Fam. Ct. Act § 454. The court must hold a "hearing" and be "satisfied by competent proof." *Id.* You have the burden of proving that you either fulfilled your obligation to pay or that your failure to pay was not willful. N.Y. Fam. Ct. Act § 454(3)(a). At this hearing, you are allowed to speak and present witnesses, and may have counsel present. N.Y. Fam. Ct. Act § 433; *Emerick v. Emerick*, 24 A.D.2d 872, 872 (N.Y.A.D. 2d Dept. 1965). The court has discretion and bases its decision on evidence of your assets and income, your needs, and all facts and circumstances bearing on your alleged willful noncompliance with the support order. N.Y. Fam. Ct. Act § 454. If you are employable, but voluntarily terminate your employment, voluntarily reduce your earning capacity or fail to diligently seek employment, the court is likely to find willful nonpayment. See *Gell v. Gell*, 428 N.Y.S.2d 352, 353 (N.Y.A.D. 3d Dept. 1980).

9 According to State of New York Department of Correctional Services Directive #2788 entitled "Collection & Repayment of Inmate Advances and Obligations", the Inmate Commissary and Accounting System (ICAS) will collect unpaid child support obligations from your inmate account.

10 The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) went into effect October 1, 1997. The statute prohibits any individual from receiving a U.S. passport who has been certified by the Secretary of Health and Human Services to the Secretary of State as being in arrears on child support payments by an amount exceeding \$5000. This prohibition extends to the issuance of diplomatic and official passports and includes both new issuances and renewals. See the Department of State Notice of 04/10/2000.

11 15 NYCRR 125.2(a) (Authorized by N.Y. Veh. & Traf. Law § 215(a)).

12 N.Y. Veh. & Traf. § 503(4)(d).

RESTITUTION CHART

1 N.Y. Penal Law § 60.27(5)(a). Restitution is limited to \$15,000 except when you consent to it being higher, the increase is a condition of probation, the increase is part of an agreement for conditional discharge, you are an officer of a school district convicted of larceny against that school district, when the court determines you have to return a victim's property, including money or the equivalent value, or when the victim has medical expenses cause by your actions (N.Y. Penal Law §§ 60.27(5)(a)-(b)).

2 N.Y. Penal Law § 60.27(9).

3 N.Y. Penal Law § 60.27(5)(a). Restitution is limited to \$10,000 except when you consent to it being higher, the increase is a condition of probation, the increase is part of an agreement for conditional discharge, you are an officer of a school district convicted of larceny against that school district, when the court determines you have to return a victim's property, including money or the equivalent value, or when the victim has medical expenses cause by your actions. (N.Y. Penal Law §§ 60.27(5)(a)-(b)).

4 N.Y. Penal Law § 60.27(8). In all cases where restitution is imposed as part of the disposition, the court must also impose a designated surcharge of 5% of the entire amount of the restitution payable to the official or organization designated as the agent to collect the restitution pursuant to Criminal Procedure Law § 420.10(8). Often the collection agent is the probation department. However, Penal Law § 60.27(8) authorizes the court to impose upon the defendant

an additional surcharge of up to another 5%, upon application by the designated official, if they can show that the actual cost of collection exceeds the initial 5%.

5 N.Y. Penal Law § 60.27(8).

6 N.Y. C.P.L. § 420.10(5).

7 N.Y. C.P.L. § 420.10(5)(d). The court will not determine that you are unable to pay solely based on your incarceration but will consider all sources of income including, but not limited to, monies in your possession at the time of imprisonment, funds earned in a work-release program, funds earned while incarcerated or deposited into an inmate account on your behalf.

8 N.Y. C.P.L. § 420.10(6).

9 According to State of New York Department of Correctional Services Directive #2788 entitled "Collection & Repayment of Inmate Advances and Obligations", the Inmate Commissary and Accounting System (ICAS) will collect unpaid restitution from your inmate account.

10 N.Y. C.P.L. § 420.10 (3).

11 N.Y. C.P.L. § 420.10(4)(a).

12 N.Y. C.P.L. § 420.10(4)(b).

13 N.Y. C.P.L. § 420.10(4)(c).