

MEMORANDUM

June 2, 2003

To: Judges, Justices and Chief Clerks of Courts
Exercising Criminal and Traffic Jurisdiction

From: Jonathan Lippman

Re: Surcharge Increases; New Termination of Suspension Fee, DNA
Databank Fee and Sex Offender Registration Fee

The State Budget just enacted makes numerous changes in law affecting courts exercising jurisdiction over criminal and traffic matters. These include:

? increase in the rates paid 18-B counsel assigned in accordance with a bar association plan, as follows:

- \$75 per hour for time spent in or out of court for representation of criminal defendants charged with a felony, plus expenses reasonably incurred.
- \$60 per hour for time spent in or out of court for representation of criminal defendants not charged with a felony, plus expenses reasonably incurred.

These increases, which are to be effective 1/1/04, are coupled with establishment of a new Indigent Legal Services Fund through which the State will provide local reimbursement for 18-B expenditures.

? changes in the surcharges and crime victim assistance fees required of persons who are convicted of criminal, VTL or other offenses. The changes include: (i) imposition of a new *additional* \$25 surcharge upon persons convicted pursuant to VTL §1192; (ii) increases in the mandatory surcharge and crime victim assistance fee for Penal Law and VTL offenses; and (ii) introduction of a crime victim assistance fee for equipment offenses and other VTL offenses. These changes will be effective 11/11/03. See Attachment A [summarizing changes in the mandatory surcharge and crime victim assistance fee].

? moving up, from 11/1/03 to 7/1/03, the scheduled effective date in the reduction in the blood alcohol concentration (BAC) level (from .10% to .08%). See L. 2002, c. 3.

? establishment of a new termination of suspension fee, effective 9/12/03, which must be paid to any court or tribunal that initiated the suspension of a person's driver's license before that suspension may be lifted. See Attachment B [summarizing this new fee].

? increases in the range of fines and fine *maxima* for certain VTL and Environmental Conservation Law offenses. These increases were effective 5/15/03. See Attachment C [summarizing these increases].

? establishment of two other new fees: (1) a sex offender registration fee, to be paid to the court, along with applicable mandatory surcharge and crime victim assistance fees, by persons convicted of certain sex offenses; and (2) a DNA databank fee, to be paid to the court, along with applicable mandatory surcharge and crime victim assistance fees, by persons convicted of certain serious felonies. These fees were effective 5/15/03. See Attachment D [summarizing these new fees].

? modification of the merit time allowance program to permit certain A-I felony drug offenders to earn merit time. See Attachment E [summarizing this change].

? establishment of a new "Presumptive Release Program" for the benefit of certain inmates serving indeterminate sentences for non-violent offenses. *Id.*

ATTACHMENT A

CHANGES IN THE MANDATORY SURCHARGE & CRIME VICTIM ASSISTANCE FEE

In Part M of the legislation, provisions of the Penal Law and the Vehicle and Traffic Law are amended to increase the amount of the mandatory surcharge and crime victim assistance fee to be imposed upon conviction for Penal Law and VTL offenses. In several instances, crime victim assistance fees are established where now there are none. The following chart shows the results of these changes:

CONVICTION OF:	FORMER		NEW	
	<u>Surcharge</u>	<u>Crime Victim Assist. fee</u>	<u>Surcharge</u>	<u>Crime Victim Assist. fee</u>
• Penal Law Felony	\$200	\$10	\$250	\$20
• Penal Law Misdemeanor	\$110	\$10	\$140	\$20
• Penal Law Violation	\$50	\$10	\$75	\$20
• VTL Art. 9 Traffic Infraction	\$20	\$0	\$25	\$5
• VTL §1192 Felony	\$200	\$10	\$250	\$20
• VTL §1192 Misdemeanor	\$110	\$10	\$140	\$20
• VTL offenses covered by VTL §1809(1)(c)	\$30	\$0	\$45	\$5

Also, in section 37 of Part J of the legislation, the Vehicle and Traffic Law is amended by the addition of a new section 1809-c, requiring imposition of a special \$25 surcharge upon conviction pursuant to section 1192. This surcharge is to be imposed *in addition to* any fine or other surcharge required or permitted by law. All surcharge money collected under section 1809-c must be paid to the State Comptroller within the first ten days of the month following collection.

Effective Date: 11/11/03

ATTACHMENT B

TERMINATION OF SUSPENSION FEE

In sections 6-11 of Part J of the legislation, provisions of the Vehicle and Traffic Law are amended to establish a \$35 termination of suspension fee. This fee must be paid to any court or tribunal that initiated the suspension of a person's driver's license before it may lift that suspension. All fees collected by the courts shall be paid to the State on a monthly basis no later than ten days after the last day of the month in which they were collected as follows: (i) if collected by a court other than a Town or Village Justice Court, fees shall be paid to the Commissioner of Taxation and Finance; and (ii) if collected by a Town or Village Justice Court, fees shall be paid to the State Comptroller (and shall be accompanied by a statement in such form and detail as the Comptroller shall require).

Effective Date: 9/12/03

ATTACHMENT C

CHANGES IN CERTAIN VTL & ECL FINES

In Part C of the legislation, numerous provisions of the Vehicle and Traffic Law and the Environmental Conservation Law are amended to increase the range of fines and fine *maxima* for certain offenses under these statutes. The following chart shows these increases:

Effective Date: 5/15/03

(Attach. C, cont) VEHICLE AND TRAFFIC LAW FINES AND PENALTIES

EFFECTIVE MAY 15, 2003

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§1800 (b) Traffic Infraction	1 st Conv., Not more than \$100	Not more than \$150
	2 nd violation w/in 18 months, Not more than \$200	Not more than \$300
	3 rd or subsequent violation w/in 18 months, Not more than \$300	Not more than \$450
§1111(d)(1) Stop for Red Light (Traffic Infraction)	1 st Conv. Not less than \$50, Not more than \$150	Not less than \$75, Not more than \$225
	2 nd violation w/in 18 months, Not less than \$100, Not more than \$250	Not less than \$150, Not more than \$375
	3 rd or subsequent violation w/in 18 months, Not less than \$250, Not more than \$450	Not less than \$375, Not more than \$675
§1111(d)(1) Stop for Red Light (Violation)	1 st Conv. Not less than \$100, Not more than \$300	Not less than \$150, Not more than \$450
	2 nd violation w/in 18 months, Not less than \$200, Not more than \$500	Not less than \$300, Not more than \$750
	3 rd or subsequent violation w/in 18 months, Not less than \$500, Not more than \$1,000	Not less than \$750, Not more than \$1,500

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§1144 Approaching Emergency Vehicle	1 st conviction, Not more than \$150	Not more than \$275
	2 nd violation w/in 18 months, Not more than \$300	Not more than \$450
	3 rd or subsequent violation w/in 18 months, Not more than \$500	Not more than \$750
§1801 Misdemeanors	1 st conviction, Not more than \$200	Not more than \$300
	2 nd violation w/in 18 months, Not more than \$350	Not more than \$525
	3 rd or subsequent violation w/in 18 months, Not more than \$750	Not more than \$1,125
§375(1)(c) Knowing disconnection of any set of service brakes Max. Wt. 18,000 or more	Not more than \$1,500	Not more than \$2,250
§509 All Subdivisions except (2) and (8)	Not less than \$50, Not more than \$200	Not less than \$75, Not more than \$300
Failure to renew within 60 days	Not less than \$25	Not more than \$40
§509(8)	Not more than \$50	Not more than \$75
§509(2) Violation involving taxicab, livery, etc.	Not less than \$150, Not more than \$300	Not less than \$225, Not more than \$450

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
	2 nd violation w/in 5 years, Not less than \$250, Not more than \$500	Not less than \$375, Not more than \$750
	2 or more violations w/in 10 years, Not less than \$500, Not more than \$1,000	Not less than \$750, Not more than \$1,500
§1180(b), (d) (1)	Exceeds Speed Limit by not more than 10 mph, Not less than \$30, Not more than \$100	Not less than \$45, Not more than \$150
	Exceeds Speed Limit by more than 10 mph, but not more than 30 mph, Not less than \$60, Not more than \$200	Not less than \$90, Not more than \$300
	Exceeds Speed Limit by more than 30 mph, Not less than \$120, Not more than \$400	Not less than \$180, Not more than \$600
1180(a), (e)	Not less than \$30, Not more than \$100	Not less than \$45, Not more than \$150

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§1180(d)(2), (f), (g)	Exceeds Speed Limit by not more than 10 mph, Not less than \$60, Not more than \$100	Not less than \$90, Not more than \$150
	<p>Exceeds Speed Limit by more than 10 mph, but not more than 30 mph, Not less than \$120, Not more than \$200</p> <p>(If violation of any rules or regs involving out-of-service defect relating to brake systems, steering components and/or coupling devices, OR transporting flammable gas, radioactive materials or explosives, fine SHALL be \$200)</p>	<p>Not less than \$180, Not more than \$300</p> <p>SHALL be \$300</p>
	<p>Exceeds Speed Limit by more than 30 mph, Not less than \$240, Not more than \$400</p> <p>(If violation of any rules or regs involving out-of-service defect relating to brake systems, steering components and/or coupling devices, OR transporting flammable gas, radioactive materials or explosives, fine SHALL be \$400)</p>	<p>Not less than \$360, Not more than \$600</p> <p>SHALL be \$600</p>
§1180(c) Violation in school speed zone between 7:00 AM and 6:00 PM	Exceeds Speed Limit by not more than 10 mph, Not less than \$60, Not more than \$200	Not less than \$90, Not more than \$300

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
	Exceeds Speed Limit by more than 10 mph but not more than 30 mph, Not less than \$120, Not more than \$400	Not less than \$180, Not more than \$600
	Exceeds Speed Limit by more than 30 mph, Not less than \$240, Not more than \$800	Not less than \$360, Not more than \$1,200
<hr/>		
§1180 Any subdivision	2 nd violation w/in 18 months, maximum fine increased by additional \$100	Maximum fine increased by additional \$150
	3 rd or more violation w/in 18 months, maximum fine increased by additional \$250	Maximum fine increased by additional \$375
<hr/>		
§1182	Not less than \$200, Not more than \$350	Not less than \$300, Not more than \$525
	2 nd violation w/in 12 months, Not less than \$350, Not more than \$500	Not less than \$525, Not more than \$750
<hr/>		
§401(1)	Not less than \$50, Not more than \$200	Not less than \$75, Not more than \$300
<hr/>		
§401(1) Failure to renew valid Registration w/in 60 days	Not less than \$25	Not less than \$40
<hr/>		

VTL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§401(7)(8)	1 st violation, Not less than \$100, Not more than \$250 (If vehicle Gross Wt. less than 18,000 lbs., Not less than \$25, Not more than \$250)	Not less than \$150, Not more than \$375 (Not less than \$40, Not more than \$375)
	2 nd or subsequent violation, Not less than \$250, Not more than \$500	Not less than \$375, Not more than \$750
§319(1)	Not less than \$100, Not more than \$1,000	Not less than \$150, Not more than \$1,500
§319(5) (Civil Penalty)	\$500	\$750
§375 (10) (Civil Penalty)	\$500	\$750
§375(32) Any provisions with respect to adequate brakes	\$100	\$150
§375(28-f) (f) (If device installed, can waive \$450 of fine)	1 st conviction, \$500	\$750
	2 nd conviction, \$500	\$750
§375(47)(a)	1 st conviction, Not more than \$100	Not more than \$150
	2 nd violation w/in 18 months, Not less than \$150, Not more than \$200	Not less than \$150, Not more than \$300
	3 rd or subsequent violation w/in 18 months, Not less than \$250, Not more than \$500	Not less than \$375, Not more than \$750

(Attach. C, cont) ENVIRONMENTAL CONSERVATION LAW FINES AND PENALTIES

EFFECTIVE MAY 15, 2003

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§71-2103 (Violation of Article 19, except §10-0304 - Civil Penalty)	1 st violation, Not less than \$250, Not more than \$10,000, and additional penalty not to exceed \$10,000 for each day during which such violation continues	Not less than \$375, Not more than \$15,000, and additional penalty not to exceed \$15,000 for each day during which such violation continues
	2 nd or any further violation, Not to exceed \$15,000 and an additional penalty not to exceed \$15,000 for each day during which such violation continues	Not to exceed \$22,500 and an additional \$22,500 for each day during which such violation continues
§71-2105 (Violation of Article 19, except §10-0304 - Criminal Penalty)	1 st conviction, Not less than \$250, Not more than \$10,000 (Each day violation occurs shall constitute a separate violation.)	Not less than \$375, Not more than \$15,000 (Each day violation occurs shall constitute a separate violation.)
	Offense after 1 st conviction, Not to exceed \$15,000 (Each day violation occurs shall constitute a separate violation.)	Not to exceed \$22,500 for each day (Each day violation occurs shall constitute a separate violation.)
§19-0304 (Civil Penalty)	Not to exceed \$25,000 and an additional penalty of not more than \$25,000 for each day during which such violation continues	Not to exceed \$37,500 and an additional penalty of \$37,500 for each day during which such violation continues

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
	2 nd or more violation, Not to exceed \$50,000 for each such violation, and an additional penalty not to exceed \$50,000 for each day violation continues	Not to exceed \$75,000 for each such violation, and an additional penalty not to exceed \$75,000 for each day violation continues
§19-0304 (Criminal Fines)	1 st conviction, Not to exceed \$25,000 per day of violation	Not to exceed \$37,500 per day of violation
	After 1 st conviction, Not to exceed \$50,000 per day of violation	Not to exceed \$75,000 per day of violation
§71-2703(1) Article 27, Titles 3 and 7 (Civil Penalty)	Not to exceed \$5,000 for each violation and an additional penalty of not more than \$1,000 for each day during which such violation continues	Not to exceed \$7,500 for each violation and an additional penalty of not more than \$1,500 for each day during which such violation continues
§71-2703(1)(b)(i) Article 27, Titles 3 and 7: Release of solid waste (Civil Penalty)	Not to exceed \$7,500 for each violation and an additional \$7,500 for each day during which such violation continues	Not to exceed \$11,250 for each violation and an additional \$11,250 for each day during which such violation continues
§71-2703(1)(b)(ii) Article 27, Titles 3 and 7: Release of more than 10 cubic yards of solid waste (Civil Penalty)	Not to exceed \$15,000 for each violation and an additional \$15,000 for each day during which such violation continues	Not to exceed \$22,500 for each violation and an additional \$22,500 for each day during which such violation continues
§71-2703(2)(a) Article 27, Titles 3 and 7: Release of solid waste (Criminal Fine)	Not less than \$1,000, Not more than \$10,000 per day of violation	Not less than \$1,500, Not more than \$15,000 per day of violation

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§71-2703(2)(b)(i) Article 27, Titles 3 and 7: Release of more than 10 cubic yards of solid waste (Criminal Fine)	Not less than \$2,500, Not more than \$15,000 per day of violation	Not less than \$3,750, Not more than \$22,500 per day of violation
§71-2703(2)(b)(ii) Article 27, Titles 3 and 7: Release of more than 10 cubic yards of solid waste (Criminal Fine)	2 nd violation w/in 5 years, Not less than \$2,500 and Not more than \$25,000 per day of violation	Not less than \$3,750 and Not more than \$37,500 per day of violation
§71-2703(2)(c) (i) Article 27, Titles 3 and 7: Release of more than 70 cubic years of solid waste (Criminal Fine)	Not less than \$2,500 and Not more than \$25,000 per day of violation	Not less than \$3,750 and not more than \$37,500 per day of violation
§71-2703(2)(c)(ii) Article 27, Titles 3 and 7: Release of more than 70 cubic years of solid waste (Criminal Fine)	2 nd violation w/in 5 years, Not less than \$5,000 and Not more than \$50,000 per day of violation	Not less than \$7,500 and Not more than \$75,000 per day of violation
§71-2703(3) Article 27, Title 7: Construction and operation of facilities for the disposal of construction and demolition debris (Civil Penalty)	Not to exceed \$10,000 and each day constitutes a separate violation	Not to exceed \$15,000 and each day constitutes a separate violation
§71-2705(1) Article 27, Titles 9, 11, and 13 (Civil Penalty)	1 st violation, Not to exceed \$25,000 and an additional penalty of not more than \$25,000 for each day during which such violation continues	Not exceed \$37,500 and an additional penalty of not more than \$37,500 for each day during which such violation continues

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
	2 nd or further violation, not to exceed \$50,000 and an additional penalty not to exceed \$50,000 for each day during which such violation continues	2 nd or further violation, not to exceed \$75,000 and an additional penalty not to exceed \$75,000 for each day during which such violation continues
	§71-2705(2) Article 27, Titles 9, 11, and 13 (Criminal Fine)	1 st conviction, Not to exceed \$25,000 per day of violation
	2 nd or more violation, Not to exceed \$50,000 per day of violation	Not to exceed \$37,500 per day of violation
	§71-2721 Article 27 and Article 71, Title 27	The higher of:
	Class C Felony: Not more than \$200,000	Not more than \$300,000
	Class D Felony: Not more than \$150,000	Not more than \$225,000
	Class E Felony: Not more than \$100,000	Not more than \$150,000
	Class A Misdemeanor: Not more than \$25,000	Not more than \$37,500
	Class B Misdemeanor: Not more than \$10,000	Not more than \$15,000
	Double the amount of the Defendant's gain	
	§71-2722(1) Enforcement of §27-1701 (Civil Penalty)	Not to exceed \$50 for each violation
		Not to exceed \$75 for each violation
	§71-2722(2) Enforcement of §27-1701(4) (Civil Penalty)	Not to exceed \$500
		Not to exceed \$750

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§71-1909(2) Violation of any provision of §17-1709 (Criminal Fine)	Not more than \$500	Not more than \$750
§71-1911 Enforcement of §17-1711 (Criminal Fine)	Not more than \$50	Not more than \$75
§71-1929(1) Violation of Article 17, Titles 1 - 5, 9 - 11, and 19 (Civil Penalty)	Not to exceed \$25,000 per day for each violation	Not to exceed \$37,500 per day for each violation
§71-1933(1) Violation of Article 17, Titles 1 - 5, 9 - 11, and 19 (Criminal Fine)	Not less than \$2,500, Not more than \$25,000 per day of violation	Not less than \$3,750, Not more than \$37,500 per day of violation
	2 nd or more violation, Not more than \$50,000 per day of violation	Not more than \$75,000 per day of violation
§71-1933(8)(b)(i),(ii),(iii), (iv)	Class C Felony committed by an organization defined in §71-1932: \$500,000	\$750,000
	Class C Felony: \$250,000	\$375,000
	Class E Felony per §71-1933 (4): \$50,000 per day of continuing violation but in no event less than \$5,000	\$75,000 per day of continuing violation but in no event less than \$7,500
	Class E Felony per §71-1933 (7): \$10,000	\$15,000
	Class A Misdemeanor: \$25,000 per day of continuing violation but in no event less than \$2,500	\$37,500 per day of continuing violation but in no event less than \$3,750

ECL SECTION	OLD FINE/PENALTY	NEW FINE/PENALTY
§71-1941 (Civil Penalty)	Not more than \$2,500 for an initial incident and an additional penalty of \$500 for each day during which violation continues	Not more than \$3,750 for an initial incident and an additional penalty of \$750 for each day during which violation continues
§71-1943 Enforcement of 17-1743: Spills of Bulk Liquids (Civil Penalty)	Not more than \$2,500 for an initial incident	\$3,750 for an initial incident

ATTACHMENT D

SEX OFFENDER REGISTRATION & DNA DATABANK FEES

In Part F of the legislation, section 60.35 of the Penal Law is amended to establish a \$50 sex offender registration fee. This fee must be imposed by the court at the sentencing of a person convicted of: (1) a sex offense defined by section 168-a(2) of the Correction Law, or (2) a sexually violent offense as defined by section 168-a(3). Section 60.35 also is amended to establish a \$50 DNA databank registration fee. This fee must be imposed by the court at the sentencing of a person convicted of any of the offenses set forth in section 995(7) of the Executive Law.

These fees must be paid to the clerk of the court that rendered the conviction. Within the first ten days of the month following collection of these fees, the Court shall pay them to: (i) the State Comptroller, if the Court is a Town or Village Justice Court, or (ii) the State Commissioner of Taxation and Finance, if the Court is any other court of the Unified Court System.

Other provisions of law applicable to collection of the mandatory surcharge generally will apply to collection of the sex offender registration and DNA databank fees. These include provisions governing notification of the head of any correctional facility in which an offender who fails to pay may be incarcerated; issuance of a summons requiring that non-paying offenders appear in court after 60 days; and collection as provided in Article 420 of the Criminal Procedure Law.

Effective Date: 5/15/03

ATTACHMENT E

MERIT TIME ALLOWANCE & PRESUMPTIVE RELEASE PROGRAMS

In Part E of the legislation, the Correction Law and the Executive Law are amended to allow persons serving an A-I felony drug sentence (15-25 years to life), who otherwise satisfy existing statutory criteria for receiving a “merit time allowance,” to receive such an allowance in the amount of a one-third reduction in the minimum term of the sentence. prior to this amendment, A-I drug felons were *ineligible* for merit time. Notably, the merit time allowance for these A-I drug offenders, as established by this legislation, is *twice* that currently allowed for other offenders, who continue to be eligible for only a *one-sixth* merit time reduction of their minimum term.

Also, a new “Presumptive Release Program” is created so as to allow an eligible inmate serving an indeterminate sentence for a non-violent offense, who has no violent offenses in his or her criminal history, and who satisfies other specified criteria, to apply for “presumptive release.” If presumptive release is granted, the inmate will be released to parole supervision, *without* the need to appear before and be considered by the parole board, at the expiration of his or her minimum term. Under the program, if the inmate is eligible for and receives a merit time allowance *in addition to* being granted presumptive release, he or she will be released to parole supervision at the expiration of five-sixths of the minimum term, again, without having to appear before the parole board. Although presumptive release, once granted, eliminates the ability of the parole board to deny release, and thus makes release at the expiration of the inmate’s minimum term more or less automatic (or “presumptive”), this legislation allows DOCS to *revoke* a scheduled presumptive release if the inmate commits a disciplinary infraction or fails to continue his or her participation in required prison programs.

Effective Date: 4/1/03