§ 420.10 Collection of fines, restitution or reparation.

1. Alternative methods of payment. When the court imposes a fine upon an individual, it shall designate the official other than the district attorney to whom payment is to be remitted. When the court imposes restitution or reparation and requires that the defendant pay a designated surcharge thereon pursuant to the provisions of subdivision eight of section 60.27 of the penal law, it shall designate the official or organization other than the district attorney, selected pursuant to subdivision eight of this section, to whom payment is to be remitted.

(a) The court may direct:

(i) That the defendant pay the entire amount at the time sentence is pronounced;

(ii) That the defendant pay the entire amount at some later date; or

(iii) That the defendant pay a specified portion at designated periodic intervals.

(b) When the court imposes both (i) a fine and (ii) restitution or reparation and such designated surcharge upon an individual and imposes a schedule of payments, the court shall also direct that payment of restitution or reparation and such designated surcharge take priority over the payment of the fine.

(c) Where the defendant is sentenced to a period of probation as well as a fine, restitution or reparation and such designated surcharge, the court may direct that payment of the fine, restitution or reparation and such designated surcharge be a condition of the sentence.

(d) When a court requires that restitution or reparation and such designated surcharge be made it must direct that notice be given to a person or persons to whom it is to be paid of the conditions under which it is to be remitted; the name and address of the public official or organization to whom it is to be remitted for payment and the amount thereof; and the availability of civil proceedings for collection under subdivision six of this section. An official or organization designated to receive payment under this subdivision must report to the court any failure to comply with the order and shall cooperate with the district attorney pursuant to his responsibilities under subdivision six of this section.

(e) Where cash bail has been posted by the defendant as the principal

and is not forfeited or assigned, the court at its discretion may order that bail be applied toward payment of any order of restitution or reparation or fine. If the court so orders, the bail proceeds shall be applied to payment first of the restitution or reparation and then of the fine.

2. Death of victim. In the event that the individual to whom restitution or reparation is to be made dies prior to completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

3. Imprisonment for failure to pay. Where the court imposes a fine, restitution or reparation, the sentence may provide that if the defendant fails to pay the fine, restitution or reparation in accordance with the direction of the court, the defendant must be imprisoned until the fine, restitution or reparation is satisfied. Such provision may be added at the time sentence is pronounced or at any later date while the fine, restitution or reparation or any part thereof remains unpaid; provided, however, that if the provision is added at a time subsequent to the pronouncement of sentence the defendant must be personally present when it is added. In any case where the defendant fails to pay a fine, restitution or reparation as directed the court may issue a warrant directing a peace officer, acting pursuant to his special duties, or a police officer, to take him into custody and bring him before the court; provided, however, if the court in which the warrant is returnable is a city, town or village court, and such court is not available, and the warrant is addressed to a police officer, such executing police officer must without unnecessary delay bring the defendant before an alternate local criminal court, as provided in subdivision five of section 120.90 of this chapter; or if the court in which the warrant is returnable is a superior court, and such court is not available, and the warrant is addressed to a police officer, such executing police officer may bring the defendant to the local correctional facility of the county in which such court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day. Such warrant may also be delegated in the same manner as a warrant pursuant to section 530.70

of this chapter. Where a sentence provides that the defendant be imprisoned for failure to pay a fine, the court shall advise the defendant that if he is unable to pay such fine, he has a right, at any time, to apply to the court to be resentenced as provided in subdivision five of this section.

4. Period of imprisonment. 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 limits:

(a) Where the fine, restitution or reparation is imposed for a felony, the period may not exceed one year;

(b) Where the fine, restitution or reparation is imposed for a misdemeanor, the period may not exceed one-third of the maximum authorized term of imprisonment;

(c) Where the fine, restitution or reparation is imposed for a petty offense, the period may not exceed fifteen days; and

(d) Where a sentence of imprisonment as well as a fine, restitution or reparation is imposed, the aggregate of the period and the term of the sentence may not exceed the maximum authorized term of imprisonment.

(e) Jail time and good behavior time shall be credited against the full period of imprisonment, if served, as provided in section 70.30 of the penal law for definite sentences.

5. Application for resentence. In any case where the defendant is unable to pay a fine, restitution or reparation imposed by the court, he may at any time apply to the court for resentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation it must:

(a) Adjust the terms of payment; or

(b) Lower the amount of the fine, restitution or reparation; or

(c) Where the sentence consists of probation or imprisonment and a fine, restitution or reparation, revoke the portion of the sentence imposing the fine, restitution or reparation; or

(d) Revoke the entire sentence imposed and resentence the defendant. Upon such resentence the court may impose any sentence it originally could have imposed, except that the amount of any fine, restitution or

reparation imposed may not be in excess of the amount the defendant is able to pay.

In any case where the defendant applies for resentencing with respect to any condition of the sentence relating to restitution or reparation the court must order that notice of such application and a reasonable opportunity to be heard be given to the person or persons given notice pursuant to subdivision one of this section. If the court grants the defendant's application by changing the original order for restitution or reparation in any manner, the court must place the reasons therefor on the record.

For the purposes of this subdivision, the court shall not determine that the defendant is unable to pay the fine, restitution or reparation ordered solely because of such defendant's incarceration but shall consider all the defendant's sources of income including, but not limited to, moneys in the possession of an incarcerated individual at the time of his or her admission into such facility, funds earned by him or her in a work release program as defined in subdivision four of section one hundred fifty of the correction law, funds earned by him or her as provided for in section one hundred eighty-seven of the correction law and any other funds received by him or her or on his or her behalf and deposited with the superintendent or the municipal official of the facility where the person is confined.

6. Civil proceeding for collection. (a) A fine, restitution or reparation imposed or directed by the court shall be imposed or directed by a written order of the court containing the amount thereof required to be paid by the defendant. The court's order also shall direct the district attorney to file a certified copy of such order with the county clerk of the county in which the court is situate except where the court which issues such order is the supreme court in which case the order itself shall be filed by the clerk of the court acting in his or her capacity as the county clerk of the county in which the court is situate. Such order shall be entered by the county clerk in the same manner as a judgment in a civil action in accordance with subdivision (a) of rule five thousand sixteen of the civil practice law and rules.

Even if the defendant was imprisoned for failure to pay such fine, restitution or reparation, or has served the period of imprisonment imposed, such order after entry thereof pursuant to this subdivision may be collected in the same manner as a judgment in a civil action by the victim, as defined in paragraph (b) of subdivision four of section 60.27 of the penal law, to whom restitution or reparation was ordered to be paid, the estate of such person or the district attorney. The entered order shall be deemed to constitute a judgment-roll as defined in section five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules. Wherever appropriate, the district attorney shall file a transcript of the docket of the judgment with the clerk of any other county of the state. Such a restitution or reparation order, when docketed shall be a first lien upon all real property in which the defendant thereafter acquires an interest, having preference over all other liens, security interests, and encumbrances whatsoever, except:

(i) a lien or interest running to the benefit of the government of the United States or the state of New York, or any political subdivision or public benefit corporation thereof; or

(ii) a purchase money interest in any property.

(b) The district attorney may, in his or her discretion, and must, upon order of the court, institute proceedings to collect such fine, restitution or reparation.

7. Undisbursed restitution payments. Where a court requires that restitution or reparation be made by a defendant, the official or organization to whom payments are to be remitted pursuant to subdivision one of this section may place such payments in an interest-bearing account. The interest accrued and any undisbursed payments shall be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time. For the purposes of this subdivision, the term "undisbursed restitution payments" shall mean those payments which have been remitted by a defendant but not disbursed to the intended beneficiary and such payment has gone unclaimed for a period of one year and the location of the intended beneficiary cannot

be ascertained by such official or organization after using reasonable efforts.

8. Designation of restitution agency. (a) The chief elected official in each county, and in the city of New York the mayor, shall designate an official or organization other than the district attorney to be responsible for the collection and administration of restitution and reparation payments under provisions of the penal law and this chapter. This official or organization shall be eligible for the designated surcharge provided for by subdivision eight of section 60.27 of the penal law.

(b) The restitution agency, as designated by paragraph (a) of this subdivision, shall be responsible for the collection of data on a monthly basis regarding the numbers of restitution and reparation orders issued, the numbers of satisfied restitution and reparation orders and information concerning the types of crimes for which such orders were required. A probation department designated as the restitution agency shall then forward such information to the office of probation and correctional alternatives within the first ten days following the end of each month. In all other cases the restitution agency shall report to the division of criminal justice services directly. The division of criminal justice services shall compile and review all such information and make recommendations to promote the use of restitution and encourage its enforcement.