§ 420.40 Deferral of a mandatory surcharge; financial hardship hearings.

1. Applicability. The procedure specified in this section governs the deferral of the obligation to pay all or part of a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law and financial hardship hearings relating to mandatory surcharges.

2. On an appearance date set forth in a summons issued pursuant to subdivision three of section 60.35 of the penal law, section eighteen hundred nine of the vehicle and traffic law or section 27.12 of the parks, recreation and historic preservation law, a person upon whom a mandatory surcharge, sex offender registration fee or DNA databank fee was levied shall have an opportunity to present on the record credible and verifiable information establishing that the mandatory surcharge, sex offender registration fee or DNA databank fee should be deferred, in whole or in part, because, due to the indigence of such person the payment of said surcharge, sex offender registration fee or DNA databank fee would work an unreasonable hardship on the person or his or her immediate family.

3. In assessing such information the superior court shall be mindful of the mandatory nature of the surcharge, sex offender registration fee and DNA databank fee, and the important criminal justice and victim services sustained by such fees.

4. Where a court determines that it will defer part or all of a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law, a statement of such finding and of the facts upon which it is based shall be made part of the record.

5. A court which defers a person's obligation to pay a mandatory surcharge, sex offender registration fee or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law shall do so in a written order. Such order shall not excuse the person from the obligation to pay the surcharge, sex offender registration fee or DNA

databank fee. Rather, the court's order shall direct the filing of a certified copy of the 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. The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee or DNA databank fee may be collected in the same manner as a civil judgment. 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.