

POTENTIAL MONEY ASSESSMENTS IN CRIMINAL CASES	Massachusetts Trial Court District Court Department
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GENERAL CASE-RELATED ASSESSMENTS

<i>Type of Money Assessment</i>	<i>Description</i>	<i>Waivable?</i>
FINE c.279 §§ 1, 1A, 7, 9, 10, 11	As provided by statute for offense.	<ul style="list-style-type: none"> Defendant unable to pay fine may not be imprisoned unless no other punishment satisfies the state's interests in punishment and deterrence. <i>Bearden v. Georgia</i>, 461 U.S. 660 (1983); <i>Comm. v. Gomes</i>, 407 Mass. 206 (1990). Fines of \$200 or less must be suspended if defendant unable to pay unless "detrimental to the interests of the public" or deft "will probably default." G.L. c.279, §1.
SURFINE c.280 §6A	25% surfine REQUIRED on payable portion of any criminal fine, except for motor vehicle offenses not punishable by incarceration.	If defendant imprisoned for non-payment of fine, surfine may be waived or reduced if a hardship to defendant or immediate family.
CIVIL MOTOR VEHICLE ASSESSMENT c.90C §3(C)(3)	Scheduled civil assessment REQUIRED when defendant found responsible for civil motor vehicle infraction unless sentenced on accompanying criminal charge and CMVI filed. Amount set by Admin. Reg. 2-86 (rev. 11/3/04, Trans. 861), but Admin. Reg. 3-86 (rev. 1/1/92, Trans. 392) permits reduction up to 50% "for exceptional circumstances in the particular case" except for (1) speeding and (2) CMVIs with scheduled assessments less than \$50.	CMVI may be filed without imposing an assessment only if defendant "has been found guilty of, and is simultaneously being sentenced on, [an accompanying] criminal automobile law violation."
CIVIL FINE c.277 §70C	On motion at arraignment or pretrial conference, or sua sponte at anytime, judge may discretionarily convert most misdemeanor, ordinance or by-law charges to a civil infraction. Judge may impose civil fine of not more than \$5000 if no civil fine specified in statute. The following offenses are ineligible for such treatment: G.L. c.90 §§ 22F, 24, 24D, 24G, 24L and 24N; c.90B §§ 8, 8A and 8B; c.119; c.119A; c.209; c.209A; c.265; c.268, §§ 1, 2, 3, 6, 6A, 6B, 8B, 13, 13A, 13B, 13C, 14, 14B, 15, 15A, 16, 17, 18, 19, 20, 23, 28, 31 and 36; c.268A; c.269 §§ 10, 10A, 10C, 10D, 10E, 11B, 11C, 11E, 12, 12A, 12B, 12D and 12E; and c.272 §§ 1, 2, 3, 4, 4A, 4B, 6, 7, 8, 12, 13, 16, 28, 29A and 29B.	
COURT COSTS c.280 §6 Mass.R.Crim.P. 10(b) Mass.R.Crim.P. 6(d)(1)	<ul style="list-style-type: none"> Defendant may be assessed the "reasonable and actual expenses of the prosecution" as a condition of dismissal, filing, or probation (c.280 §6). Defendant or either counsel may be assessed any "unnecessary expenses" incurred by the adverse party as a condition of granting a continuance requested without sufficient notice (Mass.R.Crim.P. 10[b]). Defendant may be assessed the "reasonable costs" resulting from a default that was "intentional or negligent and without good cause." c.280 §6; Mass.R.Crim.P. 6(d)(1). They must be "actual expenses resulting directly" from the default, and not merely nominal costs. <i>Commonwealth v. Gomes</i>, 407 Mass. 206 (1990). 	

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<p>RESTITUTION c.119 §62 c.258B §3(o) c.276 §§92-92A</p> <p><i>Authorized for specific offenses in:</i> c.119 §58B c.131 §90 c.149 §152A c.151A §47 c.175H §7 c.266 §30(5) c.273 §15A(5)</p> <p><i>Mandated for specific offenses in:</i> c.175H §7 c.266 §§ 27A, 29, 87, 94, 99A, 100, 102A½, 108, 111B, 126A, 126B c.269 §§ 14(b), 14(d) c.276 §92A</p>	<ul style="list-style-type: none"> • May be based on victim's loss, as established by a preponderance of evidence, after considering defendant's ability to pay. <i>Commonwealth v. Nawn</i>, 394 Mass. 1 (1985). • Limited to injury resulting from incident but not limited by elements of offense. <i>Commonwealth v. McIntyre</i>, 436 Mass. 829 (2002). • May include "medical expenses, court-related travel expenses, property loss and damage, lost pay, or even lost paid vacation days required to attend court proceedings," <i>Commonwealth v. Rotonda</i>, 434 Mass. 211 (2001), or replacement cost for substitute of comparable kind, quality, and condition, <i>Commonwealth v. Hastings</i>, 53 Mass. App. Ct. 41 (2001). • Triple restitution may be assessed for property damages resulting from a hate crime (c.265 §39) • Restitution REQUIRED for these offenses: c.152 §14 (Workers Compensation Fraud) c.175H §2 (False Health Care Claim) c.175H §3 (Health Care Kickback) c.266 §27 (Larceny of Construction Tools) c.266 §27A (Conceal MV to Defraud) c.266 §28 (Larceny of MV, Malicious Damage to MV, or Receiving Stolen MV) c.266 §87 (Conceal Leased Personalty) c.266 §94 (Vandalize Building, Sign, Light) c.266 §99A (Larceny of Library Materials) c.266 §100 (Vandalize Library Materials) c.266 §102A (Hoax Explosive) c.266 §108 (Destroy Boat) c.266 §111B (False MV Insurance Claim) c.266 §126A (Vandalize Property) c.266 §126B (Tagging Property) c.266 §139 (Altered VIN) c.269 §14 (Bomb/Hijack Threat) 	<p>Defendant unable to pay restitution cannot be imprisoned unless no other punishment satisfies the state's interests in punishment and deterrence. <i>Bearden v. Georgia</i>, 461 U.S. 660 (1983); <i>Commonwealth v. Gomes</i>, 407 Mass. 206 (1990).</p>
<p>VICTIM/WITNESS ASSESSMENT c.258B §8</p> <p><i>NOTE: By statute, this assessment has FIRST PRIORITY among all "fines, assessments or other payments."</i></p>	<ul style="list-style-type: none"> • <i>Felony</i>: not less than \$90 assessment MANDATORY upon conviction or finding of sufficient facts of any felony. • <i>Misdemeanor</i>: \$50 assessment MANDATORY upon conviction or finding of sufficient facts of any misdemeanor. • No limit on cumulative assessments for multiple criminal charges.¹ • <i>Delinquency</i>: \$45 assessment MANDATORY upon adjudication or finding of sufficient facts of delinquency for juvenile aged 14 or older. • <i>Youthful Offenders</i> not subject to this assessment.² 	<p>WAIVER REQUIRES WRITTEN FINDINGS</p> <p>May be reduced or waived only on a written finding of fact that it would cause "severe financial hardship," to be determined independently of indigency for purposes of appointing counsel.</p>

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PROBATION FEE & VICTIM SERVICES SURCHARGE c.276 §87A ¶¶ 2-9	\$60 fee plus \$5 surcharge per month MANDATORY from defendant on supervised probation, including all OUI probationers • Exception: nonsupport convictions under c.273 §1 or §15 where support payments are a condition of probation.	WAIVER REQUIRES WRITTEN FINDINGS & COMMUNITY SERVICE • May be waived to the extent that defendant pays equivalent restitution • May be reduced/waived only upon hearing and written finding of undue hardship to defendant or his/her family due to limited income, employment status, or some other factor (and only while such hardship continues); defendant must instead perform community work service of at least: • 1 day monthly in lieu of Probation Fee • 4 hours monthly in lieu of Administrative Probation Fee
ADMINISTRATIVE PROBATION FEE & VICTIM SERVICES SURCHARGE c.276 §87A ¶¶ 2-9	\$20 fee plus \$1 surcharge per month MANDATORY from defendant on administrative supervised probation • Exception: nonsupport convictions under c.273 §1 or §15 where support payments are a condition of probation.	
COUNSEL FEE c.211D §2A ¶2	\$150 fee MANDATORY when counsel appointed for defendant who is indigent or indigent but able to contribute unless court determines that defendant is "unable to pay"	• May be waived only for defendant who is unable to pay within 180 days. • Where not waived, judge may permit fee to be "worked off" with 10 hours of community service for each \$100 owed. • As to whether acquitted defendant may be entitled to remittal, see c.278 §14.
COUNSEL CONTRIBUTION c.211D §2 SJC Rule 3:10(10)(c)	"Reasonable amount" MANDATORY toward cost of counsel (in addition to Counsel Fee) when counsel appointed for defendant who is indigent but able to contribute.	• As to whether acquitted defendant may be entitled to remittal, see c.278 §14.
DEFAULT WARRANT FEE c.276 §§ 30 ¶1, 31 & 32	\$50 fee MANDATORY: • when a default warrant is recalled, or • when a default warrant is issued solely for defendant's failure to pay required moneys.	May be waived upon a finding of good cause.
DEFAULT WARRANT ARREST FEE c.276 § 30 ¶2	\$75 fee MANDATORY from defendant who is arrested on a default warrant (i.e., a warrant issued because of a default on a recognizance or upon surrender by a probation officer)	WAIVER REQUIRES COMMUNITY SVCE May be waived for indigency, whereupon defendant must perform 1 day of community service unless physically or mentally unable.

SPECIAL ASSESSMENTS FOR PARTICULAR OFFENSES

OUI § 24D FEE c.90, §24D ¶¶ 8-9	\$250 fee MANDATORY when defendant is placed in a driver alcohol education program pursuant to c.90 §24D disposition for OUI.	May be reduced, paid over time or waived if would cause "grave & serious hardship" to deft or family
OUI VICTIMS ASSESSMENT c.90, §24(1)(a)(1) ¶3	\$50 assessment MANDATORY upon conviction, CWOFF, probation, admission to sufficient facts or guilty plea for: • c.90 §24OUI • c.90 §24GVehicular Homicide involving OUI • c.90 §24JOUI with Serious Injury.	• Must be imposed "in addition to, and not in lieu of, any other fee imposed by the court" • "[S]hall not be subject to waiver by the court for any reason"
OUI & OP NEG HEAD INJURY ASSESSMENT c.90 §24(1)(a)(1) ¶2 & §24(2)(a) ¶2	\$250 assessment MANDATORY upon conviction, CWOFF, probation, admission to sufficient facts or guilty plea for: • c.90 §24(1)OUI/.08% • c.90 §24(2)Operating Negligently	"[S]hall not be subject to reduction or waiver by the court for any reason"

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<p>BATTERERS INTERVENTION PROGRAM ASSESSMENT c.209A §10</p>	<p>\$350 assessment MANDATORY when defendant is referred to a certified batterers intervention program as a condition of probation (in addition to cost of program, and any other fines, assessments or restitution imposed).</p>	<p>May be reduced or waived if indigent or if payment would cause defendant or dependents financial hardship</p>
<p>DRUG ANALYSIS FEE c.280 §6B</p>	<p>\$150-\$500 fee MANDATORY upon conviction or finding of sufficient facts of these felonies:</p> <ul style="list-style-type: none"> • c.94C §32 Distribute Class A Drug • c.94C §32A Distribute Class B Drug • c.94C §32B Distribute Class C Drug • c.94C §34 Possess Heroin, 2d offense. <p>\$35-\$100 fee MANDATORY upon conviction or finding of sufficient facts of these misdemeanors:</p> <ul style="list-style-type: none"> • c.94C §32C Distribute Class D Drug • c.94C §32D Distribute Class E Drug • c.94C §32G Distribute Counterfeit Drug • c.94C §35 Being Present Where Heroin Kept. <p>Maximum cumulative assessment is \$500.</p>	<p>May be reduced or waived if it would cause undue hardship</p>
<p>GPS FEE c.265 §47</p>	<p>\$287.44/month (\$9.45/day) fee MANDATORY from probationer who must wear GPS device as mandatory probation condition for</p> <ul style="list-style-type: none"> • any sexual offense that requires sex offender registration. 	<p>May be waived if defendant establishes inability to pay fee.</p>
<p>HATE CRIMES SURFINE c.265 §39(b)</p>	<p>\$100 surfine MANDATORY on any fine imposed for the following crimes under c265 §39:</p> <ul style="list-style-type: none"> • c.265 §39 Assault to Intimidate • c.265 §39 A&B to Intimidate • c.265 §39 A&B to Intimidate, with Bodily Injury • c.265 §39 Property Damage to Intimidate. <p>For multiple offenses, surfine applies to each.</p>	
<p>SPEEDING HEAD INJURY SURFINE c.90 §20 ¶4</p>	<p>\$50 surfine MANDATORY on any civil assessment imposed on a CMVI for:</p> <ul style="list-style-type: none"> • c.90 §17 Speeding • c.90 §17 Speeding in Constr Zone • c.90 §17 Speeding While Overweight • c.90 §18 Speeding in Viol of Special Regul unless accompanying a criminal charge and filed without assessment under c.90C §3(C)(3). 	
<p>209A VIOLATION ADDITIONAL FINE c.209A §7 ¶5</p>	<p>\$25 additional fine MANDATORY on conviction for:</p> <ul style="list-style-type: none"> • c.209A §7 Violation of Restraining Order in addition to other authorized penalties, including an optional fine of not more than \$5000. 	

¹ As to whether there is a cap on Victim/Witness Assessments for multiple juvenile delinquency charges, it is unclear whether the \$30 cap on "the total assessment against a person who has not attained seventeen years" (G.L. c.258B, § 8, fifth sentence, second clause) applies to juvenile delinquency charges as well as to juvenile CMVIs. It clearly did so prior to its 1990 amendment. If the \$30 cap does apply, it is unclear how to apply it after St. 2002, c.184, § 127 increased the assessment for a delinquency charge from \$30 to \$45 but, apparently by oversight, did not similarly increase the \$30 cap.

² General Laws c. 258B, § 8 requires a Victim/Witness Assessment from a juvenile who is "adjudicated a delinquent child or against whom a finding of sufficient facts for a finding of delinquency is made" but is silent as to a juvenile who is "adjudicated a youthful offender" (G.L. c. 119, § 58, third par.).