

Penalty Assessment and Surcharge Guide

Effective January 1, 2019

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INTRODUCTION

The passage of Laws 2018, Chapter 237 levies a new penalty assessment of \$9 under A.R.S. § 12-116.08 on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and civil penalties for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle, including parking violations, or for a violation of the game and fish statutes in Title 17. The new assessment is referred to as the “\$9 Victims’ Rights Assessment” in the surcharge guide. The bill requires that the courts impose the assessment where applicable but allows the assessment to be mitigated. The assessment is also subject to the 5% set-aside collected by the superior court, including the clerk of the court and the justice courts in each county. The assessment is effective as of January 1, 2019.

The passage of Laws 2018, Chapter 312 levies a new penalty assessment of \$4 under A.R.S. § 12-116.10 on every fine, penalty and forfeiture imposed and collected by the courts for civil penalties for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes (Title 28), for any local ordinance relating to the stopping, standing or operation of a vehicle, including parking violations and federal trucking violations. The new assessment is referred to as the “\$4 Peace Officer Training Equipment Fund” in the surcharge guide. This assessment is allowed to be mitigated. The assessment is effective as of January 1, 2019.

The prior combined surcharge percentages and their effective dates are:

<i>78%</i>	<i>1/1/2019-</i>
<i>83%</i>	<i>1/1/2012- 12/31/18</i>
<i>84%</i>	<i>9/19/07-12/31/11</i>
<i>80%</i>	<i>8/22/02-9/18/07</i>
<i>77%</i>	<i>9/01/99-8/21/02</i>
<i>70%</i>	<i>2/17/99-8/31/99</i>
<i>60%</i>	<i>9/01/96-2/16/99</i>
<i>59%</i>	<i>9/01/95-8/31/96</i>
<i>57%</i>	<i>1/01/94-8/31/95</i>

PART I
68% SURCHARGE, 10% CLEAN ELECTIONS SURCHARGE AND
ASSESSMENTS

1. *Are all surcharges percentage based?*

Yes, Laws 2011, Chapter 260, First Regular Session changed the terminology used from penalty assessment to surcharges in A.R.S. §§ 12-116.01 and -116.02. The surcharges apply in addition to any other legal financial obligations imposed for persons convicted of a criminal offense, found responsible for a civil traffic offense, found to have violated any local ordinance relating to stopping, standing or operating a vehicle, including parking violations, or for a violation of the game and fish statutes in title 17. Current surcharges include a 68% consolidated surcharge per A.R.S. §§ 12-116.01(G), (H), -116.02 and a 10% Clean Election Fund surcharge per A.R.S. § 16-954(A) which are calculated independent of each other. In 2011, the legislature added the \$13 2011 Additional Assessment; in 2014, it added the \$2 Victims' Rights Enforcement (effective January 1, 2015); and in 2018 it added the \$9 Victims' Rights Assessment (effective January 1, 2019) that are applied at the same time as surcharges.

Other assessments include:

- A Probation Assessment, a flat fee that increased to \$20 effective November 24, 2009 for all courts, except Maricopa County.
- The Probation Assessment within Maricopa County increased to \$20 effective July 1, 2008 by resolution of the Maricopa County Board of Supervisors at their meeting on May 7, 2008, pursuant to A.R.S. § 12-269(C). The Probation Assessment does not apply to parking violations.
- A \$4 Peace Officer Training Equipment Assessment for violations of Title 28 (both civil and criminal violations, local traffic violations, and federal trucking violations).

2. *Are the assessments and surcharges imposed based on violation date adjudication date?*

Assessments and surcharges are imposed based on date of the violation. The time payment fee is imposed on the date the sentence is imposed if the fine or penalty is not paid in full on that date.

3. *What assessments and surcharges are typically imposed, and of those, which are percentage based and which are flat dollar amount?*

If the violation occurred on or after January 1, 2019, assess the following surcharges:

Percentages

- 42% Criminal Justice Enhancement Fund (CJEF), A.R.S. § 12-116.01(A)
 - 13% Medical Services Enhancement Fund (MSEF), A.R.S. § 12-116.02(A)
 - 7% Fill The Gap Fund (FTG), A.R.S. § 12-116.01(B)
 - 6% AZ DPS Forensics Fund (ADPS), A.R.S. § 12-116.01(C)
-
- 10% Clean Elections Fund (CEF), A.R.S. § 16-954(A)

Flat dollar amount

- \$20.00 Probation Assessment, A.R.S. § 12-114.01(A)
- \$13.00 for the 2011 Additional Assessment, A.R.S. § 12-116.04(A)
- \$2.00 for the Victims' Rights Enforcement, A.R.S. § 12-116.09(A)
- \$9.00 for the Victims' Rights Assessment, A.R.S. § 12-116.08(A)
- \$4 Peace Officer Training Equipment Assessment, A.R.S. § 12-116.10

- 4. Per A.R.S. § 41-2421(C), 5% of all collections from superior court and justice courts are to be set aside to be potentially used for local Fill the Gap. Are the 68% percent surcharge, 10% Clean Elections Fund Surcharge, \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment, and the \$20 Probation Assessment all subject to the 5% set aside?**

Yes, per A.R.S. § 41-2421, the only monetary obligations not subject to the 5% set aside are the 10% CEF surcharge, restitution, child support, bonds, and costs assessed for services not provided by the courts. The Supreme Court adopted guidelines regarding the collection of revenues pursuant to subsections A and C of the statute in the [Arizona Code of Judicial Administration, § 5-103: Enhanced Collections](#).

- 5a. What types of violations are the surcharges, the \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment, and \$20 Probation Assessment imposed on?**

Surcharges and assessments shall be levied on every fine, penalty, and forfeiture, imposed and collected by the courts for:

- Criminal offenses,
- Civil penalties for violations of motor vehicle statutes,
- Violations of local ordinances relating to stopping, standing or operation of a vehicle,
- Violations of game and fish statutes in Title 17.

5b. Are there any exceptions?

Yes, there are exceptions. The \$20 Probation Assessment is **NOT** imposed on violations of local parking ordinances. The \$4 Peace Officer Training Equipment Assessment is **NOT** imposed on Title 13 or Title 17 criminal violations, but only on civil or criminal violations of Title 28, local traffic violations, and federal trucking violations.

6a. Are all assessments and surcharges eligible for mitigation?

No, the following **may not** be mitigated:

- Victim Restitution without victim approval (A.R.S. §13-603C)
- Mandatory Criminal Fines (A.R.S. §13-825A)
- 10% CEF Surcharge on Mandatory Criminal Fines (A.R.S. §16-954A)
- Time Payment Fee (A.R.S. §12-116)
- Mandatory DUI Surcharges and Assessments (A.R.S. §28-1389)
- Dangerous Crimes Against Children and Sexual Assault Assessment (A.R.S. §12-116.07)

6b. Are all assessments and surcharges eligible for community restitution?

No, the following **are not** eligible for community restitution:

- Victim Restitution without victim approval (A.R.S. §13-603C)
- 10% CEF Surcharge (A.R.S. §16-954A)
- Dangerous Crimes Against Children and Sexual Assault Assessment (A.R.S. §12-116.07)
- \$50 Address Confidentiality Assessment (ARS §12-116.05)
- \$50 Family Offenses Assessment (ARS §12-116.06)
- \$9 Victims' Rights Assessment (ARS §12-116.08)
- \$2 Victims' Rights Enforcement (ARS §12-116-09)

7. How is the 68% surcharge plus the 10% Clean Election Fund calculated? How is the total, including the \$20 Probation

Assessment and the \$4 Peace Officer Training Equipment Assessment, calculated?

Multiply the base fine or penalty amount by each percentage surcharge, the .42 (42% CJEF), the .13 (13% MSEF), the .10 (10% CEF), the .07 (7% FTG) and the .06 (6% ADPS). Add these amounts together. Then add the \$20 Probation Assessment, \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, and \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic violations, and federal trucking violations).

EXAMPLE: The judge orders a \$100 fine or penalty, plus surcharges and assessments.

\$ 100.00	Base fine
\$ 42.00	CJEF (\$100 base fine x 42%)
\$ 13.00	MSEF (\$100 base fine x 13%)
\$ 10.00	CEF (\$100 base fine x 10%)
\$ 7.00	FTG (\$100 base fine x 7%)
\$ 6.00	ADPS (\$100 base fine x 6%)
<hr/>	
\$ 178.00	TOTAL FINE AND 68% SURCHARGE AND 10% CLEAN ELECTIONS

Then add the \$20 Probation Assessment, the \$13 2011 Additional Assessment \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, and \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic violations, and federal trucking violations only)

\$ 178.00	Total fine and 78% surcharges
\$ 20.00	Probation Assessment
\$ 13.00	2011 Additional Assessment
\$ 2.00	Victims' Rights Enforcement
\$ 9.00	Victims' Rights Assessment
\$ 4.00	Peace Officer Training Equip Assessment (if applicable)
<hr/>	
\$ 226.00	TOTAL FINE

8. Can the 42% CJEF, 13% MSEF, 10% CEF, 7% FTG and 6% APDS be treated as one 78% surcharge?

Yes, until the court distributes money collected to the city or county treasurer or if the court modifies the surcharge or the base fine or penalty amount. (See questions #17, #18, #19 and #20.)

9. Can the \$20 Probation Assessment, the \$13 2011 Additional Assessment, the \$2 Victims' Rights Enforcement, the \$9 Victims'

Rights Assessment, and \$4 Peace Officer Training Equipment Assessment be included with the 68% surcharge and the 10% Clean Elections?

No, the \$20 Probation Assessment, the \$13 2011 Additional Assessment, the \$2 Victims' Rights Enforcement, the \$9 Victims' Rights Assessment, and the \$4 Peace Officer Training Equipment Assessment may not be included with the 68% surcharge and the 10% Clean Elections. These assessments are flat dollar amounts not a percentage of the base fine or penalty; therefore, are added and accounted for separately.

10. *What proportion of the 68% surcharge are the 42% CJEF, 13% MSEF, 7% FTG and 6% APDS surcharges?*

Regardless of the amount for fines or penalties imposed for violations occurring on or after January 1, 2019:

- the 42% CJEF surcharge is 61.77% of the 68% surcharges
- the 13% MSEF surcharge is 19.12% of the 68% surcharges
- the 7% FTG surcharge is 10.29% of the 68% surcharges
- the 6% APDS surcharge is 8.82% of the 68% surcharges

These proportions are derived by dividing the individual surcharge percentage by the total surcharge of 68%, as illustrated below:

$$\frac{42\%}{68\%} \quad \text{CJEF surcharge} \\ \text{divided by the } 68\% \text{ surcharges} = 61.77\%$$

$$\frac{13\%}{68\%} \quad \text{MSEF surcharge} \\ \text{divided by the } 68\% \text{ surcharges} = 19.12\%$$

$$\frac{7\%}{68\%} \quad \text{FTG surcharge} \\ \text{divided by the } 68\% \text{ surcharges} = 10.29\%$$

$$\frac{6\%}{68\%} \quad \text{APDS surcharge} \\ \text{divided by the } 68\% \text{ surcharges} = 8.82\%$$

The 10% Clean Elections is not included when calculating the individual surcharge percentage as it is always calculated at 10% of the final base fine or penalty imposed.

11. What percent are each of the surcharges and assessments relative to the total due?

The percent each surcharge is to the total due varies from case to case. In order to determine what the percent is, the base fine or penalty amount has to be determined. Multiply the base by .68 to determine the amount of the 68% surcharges. Multiply the base amount by .10 to determine the amount of the Clean Elections Fund. Then add the base amount, 68% surcharges, 10% Clean Elections, \$13 for the 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, the \$20 Probation Assessment, and \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic violations, and federal trucking violations) to determine the total due. See the example below:

Example: \$100 Base fine

\$	100.00	Base fine
\$	68.00	68% surcharges
\$	10.00	10% Clean Elections Fund
\$	20.00	Probation surcharge
\$	2.00	Victims' Rights Enhancement
\$	9.00	Victims' Rights Assessment
\$	4.00	Peace Officer Training Equipment Assessment (if applicable)
\$	13.00	2011 Additional assessment
\$	<u>226.00</u>	Total fine

After the total due is calculated, divide the amount of the base fine or penalty by the total due to determine the percent the base amount is to the total due. Follow the same steps to calculate the percent that the 68% surcharges and the 10% Clean Elections are to the total due. The same applies to each assessment. The percentage of the total due changes dependent on the amount of the base amount imposed. No matter how the proportions change per case, the method for calculating the proportion remains the same.

Example (includes \$4 Officer Equipment Assessment):

10%
Total Due

The 10% Clean Elections Fund % equals the 10% Clean amount divided by the Total Amount Due

\$20
Total due

The \$20 Probation Assessment % equals the \$20 Probation Assessment amount divided by the Total Amount Due

\$13
Total due

The \$13 2011 Additional Assessment % equals the \$13 2011 Additional Assessment amount divided by the Total Amount Due

\$2
Total due

The Victims' Rights Enforcement % equals the \$2 Victims' Rights Enforcement amount divided by the Total Amount Due

\$9
Total due

The Victims' Rights Assessment % equals the \$9 Victims' Rights Assessment amount divided by the Total Amount Due

\$4
Total due

The Peace Officer Training Equipment Assessment % equals the \$4 Peace Officer Training Equipment Assessment amount by the Total Amount Due

<u>\$ 100.00</u>	44.25%	Base fine is 44.25% of the Total Amount Due
\$ 226.00		
<u>\$ 68.00</u>	30.09%	68% surcharge is 30.09% of the Total Amount Due
\$ 226.00		
<u>\$ 10.00</u>	4.42%	10% Clean Elections Fund is 4.42% of the Total Amount Due
\$ 226.00		
<u>\$ 20.00</u>	8.85%	\$20 Probation Assessment is 8.85% of the Total Amount Due
\$ 226.00		
<u>\$ 13.00</u>	5.75%	\$13 2011 Additional Assessment is 5.75% of the Total Amount Due
\$ 226.00		
<u>\$ 2.00</u>	0.88%	\$2 Victims' Rights Enforcement Fund is .88% of the Total Amount Due
\$ 226.00		
<u>\$ 9.00</u>	3.98%	\$9 Victims' Rights Assessment Fund is 3.98% of the Total Amount Due
\$ 226.00		
<u>\$ 4.00</u>	1.77%	\$4 Peace Officer Training Equipment Assessment is 1.77% of the Total the Total Amount Due
\$ 226.00		

12. If the judge ordered an amount due which includes both fine or penalty and surcharges how are the fine or penalty and surcharges determined?

If the court is assessing only one total including the 68% surcharge and 10% Clean Elections Fund along with \$13 2011 Additional Assessment, \$2 for the Victims' Rights Enforcement, \$9 for the Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic ordinances, and federal trucking violations only), and \$20 Probation Assessment, first subtract the \$13 Additional Assessment, the \$2 Victims' Rights Enforcement, the \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment, and the \$20 Probation Assessment from the total amount ordered, then divide the remainder by 1.78 (68% surcharge plus the 10% CEF) to determine the base fine amount due. The balance is the surcharges and assessments.

Example: The judge orders a \$207.00 fine including surcharges.

\$ 207.00	TOTAL DUE
\$ (20.00)	Less \$20 probation surcharge
\$ (2.00)	Less \$2 victims' rights enforcement
\$ (9.00)	Less \$9 victims' rights assessment
\$ (4.00)	Less \$4 peace officer training equipment assessment (if applicable)
<u>\$ (13.00)</u>	Less \$13 2011 additional assessment
\$ 159.00	Total fine including 68% surcharges and 10% CEF
\$ 159.00	TOTAL FINE including 68% Surcharge and 10% CEF
<u>\$ 1.78</u>	divided by 1.78
\$ 89.33	Base Fine Amount
\$ 159.00	TOTAL FINE including 68% Surcharge and 10% CEF
<u>\$ (89.33)</u>	Less Fine or Penalty
\$ 69.67	78% Surcharge

The 68% surcharge and the 10% CEF amount must be divided proportionately into the five separate surcharges before monies are remitted or reported to the city or county treasurer. (Refer to question #25 for an example of allocating funds manually.)

If the court imposes the 47% CJEF, 13% MSEF, 7% FTG, 6% ADPS, and 10% CEF along with the fine or penalty, \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic violations, and federal trucking violations only), and \$20 Probation Assessment as one amount, but posts them separately, the following

example shows the steps that are used to determine how much goes to the fine or penalty, each individual assessment from the total amount ordered. Divide the remainder of total amount ordered by 1.78 to determine the fine or penalty amount due. Multiply the fine or penalty by each of the five surcharge percentages to determine the dollar amount for each surcharge.

Example: The judge orders a \$103.00 fine or penalty, including surcharges.

\$	55.00	TOTAL FINE AND PENALTY INCLUDING 68% SURCHARGES AND 10% CEF
	1.78	divided by 1.78 = Fine of \$30.90
\$	30.90	Base fine
\$	12.98	CJEF (\$30.90 base fine x 42%)
\$	4.02	MSEF (\$30.90 base fine x 13%)
\$	3.09	CEF (\$30.90 base fine x 10%)
\$	2.16	FTG (\$30.90 base fine x 7%)
\$	1.85	ADPS (\$30.90 base fine x 6%)
\$	55.00	TOTAL FINE AND PENALTY INCLUDING 68% SURCHARGES AND 10% CEF DUE

13. May the total amount due be rounded?

Yes, pursuant to A.R.S. § 12-116.01(C) and 12-116.02(C), after the surcharges are added, the total amount may be rounded up or down to the nearest quarter-dollar. For the convenience of court operations, judges can make the total of fine or penalty and surcharges whole dollars, which alleviates the need to round to the quarter dollar. However, if the total due is in dollars and cents, there are three alternatives for distributing the increase or decrease. The court must select one of the following options and use this option consistently for every case:

The first step in any of the options is to subtract out the 10% Clean Elections, \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Assessment (Title 28, local traffic, and federal trucking violations only) and the \$20 Probation Assessment. Then:

- 1) Add or subtract, to or from the fine or penalty, the difference between the actual remaining total amount due and the rounded total.
- 2) Add or subtract, to or from the 68% surcharge, the difference between the actual remaining total amount due and the rounded total.

- 3) When **rounding up**, take the difference between the actual remaining total amount due and the rounded total and divide it by 1.68. Add that amount to the base amount and add the rest to the 68% surcharge.

When **rounding down**, take the difference between the actual remaining total amount due and the rounded total and divide it by 1.68. Subtract that amount from the base fine and subtract the rest from the surcharges.

Divide the 68% surcharge into CJEF, MSEF, FTG and APDS portions before sending monies collected to the city or county treasurer. (Refer to question # 24 for an example of allocating funds manually.)

14. Does the time payment fee still exist?

Yes. The time payment fee is still a mandatory assessment on each defendant that does not pay his/her penalty, fine or sanction on the day it was imposed. (Refer to [A.C.J.A. §§ 3-401](#) and [4-301](#) for information on the Priority of Offender Payments including the time payment fee and [§ 5-103 for Enhanced Collections](#), also known as the Fill the Gap 5% set aside.)

15. Is the time payment fee added before or after the surcharges have been imposed?

The time payment fee is added after the surcharges have been imposed on the base fine. The time payment fee is imposed after it has been determined the defendant has not or will not pay his/her penalty, fine or sanction on the day imposed. The time payment fee is mandatory and cannot be waived.

- For sentences imposed for offenses committed on or after January 1, 1998 the time payment fee is \$20.
- For sentences imposed for offenses committed on or after April 22, 1993 through December 31, 1997, the time payment fee is \$12.
- For sentences imposed for offenses on or after June 28, 1989 through April 21, 1993, the time payment fee is \$8.

Part II
**COMMUNITY RESTITUTION ALLOCATION AND PROPORTIONAL
REDUCTION**

16. *May the judge order that monetary obligations in criminal cases be satisfied by way of community restitution if the defendant is unable to pay?*

Yes, A.R.S. § 13-824 expressly authorizes a court to order satisfaction of monetary obligations by way of community restitution in criminal cases and civil traffic cases. In addition, A.R.S. § 13-824 states that “notwithstanding any other law...” the court may permit community restitution in lieu of monetary obligations. Therefore, fines, penalties fees, some assessments, and incarceration costs imposed in criminal cases may be satisfied with community restitution at a rate of \$10.00 per hour, if the court finds that the defendant cannot pay the fine, fees, penalties, assessments, or incarceration costs. However, the following surcharges and assessments are **not eligible** for satisfaction by way of community restitution.

- Reimbursable costs are costs for services by entities other than the court including, but not limited to, costs for public defender services, laboratory services, electronic monitoring services, treatment provider services, etc.
- Victim Restitution (ARS §13-804)
- \$50 Address Confidentiality Assessment (ARS §12-116.05)
- \$50 Family Offenses Assessment (ARS §12-116.06)
- Dangerous Crimes Against Children and Sexual Assault Assessment (ARS §12-116.07)
- \$9 Victims’ Rights Assessment (ARS §12-116.08)
- \$2 Victims’ Rights Enforcement (ARS §12-116.09)
- 10% Clean Election Fund Surcharge (ARS §16-954A)

Please see the Q&A document at the following link:
<http://ajinweb/csd/cou/SB1116QA%20final.pdf>

17. *May the judge mitigate the total amount of fine or penalty and surcharges if the payment would work a hardship on a person?*

Yes. If a reduction is made, the fine and surcharges must be reduced proportionately. However, if a mandatory criminal fine is included, the amount may not be reduced to an amount less than the mandatory criminal minimum fine plus the 10% Clean Election Fund surcharge. The 2011 Additional Assessment and the Victims’ Rights

Enhancement Assessment requires the courts impose the assessment where applicable but does not specifically prohibit the court from waiving or reducing the amount of these assessment.

However, there are exceptions to the provisions of A.R.S. §§ 12-116.01 and 12-116.02 (the 68% consolidated surcharge) allowing reduction of surcharges. Effective March 13, 2004, the additions to the operating under the influence statutes of A.R.S. §§ 5-395.01, 28-1389 and 28-8292 **prohibit** the court from waiving a fine or assessment pursuant to those articles or a surcharge imposed pursuant to section 12-116.01 or 12-116.02. This means that the court **cannot** reduce the total fines, surcharges, civil assessments and PCOF for any conviction for operating under the influence statutes. Additionally, pursuant to A.R.S. §§ 13-804 (victim restitution, without victim consent), 13-825A (mandatory criminal fines), 12-116 (time payment fee), and 12-116.07 (sexual assault assessments) are **prohibited** from mitigation.

18. How are all civil traffic penalties and non-mandatory criminal fines and surcharges proportionately reduced?

To proportionately reduce any civil traffic penalty or non-mandatory criminal fine and surcharges for a violation occurring on or after September 19, 2007, the original assessment must be determined first. In this example, the original assessment is:

\$ 100.00	Original Base Fine or Penalty
\$ 68.00	68% surcharge (\$100 base fine x .68)
\$ 10.00	10% CEF surcharge (\$100 base fine x .10)
\$ 20.00	\$20 Probation Assessment
\$ 2.00	\$2 Victims' Rights Enforcement
\$ 9.00	\$9 Victims' Rights Assessment
\$ 4.00	\$4 Peace Officer Training Equipment Assessment (if applicable)
\$ 13.00	\$13 2011 Additional Assessment
<u>\$ 226.00</u>	ORIGINAL TOTAL AMOUNT DUE

- If the judge waives one-half the base fine, penalty or total amount due the new totals are:

\$ 50.00	Original Base Fine or Penalty
\$ 34.00	68% surcharge (\$50 base fine x .68)
\$ 5.00	10% CEF surcharge (\$50 base fine x .10)
\$ 10.00	Half of the \$20 Probation Assessment
\$ 1.00	Half of the \$2 Victims' Rights Enforcement
\$ 4.50	Half of the \$9 Victims' Rights Assessment
\$ 2.00	Half of the \$4 Peace Officer Training Assessment (if applicable)
\$ 6.50	Half of the \$13 2011 Additional Assessment
<u>\$ 113.00</u>	NEW TOTAL AMOUNT DUE

If the judge reduces the original total amount due to a total of \$35, first determine the percentage of the fine or penalty, the 68% surcharge, 10% CEF Surcharge, \$20 Probation Assessment, \$2 Victims' Rights Enforcement Assessment, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Assessment (Title 28, local traffic, and federal trucking violations only), and \$13 2011 Additional Assessment are to the total amount due. Then multiply the \$35 by those percentages to determine the amount of the fine and surcharges. *Surcharge percentage and assessments will vary based on date of violation and type of charge filed.*

Example: Original Total Due: \$226.00

\$ <u>100.00</u>	44.25% = Base fine or penalty to total
\$ 226.00	
\$ <u>68.00</u>	30.09% = 68% surcharge to total
\$ 226.00	
\$ <u>10.00</u>	4.42% = 10% CEF surcharge to total
\$ 226.00	
\$ <u>20.00</u>	8.85% = \$20 probation assessment
\$ 226.00	
\$ <u>13.00</u>	5.75% = \$13 2011 additional assessment
\$ 226.00	
\$ <u>9.00</u>	3.98% = \$9 victims' rights assessment
\$ 226.00	
\$ <u>2.00</u>	0.88% = \$2 victims' rights enhancement
\$ 226.00	
\$ <u>4.00</u>	1.77% = \$4 peace officer training equipment assessment (if applicable)
\$ 226.00	

\$ 35.00 NEW TOTAL FINE AND SURCHARGES DUE

\$ 35.00	X	44.25%	= \$ 15.49	New base fine
\$ 35.00	X	30.09%	= \$ 10.53	68% surcharge
\$ 35.00	X	4.42%	= \$ 1.55	10% CEF surcharge
\$ 35.00	X	8.85%	= \$ 3.09	Probation Assessment
\$ 35.00	X	5.75%	= \$ 2.01	2011 Additional Assessment
\$ 35.00	X	3.98%	= \$ 1.39	Victims' Rights Assessment
\$ 35.00	X	0.88%	= \$ 0.31	Victims' Rights Enforcement
\$ 35.00	X	1.77%	= \$ 0.62	Peace Officer Training Equipment Fund (if applicable)

19. How are MANDATORY criminal fines and surcharges mitigated?

If an amount which includes a mandatory minimum criminal fine is mitigated, the base fine amount may not be reduced to an amount less than the mandatory minimum plus the 10% CEF surcharge. The remaining percentage surcharges and Assessments must be reduced proportionately. The statute does not permit you to reduce or waive one percentage of the 68% surcharge and not the other ones. The 10% CEF surcharge **may not be reduced** and must remain at the 10% of the final base fine imposed.

The additions to the Operating Under the Influence statutes of A.R.S. §§ 5-395.01, 28-1389 and 28-8292 **prohibit** the court from waiving a fine or assessment pursuant to those articles or a surcharge imposed pursuant to section 12-116.01 or 12-116.02.

The following information does not apply to violations of A.R.S. §§ 5-395.01, 5-395, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8282, 28-8284, 28-8286, 13-8287 and 28-8288.

For violations that occur on or after January 1, 2019:

To proportionately reduce an amount which includes a mandatory minimum criminal fine for a violation, which occurs on or after September 19, 2007, the original amount imposed must be determined first.

In this example, the original amount imposed is:

\$ 300.00	Original Mandatory Base Fine
\$ 204.00	68% surcharge (\$300 base fine x .68)
\$ 30.00	10% CEF (\$300 base fine x .10)
\$ 20.00	\$20 Probation Assessment
\$ 2.00	\$2 Victims' Rights Enforcement
\$ 9.00	\$9 Victims' Rights Assessment
\$ 4.00	\$4 Peace Officer Training Equipment Fund (if applicable)
\$ 13.00	\$13 Additional Assessment
<u>\$ 582.00</u>	ORIGINAL TOTAL AMOUNT DUE

If the judge reduces the original total amount due to \$400.00:

- 1) Determine the percentage the 68% surcharges, 10% CEF Surcharge, \$13 2011 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Fund (Title 28, local traffic violations, federal trucking violations), and \$20 Probation Assessment are to the total surcharges.

\$ 300.00	Original Mandatory Base Fine
\$ 204.00	68% surcharge (\$300 base fine x .68)
\$ 30.00	10% CEF surcharge (\$300 base fine x .10)
\$ 20.00	\$20 Probation Assessment
\$ 2.00	\$2 Victims' Rights Enforcement
\$ 9.00	\$9 Victims' Rights Assessment
\$ 4.00	\$4 Peace Officer Training Equipment Fund (if applicable)
\$ 13.00	\$13 Additional Assessment
<u>\$ 582.00</u>	ORIGINAL TOTAL AMOUNT DUE

\$ 582.00	Original total amount due
<u>\$ (300.00)</u>	Mandatory minimum base fine
\$ 282.00	Total surcharges and assessments due

\$ 282.00	
<u>\$ (30.00)</u>	\$30 10% CEF surcharge
\$ 252.00	NOTE: This is always .10 times the mandatory minimum fine

\$ 252.00	Total consolidated surcharges and assessments
<u>\$ (20.00)</u>	\$20 Probation Assessment
\$ 232.00	

\$ 232.00	
<u>\$ (13.00)</u>	\$13 2011 Additional Assessment
\$ 219.00	

\$ 219.00	
<u>\$ (2.00)</u>	\$2 Victims' Rights Enforcement
\$ 217.00	

\$ 217.00	
<u>\$ (9.00)</u>	\$9 Victims' Rights Assessment
\$ 208.00	

\$ 208.00	
<u>\$ (4.00)</u>	\$4 Peace Officer Training Equipment Fund (if applicable)
\$ 204.00	

$$\frac{\$ 204.00}{\$ 252.00} = 80.95\%$$

Total consolidated surcharges and assessments

NOTE: This equals the 68% Consolidated Surcharge

$$\frac{\$ 20.00}{\$ 252.00} = 7.94\%$$

Total consolidated surcharges and assessments

$$\frac{\$ 13.00}{\$ 252.00} = 5.16\%$$

Total consolidated surcharges and assessments

$$\frac{\$ 2.00}{\$ 252.00} = 0.79\%$$

Total consolidated surcharges and assessments

$$\frac{\$ 9.00}{\$ 252.00} = 3.57\%$$

Total consolidated surcharges and assessments

$$\frac{\$ 4.00}{\$ 252.00} = 1.59\%$$

Total consolidated surcharges and assessments

- 2) Subtract the mandatory base fine and the 10% CEF surcharge from the new total amount due:

\$ 400.00	New total amount due
\$ (330.00)	Mandatory base fine and 10% CEF (may not be reduced)
\$ 70.00	Amount to be divided proportionately between the 68% surcharge, \$13 Additional Assessment, \$2 Victims' Rights Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment

Fund (Title 28, local traffic, and federal trucking violations), and \$20 Probation Assessment.

- 3) Multiply the \$70.00 by the proportion for each of the surcharges and assessments and then add the new amounts to the mandatory base fine:

\$ 56.67	68% surcharges (\$70 x 80.95%)
\$ 5.56	\$20 Probation Assessment (\$70 x 7.94%)
\$ 3.61	\$13 2011 Additional Assessment (\$70 x 5.16%)
\$ 0.55	\$2 Victims' Rights Enforcement (\$70 x .79%)
\$ 2.50	\$9 Victims' Rights Assessment (\$70 x 3.57%)
\$ 1.11	\$4 Peace Officer Training Equipment Fund (\$70 x 1.59%)
<u>\$ 70.00</u>	
\$ 70.00	Total Surcharges and Assessments
\$ 300.00	Mandatory Base Fine
\$ 30.00	10% CEF
<u>\$ 400.00</u>	Total Amount Due

20. May the judge waive or reduce the surcharges if the payment would work a hardship on a person?

Yes, if the total amount due includes a **mandatory** minimum criminal fine. Only the 68% surcharges are waived or reduced proportionately in this case. (Refer to question #19 for example.) The court may waive all or part of the Probation Assessment in the same manner and subject to the same limitations provided for the waiver of surcharges in section 12-116.01, subsection F and section 12-116.02, subsection D. As of January 1, 2018 the court is not to include the 10% CEF fund in the waiver or reduction as it is tied to the final base fine imposed and collected.

Effective March 13, 2004, there are **exceptions** to the provisions of A.R.S. §§ 12-116.01 and 12-116.02 allowing reduction of surcharges. The additions to the Operating Under the Influence statutes of A.R.S. §§ 5-395.01, 28-1389 and 28-8292 **prohibit** the court from waiving a fine or assessment pursuant to those articles or a surcharge imposed pursuant to section 12-116.01 or 12-116.02.

No, if the total amount due includes a civil traffic penalty or a **non-mandatory** minimum criminal fine. The fine or penalty and surcharges must be reduced proportionately in this case. ¹ (Refer to question #18 for example.)

¹ A.R.S. § 12.116.01(F). The judge may waive all or part of any civil penalty, fine, forfeiture and thus reduce the percentage based surcharges, except for mandatory criminal fines, the payment of which would work a hardship on the persons convicted or adjudicated or on their immediate families. If a criminal fine is mandatory, the judge may waive only all or part of the surcharges prescribed by subsections A, B and C of this section and section 12-116.02. If a criminal fine is not

Part III

PAYMENT DISTRIBUTION

21. How are partial payments applied to fines or penalties and surcharges?

Partial payments received on amounts imposed for violations that occur from and after January 1, 1994 are applied proportionately to the fine, penalty and surcharges. There are several ways of doing this. Each court should use the method that works best based on its operations. Below are examples showing partial payments received for violations occurring on and after January 1, 2019.

The following fine, penalty and surcharge proportions are used when applying payments to fines, penalties and surcharges imposed for violations occurring on or after September 19, 2007, unless the amount due includes surcharges which were reduced or waived on a mandatory fine or sanction. If the amount due includes a mandatory criminal fine and the surcharges were reduced or waived, new proportions would need to be calculated. (Refer to question #19 for examples on how payments are applied.)

First, the total amount due (base amount + 68% surcharge + 10% CEF surcharge + \$13 for the 2011 Additional Assessment + \$20 for the Probation Assessment + \$2 Victims' Rights Enforcement + \$9 Victims' Rights Assessment + \$4 Peace Officer Training Equip (for Title 28, local traffic violations, and federal trucking violations) needs to be calculated. Then the percent each component is to the total amount due needs to be calculated. The percent varies from case to case (Refer to question # 11 for examples on how to perform these calculations)

These proportions are found by dividing the fines, assessments and surcharges individually by the combined total of fines, assessments and surcharges (Refer to question #12 for additional information).

To demonstrate, in this example, payments are applied to an account established for an individual who was convicted of a violation, which occurred on or after January 1, 2019. The court imposed a \$250 fine + \$170.00 68% surcharge + \$25 10% CEF surcharge + \$20 Probation Assessment + \$13 for the 2011 Additional Assessment + \$2 Victims' Rights Enforcement + \$9 Victims' Rights Assessment + \$4 Peace Officer

mandatory and if a portion of the civil penalty, fine, forfeiture and surcharge is waived or suspended, the amount assessed must be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.

Training Equipment Fund (Title 28, local traffic violations, and federal trucking violations) + \$20 time payment fee, for a total due of \$513.00.

REMEMBER: Payments are **always** applied to restitution first, then to the JCEF time payment fee, pursuant to A.R.S. § 12-116, and then in the order listed in ACJA §§3-401 (General Jurisdiction Priority of Offender Payments) and 4-301 (Limited Jurisdiction Priority of Offender Payments). Payments to fines or penalties and surcharges are applied proportionally. Note that in this example, no restitution or any fees aside from the time payment fee, fine or penalty and surcharges is due. Payment of \$200 was collected the same day the fine was imposed. First, apply \$20 to the time payment fee. Then, apply the remaining \$180 proportionately to the fine or penalty and surcharges. To determine how to proportionally divide the payment, the fine and the surcharges must be calculated as a percentage of the \$180 payment.

Example:

NOTE: The \$4 Peace Officers Training Equipment Assessment only applies to Title 28 charges, local traffic violations, and federal trucking violations)

\$	250.00	Base fine
\$	20.00	Time Payment Fee
\$	170.00	68% surcharge
\$	25.00	10% CEF surcharge
\$	20.00	\$20 probation surcharge
\$	2.00	\$2 Victims' Rights Enhancement
\$	9.00	\$9 Victims' Rights Assessment
\$	4.00	\$4 Peace Officers Training Equipment Fund (if applicable)
\$	13.00	\$13 Additional Assessment
\$	513.00	Total fine and surcharges due

<u>\$ 170.00</u>	68% surcharge = 34.48%
\$ 513.00	Total due
<u>\$ 25.00</u>	10% CEF surcharge = 5.07%
\$ 513.00	Total due
<u>\$ 20.00</u>	\$20 Probation Assessment =4.06%
\$ 513.00	
<u>\$ 2.00</u>	\$2 Victims' Rights Assessment =0.41%
\$ 513.00	
<u>\$ 9.00</u>	\$9 Victims' Rights Enhancement=1.83%
\$ 513.00	
<u>\$ 4.00</u>	\$4 Peace Officer Training Equipment Fund (if applicable)=0.81%
\$ 513.00	
<u>\$ 13.00</u>	\$13 Additional Assessment =2.64%
\$ 513.00	

Multiply the \$180 by the resulting proportions identified above

\$ 180.00	x	48.73%	=	\$87.72	Base fine or penalty
\$ 180.00	x	33.14%	=	\$59.65	68% surcharge
\$ 180.00	x	4.87%	=	\$8.77	10% CEF surcharge
\$ 180.00	x	3.90%	=	\$7.02	\$20 probation assessment
\$ 180.00	x	0.39%	=	\$0.70	\$2 victims' rights assessment
\$ 180.00	x	1.75%	=	\$3.16	\$9 victims' rights enhancement
\$ 180.00	x	0.78%	=	\$1.40	\$4 peace officer training equipment fund (if applicable)
\$ 180.00	x	2.53%	=	\$4.56	\$13 additional assessment

Case Financial Record

Distribution		Time Payment	Base Fine	68% State + 10% CEF Surch	Probation Assess't	2011 Add'l Assess't	Victims' Assess't	Victims' Enhan	Peace Officer Train Equip	Total
Total Judgment		\$20.00	\$250.00	\$195.00	\$20.00	\$13.00	\$2.00	\$9.00	\$4.00	\$513.00
Payment #1	\$200.00	-\$20.00	-\$91.28	-\$71.19	-\$7.31	-\$4.75	-\$0.74	-\$3.28	-\$1.46	-\$200.00
New Balance Due		\$0.00	\$158.72	\$123.81	\$12.69	\$8.25	\$1.26	\$5.72	\$2.54	\$313.00

A few weeks later, the person makes a \$200 payment. Multiply the \$200 by 50.71% to determine the amount to be applied to the fine. Multiply the \$200 by 37.06% then multiply the \$200 by 5.07% to determine the amount to be applied to the surcharges. Multiply the \$200 by 4.06% to determine the amount to be applied to the Probation Assessment. Multiply the \$200 by 2.64% to determine the amount to be applied to the 2011 Additional Assessment. Multiply the \$200 by 0.41% to determine the amount to be applied to the \$2 Victims' Rights Assessment. Multiply the \$200 by 1.83% to determine the amount to be applied to the \$9 Victims' Rights Enhancement Assessment. Multiply the \$200 by 0.81% to determine the amount to be applied to the \$4 Peace Officer Training Enhancement Fund.

Distribution		Time Payment	Base Fine	73% State + 10% CEF Surch	Probation Assess't	2011 Add'l Assess't	Victims' E Assess't	Victims' Enhan	Peace Officer Train Equip	Total
Total Judgment		\$0.00	\$158.72	\$123.81	\$12.69	\$8.25	\$1.26	\$5.72	\$2.54	\$313.00
Payment #2	\$200.00	\$0.00	-\$101.42	-\$79.10	-\$8.12	-\$5.26	-\$0.82	-\$3.66	-\$1.62	-\$200.00
New Balance Due		\$0.00	\$57.30	\$44.71	\$4.57	\$2.99	\$0.44	\$2.06	\$0.92	\$113.00

The person makes a final payment. Apply it to the outstanding balance.

Distribution		Time Payment	Base Fine	73% State + 10% CEF Surch	Probation Assess't	2011 Add'l Assess't	Victims' Assess't	Victims' Enhan	Peace Officer Train Equip	Total
Total Judgment		\$0.00	\$57.30	\$44.71	\$4.57	\$2.99	\$0.44	\$2.06	\$0.92	\$113.00
Payment #3	\$113.00	\$0.00	-\$57.30	-\$44.71	-\$4.57	-\$2.99	-\$0.44	-\$2.06	-\$0.92	-\$113.00
New Balance Due		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

22. When partial payments are applied proportionately, does that mean 50% of the payment goes to the fine or penalty, and 50% goes to the surcharges?

No. When applying a partial payment proportionately, divide the payment in proportion to what the unpaid components represent to the total unpaid balance. Include

restitution, time payments fee, fines, penalties 68% surcharges, 10% CEF Surcharge, \$13 for the 2011 Additional Assessment, \$2 Victims' Enforcement, \$9 Victims' Rights Assessment, \$4 Peace Officer Training Equipment Fund (for Title 28, local traffic violations, and federal trucking violations), \$20 Probation Assessment, and local assessments. The percentages vary from case to case. (Refer to number #17).

23. *How are payments applied to fines and surcharges imposed if the amount due includes a MANDATORY criminal fine AND the surcharges were reduced?*

When surcharges are reduced on mandatory criminal fines, the proportions will be different from one case to the next. The method for determining the proportions will be the same no matter when the violation occurred. To determine the proportions of fine and surcharges, divide the fine amount by the total of the fines and surcharges. Then divide the surcharge amount by the total of fine and surcharges. (Refer to number 18).

24. *How are partial payments applied on and after January 1, 1994, for violations that occurred prior to January 1, 1994?*

Payment are applied proportionally according to A.R.S. §§ 12-116.01 and 12-116.02. (Refer to # 27)

25. *How are payments applied if other amounts are imposed in addition to restitution, time payment fee, fine, penalty or surcharge (example: public defender reimbursement fee, jail cost reimbursement fee, default fee, warrant fee, etc.)?*

Pursuant to A.R.S. § 13-809, payments are applied first to restitution and then the time payment fee, A.R.S. § 12-116, then according to A.R.S. §§ 12-116.01 and 12-116.02 to fines, penalties, assessments and the 68% surcharges and 10% CEF surcharge. For additional guidance refer to A.C.J.A. §§ [3-401](#) and [4-301](#) for priority of payments and § [5-103](#) for enhanced collections, Fill the Gap.

Part IV REMITTANCE REPORTS

26. *Does the city or county treasurer transmit these old surcharges collected by the court to individual state treasurer accounts?*

OLD SURCHARGES (Before January 1, 1994):

- 37% & 40% Criminal Justice Enhancement Fund (CJEF) A.R.S. § 41-2403
- \$10 Emergency Medical Services Operating Fund (EMSOF), A.R.S. § 36-2219
- \$35 Emergency Medical Services Operating Fund (EMSOF), A.R.S. § 36-2219
- \$10 additional EMSOF on seat belt violations, A.R.S. § 36-2219
- \$10 Crime Laboratory Assessment Fund (CLAF), A.R.S. § 13-813
- \$40 Alcohol Abuse and Treatment Fund (AATF), A.R.S. § 36-2219
- \$25 Victims' Rights Implementation Fund (VRIF), A.R.S. § 13-812
- \$2/mph Spinal and Head Injuries Trust Fund (SHIF), A.R.S. § 28-1076.01
- \$100/\$500 Victim Compensation Fund (VCF), A.R.S. § 13-812
- 15% DUI surcharge repealed by Laws 1982, A.R.S. § 36-142
- \$2/10% Peace Officers Training fund surcharge repealed by Laws 1982, A.R.S. § 41-1826
- Prosecuting Attorneys' Advisory Council Training Fund surcharge repealed by Laws 1982, A.R.S. § 41-1830.04

No. On January 1, 1994, all of the surcharges above were consolidated into two assessments: 46% Criminal Justice Enhancement Fund (CJEF), A.R.S. § 12-116.01, and 11% Medical Services Enhancement Fund (MSEF), A.R.S. § 12-116.02. Laws 1993, Chapter 243, § 17, required that monetary obligations imposed but unpaid as of January 1, 1994 shall be divided proportionally and transmitted pursuant to A.R.S. §§ 12-116.01 and 12-116.02.

After the city or county treasurer receives these monies from the court, the treasurer should use the newest version of the State Remittance Report to transmit the monies to the state treasurer on or before the 15th day of each month for deposit in the Criminal Justice Enhancement Fund and Medical Services Enhancement Fund.

Some treasurers use a computer-generated remittance report and may continue to do

so as long as it is revised per the new [State Treasurer Remittance Report form](#). The State Treasurer will distribute the monies to the various individual accounts.

REMEMBER: For violations occurring on or after July 1, 2018, a 73% consolidated surcharge is made up of the following: 47% Criminal Justice Enhancement Fund (CJEF), A.R.S. § 12-116.01A, 13% Medical Services Enhancement Fund (MSEF), A.R.S. § 12-116.02, 7% Fill The Gap (FTG), A.R.S. § 12-116.01B, 6% AZ DPS Forensics Fun, A.R.S. § 12-116.01C, and a 10% Clean Elections Fund surcharge (CEF) per A.R.S. § 16-954A, which are calculated independent of each other. The Probation Assessment is \$20, A.R.S. § 12-114.01, the 2011 Additional Assessment is \$13, A.R.S. § 12-116.04 and the Victims' Rights Enhancement Assessment is \$2, A.R.S. § 12-116.09.

27. *To what accounts do I transmit surcharges since I cannot deposit monies collected for old surcharges into all the old individual surcharge accounts as of January 1, 1994?*

Add all surcharges imposed on fines and sanctions which are collected for violations occurring prior to September 1, 1995, and divide them proportionally to the funds that were in existence at that time: 80.7% to Criminal Justice Enhancement Fund and 19.3% to Medical Services Enhancement Fund before reporting the collections to your city or county treasurer. Do not report or remit funds to any of the other old surcharges for violations that occurred prior to January 1, 1994.²

² Laws 1993, Chapter 243, § 17, consolidated surcharges as a 47% Criminal Justice Enhancement fund and a 11% Medical Services Enhancement Fund beginning January 1, 1994.