

 <p><b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	TITLE		NO. 2788
	<b>Collection &amp; Repayment of Inmate Advances &amp; Obligations</b>		DATE 9/9/2015
SUPERSEDES DIR #2788 Dtd. 7/1/2014	DISTRIBUTION A B	PAGES PAGE 1 OF 16	DATE LAST REVISED
REFERENCES (Include but are not limited to): Correction Law, Section 125; 22 NYCRR 140.6; Civil Practice Law and Rules; Public Health Law; HIPAA; Criminal Procedure Law; Penal Law; Executive Law; PLRA of 1995; DOCCS HSPM 4.04; Temp Release Manual; Dir. #4421, #4422	APPROVING AUTHORITY 		

- I. **PURPOSE:** This directive establishes procedures for the collection and repayment of money due from inmates as a result of advances or obligations. The facility Business Office is responsible for processing, collection, and payment with assistance, as specified, from other administrative or program staff.
- II. **OBLIGATIONS:** The facility Business Office will provide notification to the inmate whenever staff generates an encumbrance. Examples of financial obligations which inmates may incur are listed below:

Type of Obligation	Source/Authorization	Form of Notification to Inmate
Advances	Advance Form IAS 2708	Advance Form IAS 2708
Mandatory surcharge, crime victim assistance fee, fine, restitution, reparation, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee, and designated surcharge	Order of Commitment Note: Collection will not be made if a Judge has ordered deferral of mandatory surcharge, sex offender registration fee, or DNA data bank fee.	Written - copy of IRC memo or memo from facility Business Office
Court costs, reparations, restitution, child support, judgments	Court Order	Written - copy of IRC memo or memo from facility Business Office
Restitution for damage/loss of property up to \$100, and \$5 disciplinary surcharge	Tier II disposition	Verbal - Tier II disposition
Restitution for damage/loss of property, and \$5 disciplinary surcharge	Tier III disposition	Verbal - Tier III disposition
Voluntary restitution; Disbursement Form IAS 2706	Signed Form IAS 2706	Disbursement Form IAS 2706
"Gate money"	Release date of one year or less	Inmate Monthly Account Statement

Court filing fees (Federal, State)	Written notification from the court and signed authorization from inmate or signed Form IAS 2706	Written memo from facility Business Office or copy of Form IAS 2706
Work release room and board fees/20% of net earnings	Temporary Release rules	Inmate Monthly Account Statement
Day Reporting fees - \$10 weekly	Temporary Release rules	Inmate Monthly Account Statement

- III. ADVANCES:** Funds in the minimum amount necessary may be advanced to inmates with insufficient funds in their accounts. Because advances represent direct cash disbursements, the collection and repayment is made as soon as possible, as first priority, from all funds available, and accruing to the inmate's account.

Form IAS 2708, "Authorized Advance Request," serves as authorization to proceed with collection and repayment of advances, and must be signed by the inmate for mail, copies of medical records, legal photocopies, and temporary release advances. Advances authorized by the Business Office do not require the inmate's signature. Advances may be made only for the purposes specified below.

A. Postage – Mail

1. Legal Mail (ref. Dir. #4421, "Privileged Correspondence"): To ensure that indigent inmates maintain their right of access to the courts, the facility shall approve an IAS 2708 advance request to pay for first class mail postage if the inmate has insufficient funds and if the following conditions are met:
  - a. The mail is legal mail (e.g., it is addressed to a judge, clerk of court, attorney, or authorized legal representative; or is related to a potential or ongoing legal matter);
  - b. Any balance of the inmate's free weekly postage allowance is applied to the legal mail postage costs; and
  - c. The requested advance and the balance of unpaid previous advances for legal mail postage do not exceed \$20.

Advances for "special handling" (e.g., certified mail, return receipt, express mail, etc.) will not be approved unless required by a statute or court rule.

Exceeding the \$20 limit shall only be approved if the inmate can show by court rules, a statute of limitations, or other legal deadline applicable to his or her individual circumstance that the legal mail must be sent prior to receipt of the next week's free postage allowance. The inmate must provide justification for such advance.

No request for a legal mail advance will be denied by facility staff without prior consultation with the Office of Counsel regardless of the unpaid previous balance. Any question whether a particular item qualifies as "legal mail," or whether an advance is allowable should be directed to the Office of Counsel.

2. **Personal Postage** (ref. Directive #4422, "Offender Correspondence Program"): Funds may be advanced for postage for one domestic first class one-ounce letter per month under the following circumstances:
    - a. The inmate has been confined to SHU for discipline or administrative segregation for 30 days or more, and has insufficient funds; or
    - b. The inmate has been in keeplock status for 30 days or more, has lost telephone privileges, and has insufficient funds; or
    - c. The inmate has lost telephone privileges, has a zero balance or insufficient funds, and has not refused to accept available program assignments.
  3. **Postage for Disposition of Property**: Funds may be advanced for postage to send disallowed property home or return it to a vendor at reception facilities, or postage to send contraband or disallowed items home when received at a new facility.
- B. **Medical Records**: In accordance with Section 18 of Public Health Law, HIPAA privacy regulations, and DOCCS Health Services Policy Manual (HSPM) Item 4.04, an inmate may request copies of his or her medical records. Charges are based on a flat fee of \$.25 per page. If the inmate does not have sufficient funds to pay for the requested copies, a completed IAS 2708 advance request must be presented to the health unit.
- C. **Temporary Release**: Funds may be advanced for specified temporary release program activities if sufficient funds are not available in the inmate's account. (See the Temporary Release Manual of Rules & Regulations.)
- D. **Adjustment Advances**: Although DOCCS policy is not to "advance" funds to an inmate for an activity within the inmate's control other than those listed above, circumstances beyond the control of the inmate or errors at the facility may necessitate an advance when the inmate does not have sufficient funds. The advance to the inmate's account will be made immediately upon discovery of the error or outlay of funds in the minimum amount necessary. Examples are:
1. An unpaid returned check from the bank when the inmate has insufficient funds;
  2. Commissary overbuys resulting from clerical or computer errors; and
  3. Erroneous credits resulting from a clerical or computer error in posting a receipt, refund, or adjustment (Note: when two inmates' accounts are involved, the funds will be immediately disbursed from the incorrect account and deposited into the correct account; a copy of the original receipt should be filed in the daily transaction folder).
- E. **Legal Photocopies**: Advances for legal photocopies will be authorized for inmates with insufficient funds if the following conditions are met:
1. The specific documents being copied are required by the courts and cannot be replicated longhand; and
  2. The requested advance and the balance of unpaid previous advances for legal photocopies do not exceed \$20.

Exceeding the \$20 limit shall only be approved if the inmate can show by court rules, statute, or circumstances applicable to his or her individual case why the documents to be copied cannot be replicated longhand.

No request for a legal photocopy advance will be denied by facility staff without prior consultation with the Office of Counsel regardless of the unpaid previous balance. Any question as to whether a particular document qualifies for legal photocopies or whether an advance is allowable should be directed to the Office of Counsel.

- F. Facility Required Items: Upon admission to the facility, funds may be advanced for specific items purchased in the Commissary that are required for an inmate to have at the facility where he or she is located (e.g., padlocks). These advances are authorized by the Business Office and do not require the inmate's signature.

#### IV. COLLECTION OF ADVANCES AND OBLIGATIONS

- A. Advances and other obligations must be collected and paid via the encumbrance mechanism which is established on an inmate's account. No collection will be initiated, however, in any case where the sentencing court has ordered the deferral of a mandatory surcharge, sex offender registration fee, or DNA data bank fee, pursuant to Criminal Procedure Law section 420.40. An encumbrance creates a permanent record of moneys collected and paid on behalf of an inmate. The source/authorization documents listed above represent authorization to establish an encumbrance. The facility Business Office originating the encumbrance retains the Business Office copy of the documentation in the inmate account files even if the inmate transfers to another facility before the obligation is paid.

The encumbrance mechanism functions automatically through the Inmate Commissary Accounting System (ICAS). However, depending upon the type of obligation, it may be initiated automatically by ICAS or manually started by facility staff. The rates at which moneys are collected and the priority order for collections are also dependent on type, as detailed below.

#### B. Order and Rate of Collection

1. Advances: Advances are collected as first priority before automatic and manual collections. If more than one advance is owed, the oldest will be collected first. Advances are collected at a rate of 100% of all receipts (payroll and outside).
2. Automatic ICAS Collections: As inmates qualify, the following types of obligations are collected automatically through ICAS. The automatic ICAS collection takes precedence over manual collections.
  - a. Lag Pay/"Gate Money:" For the first 15 weeks of payroll, 20% of the weekly payroll amount is withheld from all inmates' pay until a full three weeks of pay (15 days) has been withheld.

The first time a payroll transaction (340-manual or 341-automated) is processed, the computer automatically reduces the amount of the pay by 20%.

Example: Inmate earned \$2.50. The payroll amount of \$2.50 is entered into the computer. When the payroll is processed, the computer automatically deducts \$.50 (20%) from the payroll amount. The payroll receipt amount posted to the account will be \$2.00. The account statement will indicate days lagged 1, amount lagged \$.50.

This process will continue each payroll week until 15 days of pay have been lagged. The lag amount is not added to the account balance until the inmate is released.

“Gate Money” collections to save the \$40 release money will begin when an inmate is within one year of earliest release date, and will be collected at a rate of 12 1/2% of all receipts (payroll and outside). The gate money encumbrance amount will be the difference between \$40 and the lag amount withheld. If the full 15 days of lag has not been completed when the gate money encumbrance is established, the computer will automatically reduce the gate money owed amount as the lag amount increases. If an inmate earns a high rate of pay during the first 15 weeks of payroll, the total amount of lag withheld could exceed \$40. In this case, a gate money encumbrance would not be established. Once commenced, the gate money collection process will continue.

- b. Participation fees (room and board) for work release will be collected in the amount of 20% of an inmate’s net work release wages. However, no such charge shall be collected until all prior advances have been repaid by the inmate.
3. Manual Collections: A limit of two manual encumbrances may be active at one time. These will be attached to the balance of receipts after advances and automatic ICAS collections (gate money, work release fees) have been processed. Manual encumbrances are collected in the order in which they were established, the oldest to the most recent.
  - a. When a new encumbrance is established, all spendable funds will be applied to the collection. If sufficient funds are available in the inmate’s account to pay off an encumbrance as it is established, the amount available will be immediately collected and disbursed. If there are insufficient spendable funds available to pay off an encumbrance when it is established, the amount available will be immediately collected. This process takes place even if there are other unsatisfied encumbrances on the account when the new encumbrance is initiated. The balance due on unsatisfied encumbrances will be collected at the rate of 20% of payroll receipts and 25% of outside receipts. Exceptions to this process are the collection of Federal court filing fees and court motion/bill of costs (see Section IV-B-3-d below) and court ordered restitutions (see Section IV-B-3-e below).
  - b. When two encumbrances are active up to 40% of weekly earnings and 50% of outside receipts will be collected. Exceptions to this process are the collection of Federal court filing fees and court motion/bill of costs (see Section IV-B-3-d below) and court ordered restitutions (see Section IV-B-3-e below).
  - c. When more than two manual encumbrances have been entered against an inmate’s account, the same receipt will be applied to the third and subsequent encumbrance(s) if the prior encumbrance(s) become fully collected before 40% of the payroll or 50% of the outside receipt has been used. Exceptions to this process are the collection of Federal court filing fees and court motion/bill of costs (see Section IV-B-3-d below) and court ordered restitutions (see Section IV-B-3-e below).

- d. When an encumbrance is established for a Federal court filing fee or a court motion/bill of costs, a partial payment will be collected (see Section VII-B-2). The remainder of the amount owed will be collected at a rate of 20% of all receipts (payroll and outside) if the inmate's spendable account balance exceeds \$10 after the receipt has been posted. After the initial establishment of the encumbrance, only one Federal court filing fee encumbrance and one court motion/bill of costs encumbrance can be active at the same time.

When work release inmate wages are posted, 305 receipt, the automatic disbursement of the room and board fee will take place immediately after the receipt is posted. If a Federal court filing fee or court motion/bill of costs is active, the 20% collection will take place if the spendable balance is over \$10 after the room and board fee has been disbursed.

In the case of multiple encumbrances, the computer will skip over a Federal court filing fee or court motion/bill of costs encumbrance if the spendable balance is \$10 or under after the receipt has been posted. The next encumbrance, in date order, will be subject to the collection process using the appropriate percentage.

- e. When an encumbrance is established for a court ordered restitution, it will be the first manual encumbrance in order of collection (see Section VI-B). In addition, court ordered restitutions are collected at a rate of 20% of inmate payroll and 50% of outside receipts.

**V. PAYMENT OF ADVANCES AND OTHER OBLIGATIONS:** All obligations are to be collected and paid by the facility having control of the inmate. Should the inmate be transferred prior to the full collection of the obligation, collection shall continue at the new facility. Once the total obligation is satisfied, the collecting facility will process either an AC 909-S, "Report of Moneys Received," (Revenues), or an AC 1286-S, "Refund of Appropriation," depending upon the type of obligation. The inmate will receive notification when the advance or encumbrance has been initiated, but there will be no further notification at the time of payment. The inmate's monthly account statement will provide the inmate with a record of the collection and payment of all advances and encumbrances.

- A. Advances: Upon full collection of advances, an automatic disbursement (payment) will be processed by ICAS. Payments of advances will be forwarded bi-weekly to the Treasury on an AC 1286-S, "Refund of Appropriation," using the totals from the ICAS report F292 (encumbrances and advances paid during current month) as follows:

#### PAYMENT OF ADVANCES

Postage:	Refund of Appropriation
Medical Records:	Refund of Appropriation to collecting facility
Temporary Release:	Facility issuing the advance will voucher against centralized account to reimburse the Agency Advance Account. Collecting facility will process a refund of appropriation to centralized account.
Unpaid Returned (bounced) Check:	Facility issuing the advance will voucher against centralized account to reimburse facility Inmate Fund Account. Collecting facility will process refund of appropriation to centralized account.

Commissary Overbuy:	Facility where the overbuy occurs will process a journal transfer charging the centralized account to reimburse Commissary Account. Collecting facility will process refund of appropriation to centralized account.
Erroneous Credits:	Facility processing the advance will voucher against centralized account to reimburse the Inmate Fund Account. Collecting facility will process a refund of appropriation to the centralized account.
Prior Negative Balances:	Inmates whose accounts were in a negative status prior to the implementation of the ICAS changes disallowing negative balances will have their account balance adjusted to zero. Computer generated advance will be processed against their account in the amount of the negative balance. Each facility will add the total of the negative balance accounts to their money owed ledger until a voucher can be processed against the centralized account. The facility collecting a prior negative balance advance will process a refund of appropriation to the centralized account.
Legal Photocopies:	Refund of Appropriation to collecting facility

- B. Encumbrance payments from the “collected in full” encumbrances will be made either on an immediate basis or on a bi-weekly basis using ICAS reports F290 (encumbrances collected in full) and F292 (encumbrances/advances paid during current month). Encumbrance payments will be transmitted to the appropriate collection agency or transmitted on an AC 1286-S, “Refund of Appropriation,” (to collecting facility) or an AC 909-S, “Report of Moneys Received.”

**VI. MANDATORY SURCHARGE/CRIME VICTIMS ASSISTANCE FEE/SEX OFFENDER REGISTRATION FEE/DNA DATABANK FEE/ SUPPLEMENTAL SEX OFFENDER VICTIM FEE/ COURT ORDERED RESTITUTIONS/FINES-SPECIAL PROCEDURES**

- A. General: An inmate’s sentence and order of commitment, or other official documentation from the sentencing court, will specify if a mandatory surcharge, crime victim assistance fee, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee, fine, or restitution have been imposed as required under Section 60.35 of the Penal Law, and if they must be collected. Therefore, collection of any ordered obligation ordinarily begins at the Reception/Classification facility and will continue at any subsequent facility until payment can be made. Collection must be initiated, however, whenever the sentencing court provides notice that payment has been ordered.
- B. Restitution: In general, the system is programmed to collect manual encumbrances in the order in which they are established, however, court ordered restitution is an exception to this procedure. Once a new restitution is established on an inmate’s account, it will take priority collection over all other manual obligations. The computer system is programmed to ensure that court ordered restitutions are the first manual encumbrances to be collected and are collected at a rate of 20% of inmate payroll and 50% of outside receipts.

C. Facility Inmate Records Coordinator (IRC)

1. At the Reception/Classification Center, the facility IRC, using a stamp or other suitable method, marks the outside of the inmate's legal file as shown in Section VI-C-2 a or b below. If a surcharge, crime victim assistance fee, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee, restitution or fine has been imposed, fills in all available information, and provides that same information to the facility Business Office. The IRC notification to the Business Office will include the type of obligation imposed, the indictment number, county of commitment, and total amount due.
2. MANDATORY SURCHARGE IMPOSED \_\_\_\_\_  
 CRIME VICTIM ASSISTANCE FEE IMPOSED \_\_\_\_\_  

RESTITUTION Total Amt Due (if indicated) _____ Date Due (if indicated) _____ Business Office Notified _____ (date/person) Date Paid _____	FINES Total Amt Due (if indicated) _____ Date Due (if indicated) _____ Business Office Notified _____ (date/person) Date Paid _____
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or

  - a. NO SURCHARGE IMPOSED (review date) \_\_\_\_\_  
 NO CRIME VICTIM ASSISTANCE FEE IMPOSED  
 (review date) \_\_\_\_\_
  - b. NO RESTITUTION/FINE
3. The IRC at the first general confinement facility to which an inmate is transferred from the Reception/Classification Center will review the inmate's file to ensure that proper notification had been sent to the Classification Center Business Office. If it is determined that a notice had not been sent, then it is necessary for the IRC to send one. No further notifications are required. If at some future date an inmate receives an additional sentence with a mandatory surcharge/crime victim fee, then a new notice only should be sent to the facility Business Office.
4. The IRC notifies the facility Community Supervision Office of the status of the court ordered fees, fines, and restitution:
  - a. Prior to the inmate's release; and
  - b. When the court fees are paid in full.

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D. Facility Business Office

1. Establishes and collects encumbrances for mandatory surcharge(s), crime victim assistance fee(s); mandatory surcharge and crime victim fees are combined as one encumbrance per commitment. When establishing mandatory surcharge/crime victim encumbrances, Business Office staff will use ICAS encumbrance code "01" and will enter the indictment number in the comments field and county code in the county code field. If spendable funds are available in the inmate's account to pay off the encumbrance as it is established, the amount available will be immediately collected and disbursed. If there are insufficient funds to immediately pay off the encumbrance, the amount available will be immediately collected. The remaining amount owed will be collected as receipts are posted to the inmate's account.
2. Establishes and collects encumbrances for court ordered restitutions using ICAS encumbrance code "17." Indictment number will be entered in the comment field. County code of the county of commitment will be entered into the computer in the county code field. Collection rules are the same as for mandatory surcharge (above).
3. Establishes and collects encumbrances for court ordered fines using ICAS encumbrance code "32." Indictment number will be entered in the comment field and county code in the county code field. Collection rules are the same as for mandatory surcharge (above).
4. Establishes and collects encumbrances for sex offender registration fees using ICAS encumbrance code "25." The indictment number will be entered in the comment field. Collection rules are the same as for the mandatory surcharge (above).
5. Establishes and collects encumbrances for DNA databank fees using ICAS encumbrance code "26." The indictment number will be entered in the comment field. Collection rules are the same as for the mandatory surcharge (above).
6. Establishes and collects encumbrances for supplemental sex offender victim fees using ICAS encumbrance code "39." The indictment number will be entered in the comment field. Collection rules are the same as for mandatory surcharge (above).
7. Provides notification of mandatory surcharge/crime victim assistance fee payments and court ordered restitution payments, sex offender registration fees, DNA databank fees, supplemental sex offender victim fees, partial or full, to the IRC for inclusion in the inmate's legal file and to prompt the IRC to forward a corresponding notice to the sentencing court and Community Supervision Office. If mandatory surcharge/crime victim fee encumbrances are partially paid due to an inmate's release from DOCCS, the first \$20 or \$25, depending on the amount assessed by the court, of the partial payment will be designated for the crime victim assistance fee and the remainder of the partial payment will be designated for the mandatory surcharge.

8. Sends payment of mandatory surcharge, crime victim fees, sex offender registration fees, DNA databank fees, and supplemental sex offender victim fees to Division of the Treasury via AC 909-S, "Report of Moneys Received." Sends payment of court ordered restitutions to the Probation Department in the county of commitment. For cases in New York City, sends payment of court ordered restitutions to Safe Horizons. Restitution payments to the county Probation Department or to Safe Horizons must be sent with a cover letter and must contain the following information: inmate name, date of birth, NYSID number and DIN, indictment number, amount of original restitution order, and amount of restitution collected while in DOCCS custody being forwarded either to the county Probation Department or in NYC to Safe Horizons. For payments to Safe Horizons, the cover letter must also indicate the county of commitment and should be addressed to the Director. Court ordered fines are sent to the court which imposed the fine unless commitment papers indicate otherwise. (See Sample - Attachment A)

**VII. FEDERAL COURT FILING FEES - SPECIAL PROCEDURES:** Under the Prison Litigation Reform Act (PLRA) of 1995, inmates filing an action in Federal courts are required to pay a filing fee.

A. Application for Forma Pauperis

1. If an inmate does not send in the full amount of the fee when filing the court action (or appeal), a forma pauperis application is required. Facility Business Office staff will certify the account balance information on the form and return it to the inmate so that the inmate may transmit it to the court.
2. After the court has reviewed and approved the pauperis application, the Superintendent of the facility where the inmate is housed will receive a letter which includes a signed authorization form from the inmate. Upon receipt of the letter, facility Business Office staff will forward copies of the inmate's last six months account statements to the court.

B. Establishing an Encumbrance

1. An encumbrance will be established on the inmate's account using the appropriate encumbrance code for the court where the fee payment is to be sent. If the action is pending with the U.S. Court of Appeals, Second Circuit, the court may indicate that the payment is to be sent to the underlying court from which the civil action originated. In those cases, the encumbrance code for the court to which payment is to be made should be used. This information will be found in the letter to the Superintendent. When establishing the encumbrance for court filing fees, the docket (CIV) number MUST be entered in the "reason comments" field. The docket number must be entered without dashes or spaces. This will identify the inmate with the civil action and eliminate duplicate encumbrances.

2. When establishing the encumbrance for the full amount of the filing fee, facility Business Office staff will enter the collected amount of the encumbrance using the amount of the partial filing fee. The partial filing fee payment amount can be found on the inmate's account statement and is the greater amount of either 20% of the average monthly deposits or 20% of the average spendable balance for the six-month period immediately preceding the filing of the complaint or notice of appeal. If the amount available in the inmate's spendable balance is less than the calculated partial payment fee, the amount available will be used as the collected amount. If the amount is zero, the collected amount will be zero. The remaining unpaid balance of the filing fee will be collected at the rate of 20% of all receipts (payroll and outside) if the spendable balance is over \$10 after the receipt has been posted. After the initial establishment of the encumbrance, only one court filing fee encumbrance can be active at a time. No payments will be sent to the court until the full amount of the fee has been collected, or the inmate is released.
3. Payments of filing fees will be sent to the Clerk of the Court in the district where the action was initiated. Checks should note inmate's name, DIN, and court docket number (CIV). (See Sample - Attachment A)

C. Full Payment of Filing Fee - Inmate Initiated

1. If the inmate is not filing a forma pauperis application, has available funds, and wishes to send the full amount of the court filing fee to the court, the inmate will forward a disbursement form to the facility Business Office, indicating the amount of the fee to be disbursed, the court district where the fee is to be sent, and a CIV, if available.
2. If a CIV is available, facility Business Office staff will establish an encumbrance on the inmate's account for the full amount of the fee, using the appropriate encumbrance code for the district where the fee is to be sent. The CIV will be entered in the "reason comments" field. An immediate payoff of the encumbrance will be processed and a check forwarded to the Clerk of the Court. The check should note the inmate's name, DIN, and CIV. (See Sample - Attachment A)
3. If the CIV is not indicated on the disbursement form, an encumbrance will not be established for the inmate initiated payment. A disbursement will be processed and a check forwarded to the Clerk of the Court. The check should note the inmate's name and DIN. (See Sample - Attachment A)
4. If the inmate does not have sufficient funds to process the immediate payoff of the encumbrance or to process a disbursement of the filing fee, facility Business Office staff will note insufficient funds on the disbursement form and return it to the inmate.

**VIII. NEW YORK STATE COURTS FILING FEES - SPECIAL PROCEDURES:** Pursuant to an amendment to the Civil Practice Law and Rules (CPLR), inmate filing actions in State courts must pay a filing fee, as determined by the court. The amount of the filing fee will not be less than \$15. The filing fee requirement also applies to the filing of inmate personal property claims in the Court of Claims.

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A. Reduced Filing Fee

1. If an inmate does not send in the full amount of the fee when commencing an action in the State courts, an application requesting a reduction of the fees must be submitted to the court in the form set forth in Appendix A-1 of 22 NYCRR 140.6. The inmate's submission of the application includes an authorization signed by the inmate to allow DOCCS to release the account balance information to the court, and further authorizes DOCCS to collect the filing fee as determined by the court.
2. Upon receipt of the application, the court shall review the account balance information. If the court determines that the inmate has insufficient means to pay the full filing fee, the court may permit the inmate to pay a reduced filing fee, the minimum of which shall not be less than \$15 and the maximum of which shall not be more than \$50. The court may require the inmate to make an initial payment of the reduced filing fee.
  - a. If an initial payment is ordered, the inmate will receive an order from the court indicating the amount to be paid. The inmate is responsible for having the initial payment sent to the court. Initial payments are not to be processed through the encumbrance system. An inmate may submit a disbursement request to the facility Business Office indicating the amount of the fee to be disbursed, court index number (if available) and the name and address of the court where the initial payment is to be sent. After the initial payment is received by the court, the facility will receive a Court Order directing that the Superintendent collect the remainder of the filing fee (difference between reduced fee and initial payment) by assessing it as an outstanding obligation. The Court Order will include the inmate's name, DIN, index number (or claim number), amount of the fee, and court ORI number. This Court Order will be forwarded to the IRC, who will then make a copy for inclusion in the inmate's folder. The IRC will also send a copy of this order to the facility Business Office. When the order is received, the facility will establish an encumbrance.
  - b. If no initial payment is ordered, the facility will receive a Court Order indicating that the full amount of the reduced filing fee is to be collected. This is the amount that will be encumbered.

B. Establishing an Encumbrance

1. An encumbrance will be established on the inmate's account for the amount of the filing fee as indicated on the Court Order. ICAS encumbrance code "50" will be used for all State court filing fees. When establishing the encumbrance for State court filing fees, the index number (or claim number) must be entered in the "reason comments" field, and the court ORI # must be entered in the ORI field. Upon establishment of the encumbrance, if the spendable balance is sufficient to pay off the encumbrance, the amount available will be immediately collected and disbursed. If there are insufficient funds to pay off the encumbrance when it is established, the available amount will be collected. The balance due will be collected at the rate of 20% of payroll receipts and 25% of outside receipts.
2. Upon full collection of the fee, or partial collection if the inmate is released from the custody of DOCCS, the fee will be disbursed from the inmate's account and a check will be forwarded to the appropriate Clerk of the Court where the application was initiated. The check should note the inmate's name, DIN, and court index number or claim number (if available). (See Sample - Attachment A)

C. Full Payment of Filing Fee - Inmate Initiated

1. If the inmate wishes to pay the full amount of the fee as determined by the court, the inmate will forward a disbursement form to the facility Business Office, indicating the amount of the fee to be disbursed, court index number (if available), and the name and address of the court where the fee is to be sent.
2. If sufficient funds are available in the inmate's account, the facility Business Office will process the disbursement and forward a check to the Clerk of the Court. The check should note the inmate's name, DIN, and court index number (if available). If the inmate does not have sufficient funds to process the disbursement for the filing fee, facility Business Office staff will note insufficient funds on the disbursement form and return it to the inmate. (See Sample - Attachment A)

**IX. COURT MOTION/BILL OF COSTS**

- A. Inmates may be obligated to pay a bill of costs and/or motion costs relating to court actions filed by the inmate. In such cases, a letter and a copy of the Court Order will be sent to the facility Superintendent by the Office of the Attorney General advising that a bill of costs and/or motion costs has been issued by the court.

The letter will include the inmate's name, DIN, court docket number, amount to be collected, and will ask that the necessary steps be taken to collect the costs. The original of the letter and copy of the Court Order will be forwarded to the IRC for inclusion in the inmate's folder. The IRC will notify the facility Business Office of the Court Order in the same format that is used for notification of mandatory surcharges. Notification will include name, DIN, type of obligation imposed (court bill of costs and/or motion costs), docket number, and amount to be collected.

- B. Upon notification by the IRC that a court bill of costs and/or motion costs has been imposed, facility Business Office staff will establish an encumbrance for the amount owed, using encumbrance code "31." The docket number will be entered in the comments section of the encumbrance. After establishing the encumbrance for the full amount of the bill of costs and/or motion costs, staff will enter the collected amount of the encumbrance using the amount of the partial filing fee. The partial filing fee payment amount can be found on the inmate's account statement and is the greater amount of either 20% of the average monthly deposits or 20% of the average spendable balance for the six-month period immediately preceding notification of the Court Order. If the amount available in the inmate's spendable balance is less than the calculated partial-payment fee, the amount available will be used as the collected amount. If the amount is zero, the collected amount will be zero. The remaining unpaid balance will be collected at the rate of 20% of all receipts (payroll and outside) if the spendable balance is over \$10 after the receipt has been posted. After the initial establishment of the encumbrance, only one court motion/bill of costs can be active at a time.
- C. When the bill of costs/motion costs encumbrance has been fully collected, or partially collected upon the inmate's release, a check will be drawn to The Office of the Attorney General. On the check will be noted inmate name, DIN, and court docket number. The check will be forwarded to The Office of the Attorney General, Budget and Fiscal Management Bureau, State Capitol, Albany, New York 12224, Attention: Accounts Receivable Unit. (See Sample - Attachment A)

Business Office staff do not need to notify the IRC of the payment status of court bill of costs/motion costs as they do for mandatory surcharge payments.

Other than the initial notification upon establishment of the encumbrance, the inmate will receive no further notification that the court bill of costs and/or motion costs payment has been processed (the monthly account statement contains this information).

- D. It should be noted that court bills of cost and court motion costs are different from the court filing fees that are imposed by the Federal courts under the Prison Litigation Reform Act (PLRA). Court filing fees do not require the involvement of the IRC. The courts send a letter to the Superintendent, along with an authorization form signed by the inmate, to notify the facility that a Federal court filing fee has been imposed. This letter and authorization form must be forwarded to the Business Office for processing. These documents are to be retained in the Business Office files at the facility where the encumbrance is initiated.

#### **X. EXECUTIVE LAW SECTION 632-a – SON OF SAM LAW**

Executive Law Section 632-a was enacted to assist crime victims in their attempts to collect civil damages from the convicted persons who caused them harm. The Son of Sam Law was amended to its present form in 2001. The amendment broadens the funds subject to the laws reach by adding a new category of covered funds called “funds of a convicted person.” “Funds of a convicted person” means funds and property received from any source by a person convicted of a “specified crime.”

- A. Injunction: Upon receipt of a completed affidavit from a victim or victim’s representative the NYS Office of Victim Service, in conjunction with the Attorney General’s Office, will submit papers to the Albany County Supreme Court. Once signed, the Temporary Restraining Order will be faxed to the owning facility; one copy for service upon the inmate and one copy for the Superintendent. The inmate must be served by the date noted on the Order (usually within five days). Once the inmate is served, an affidavit of service **must** be completed and returned to the Attorney General’s Office.
- B. Establishing an Encumbrance: The Superintendent shall ensure that notification is forwarded to Business Office staff. Upon notification that a Temporary Injunction is received directing the facility to refrain from in any way disbursing, encumbering, transferring, or assigning any portion of funds to be deposited in or credited to the inmate’s account, Inmate Account staff will establish an encumbrance for the amount of one million dollars (\$1,000,000), using the encumbrance code “15,” Son of Sam Law. The amount to be collected is the total amount of spendable funds less the first one thousand dollars (\$1,000), pursuant to Executive Law 632-a(3). The index number will be entered in the comment section of the encumbrance.
- C. Release: If an inmate has a pending release and has a Son of Sam encumbrance, facility Business Office staff must contact Central Office/Inmate Accounts for further direction.
- D. Stipulation of Settlement: If a settlement between the victim and the inmate is reached, the facility will receive a “So Ordered” Stipulation of Settlement from the Attorney General’s Office. Central Office/Inmate Accounts must be contacted for further direction.

**XI. CHILD SUPPORT - SPECIAL PROCEDURES**

- A. Any documents relating to child support, including Inmate Withholding for Support, should be faxed to Central Office/Inmate Accounts. Central Office will work in conjunction with the Office of Temporary & Disability Assistance/Division of Child Support Enforcement to verify all current payments, arrears, poverty orders, etc., in order to accurately compute the encumbrance.
- B. In general, child support encumbrances are calculated by taking the number of months until the inmate's earliest release date, multiplying by the monthly amount listed on the Order, and then adding the arrears amount owed.
- C. Once the amount is calculated, Central Office staff will contact the facility Business Office to establish an encumbrance using the code "30," Child Support. The New York Case Identifier on the Order should be entered in the comment section.
- D. The Business Office will send notification to the inmate that an encumbrance has been established. When the encumbrance is fully collected, or partially collected upon the inmate's release, payment is sent to the collection agency indicated on the Court Order.

**XII. UNSATISFIED OBLIGATIONS/ADVANCES AT TIME OF RELEASE FROM CUSTODY**

- A. If sufficient funds are not available at time of release from custody for payment of all existing obligations, the first \$40 of the balance of the inmate's account shall be reserved for release funds. The remainder, if any, shall be applied to satisfy the uncollected advances and encumbrances. If the inmate account balance is less than \$40 at the time of release, a check will be drawn from the facility Consolidated Advance Account for the difference.
- B. Any Cash to Outgoing Inmates (COGI) monies provided pursuant to Section 125 Correction Law shall not be considered a part of the inmate's account nor utilized for payment of any obligation/advance unless authorized in writing by the inmate.
- C. When additional funds are received after parole, a refund of appropriation must be processed against the centralized account up to the full amount of COGI funds provided, not to exceed \$40. The balance of the additional funds received on behalf of the former inmate should be sent to his or her last known address. If a forwarding address is unavailable, funds will be considered abandoned property and should be reported in accordance with Directive #2791, "Lost & Found/Abandoned Property." If additional funds are received at a facility that was not the releasing facility, the funds must be receipted and deposited to that facility's Inmate Fund checkbook. A check should then be immediately drawn to the releasing facility which will then comply with the above procedure.

