

**Mercer County Bar Association
Municipal Court Bench-Bar Meeting**

Money Bawl



Collection of Financial Obligations by New Jersey Municipal Courts

Lesson Plan

October 17, 2018

Introduction

We are in a time of enormous change in the efforts of municipal courts to collect financial obligations. There are a number of powerful factors that are driving New Jersey's reform efforts, not the least of which is the public commitment of the Chief Justice to bring about needed change. Among the other influences are the following:



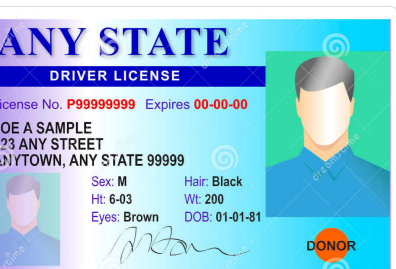
a. The Motor Vehicles Affordability and Fairness Task Force Final Report (2006).

- 1. At the time of the report, there were 6 million licensed drivers in New Jersey.**
- 2. An average of 838,000 suspensions had been ordered per year over the previous 10 years.**
- 3. In May 2004, there were 289,600 people on the revoked list (about 5% of all licensed drivers).**
- 4. The drivers on the revoked list live in urban areas (62%) and are in middle to lower income brackets (80%).**
- 5. The report concluded that statutory change was required to address these issues:**

The obvious and most direct impact of license suspension is loss of personal mobility. However, suspension may also have collateral and/or unintended consequences such as job loss, difficulty in finding employment, and reduced income. Consequences can also include other financial impacts, such as increased insurance premiums and other costs associated with suspension; as well as psychological and social impacts such as loss of freedom, increased stress, and family strain.

In addition, suspension can also have broader economic and societal impacts such as limiting the labor force for specific industries such as automobile sales and services, home health care aides and the construction trades. Jobs in each of these industries depend on semi-skilled workers with a valid driver's license.

[https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf]



b.) Report on the Investigation of the Ferguson Missouri Police Department by the Department of Justice Civil Rights (March 4, 2015).

The Report found that Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety. Most strikingly, the court issues municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments.

In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees. Under state law, a failure to appear in municipal court on a traffic charge involving a moving violation also results in a license suspension. Ferguson has made this penalty even more onerous by only allowing the suspension to be lifted after payment of an owed fine is made in full. Further, until recently, Ferguson also added charges, fines, and fees for each missed appearance and payment. Many pending cases still include such charges that were imposed before the court recently eliminated them, making it as difficult as before for people to resolve these cases.

The court imposes these severe penalties for missed appearances and payments even as several of the court's practices create unnecessary barriers to resolving a municipal violation. The court often fails to provide clear and accurate information regarding a person's charges or court obligations. And the court's fine assessment procedures do not adequately provide for a defendant to seek a fine reduction on account of financial incapacity or to seek alternatives to payment such as community service

[https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf]



C.) The March 14, 2016 “Dear Colleague” letter to the Chief Justices of the United States from Vanita Gupta, Principal Deputy Assistant Attorney General Civil Rights Division.

This letter recounted the illegal practices municipal courts in the United States have been utilizing to collect revenue while blatantly depriving indigent defendants of their civil rights. Certain steps are necessary to put an end to these practices in municipal court:

(1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigence determination and establishing that the failure to pay was willful;

(2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;

(3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees;

(4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;



(5) Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;

(6) Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and

(7) Courts must safeguard against unconstitutional practices by court staff and private contractors.

[https://www.txmca.com/files/3414/6012/5401/Department_of_Justice_Letter.pdf] (This letter was subsequently rescinded by the Department of justice on December 21, 2017.)



d.) Report of *The Supreme Court Committee on Municipal Court Operations, Fines and Fees.*

The committee that prepared this report was convened by the Chief Justice as a result of the following:

1.) The DOJ Ferguson Report

2.) The “Dear Colleague” letter;

3.) A 2017 report issued by New Jersey State Bar Association’s Subcommittee on Judicial Independence in the Municipal Courts pointed out significant concerns about the independence of Municipal Courts;

4.) A series of newspaper articles beginning in late 2016 articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices;

5.) Two high-profile cases involving municipal court judges and the abuse of municipal court defendants related to the collection of fines and the imposition of contempt sanctions.



The report found that there are:

6 million new municipal cases per year;

2.5 million active-municipal court bench warrants for FTA and FTP;

Between 2015 and 2017 \$22 millions was collected in contempt sanctions;



Among the Committee's findings and recommendations were the following:

1.) The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government;

- **The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality;**

- **The appointment and reappointment of Municipal Court judges shall never be based on the revenue a Municipal Court judge generates for a municipality; and**

- **Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary.**



2.) FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES:

- **Develop policies and procedures that would monitor the imposition of contempt sanction amounts;**
- **Develop sentencing guidelines for discretionary, ranged financial penalties;**
- **Develop policies for the widespread review and dismissal of old complaints;**
- **The continued encouragement of the use of authorized post-disposition sentencing alternatives through additional policies and procedures;**
- **The development of policies and tools that would assist Municipal Courts in imposing such sentencing alternatives; and**
- **The legislative creation of additional sentencing alternatives.**



3. PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE:

- **Significant changes to the Municipal Court's response to a defendant's post-disposition failure to pay, including the mandatory scheduling of an ability-to-pay hearing upon a failure to pay;**
- **Limiting the issuance of bench warrants to certain serious offenses or when outstanding fines and fees are substantial; and**
- **The development of a formalized policy for recalling existing bench warrants for failure to appear and failure to pay.**



4. VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS:

- **The provision of automated text, email, and/or telephonic reminders of upcoming court dates and payment due dates;**
- **Modifying court notices to fully advise defendants in plain language of the consequences of a failure to appear or failure to pay;**
- **Advising defendants in plain language of the availability of sentencing alternatives; and**
- **Expanding the use of video and telephonic appearances.**



5. INDEPENDENCE OF THE MUNICIPAL COURTS:

- **A voluntary, transparent, and impartial appointment and reappointment process for Municipal Court judges;**
- **The establishment of a Municipal Court judge evaluation process that resembles that used for Superior Court judges, and would be based on both quantitative and qualitative data collected during the course of a judge's term;**
- **legislatively increasing the term of service for Municipal Court judges from three to five-years;**
- **legislatively mandating the consolidation of small courts; and**
- **legislatively adopting a transparent, impartial appointment and reappointment process for Municipal Court judges.**



Illustration by Chris Gash



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6. IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY

- **Offering NJMCdirect.com (an online payment center) at every Municipal Court's payment window, giving defendants the ability to pay all Municipal Court fines with a credit or debit card;**
- **Expanding remote appearances and actions that defendants can take on their case;**
- **Increasing the types of offenses that can be resolved online without a court appearance;**
- **Allowing the online rescheduling of an initial court date; and**
- **Allowing for the online completion of various Municipal Court forms in the NJMCdirect.com portal.**



Part I – New Court Rules

Amendment to Rule 1:2-4 (civil sanctions)

Except as provided in R. 7:8-9A, if without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to “Treasurer, State of New Jersey,” or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.



New Rule 7:8-9(g) (effective September 1, 2018)

(g) Monetary Sanctions for Failure to Appear. Monetary sanctions on defendants for failure to appear are addressed in R. 7:8-9A.

New Rule 7:8-9A (effective September 1, 2018)

(a) In General. If without just cause or excuse, a defendant who is required to appear at a trial hearing or other scheduled municipal court proceeding fails to appear, the municipal court judge may order that defendant to pay a monetary sanction based on the following factors:

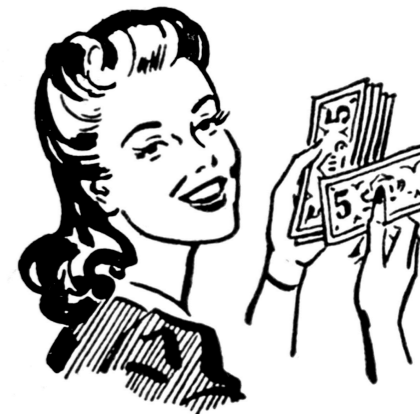
- (1) defendant's history of failure to appear;**
- (2) defendant's criminal and offense history;**
- (3) the seriousness of the offense; and**
- (4) the resulting inconvenience to the defendant's adversary and to witnesses called by the parties.**



The judge shall state the reasons for the sanction on the record.

(b) Maximum Sanction. For consequence of magnitude cases, the aggregate sanction per case shall not exceed \$100. For other than consequence of magnitude cases, the aggregate sanction per case shall not exceed \$25 for parking offenses and \$50 for all other matters.

(c) Contempt of Court. A judge may impose a higher sanction on a defendant for failure to appear only in accordance with the provisions of R. 1:10.



(d) Calculation of Sanction. When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

(e) Payment of Sanction. The defendant shall pay the assessed sanction to the municipal court to be disbursed to the municipality where the offense occurred.

(f) Non-Monetary Procedures on Failure to Appear. Non-monetary procedures on failure to appear are addressed in R. 7:8-9.

Part II – Due Process



1. Right to counsel

It is critical to remember that the conversion of a fine to a jail term implicates a defendant's right to counsel. The jail term is a consequence of magnitude. (*Rodriguez v. Rosenblatt*, 58 NJ 281 (1971)).

Under *Argersinger v. Hamlin*, 407 US 25 (1972), nobody in the United States can be sentenced to a jail term of any length unless he has been either represented by counsel or has entered a voluntary waiver of his right to counsel. In New Jersey, the vast majority of defendants who have been held in custody for failing to pay financial obligations are subsequently sentenced to incarceration through video link from the county jail to satisfy the balance of their fines without either counsel (municipal public defender) or an effective waiver.

2. State v. De Bonis, 58 NJ 182, 200 (1971)

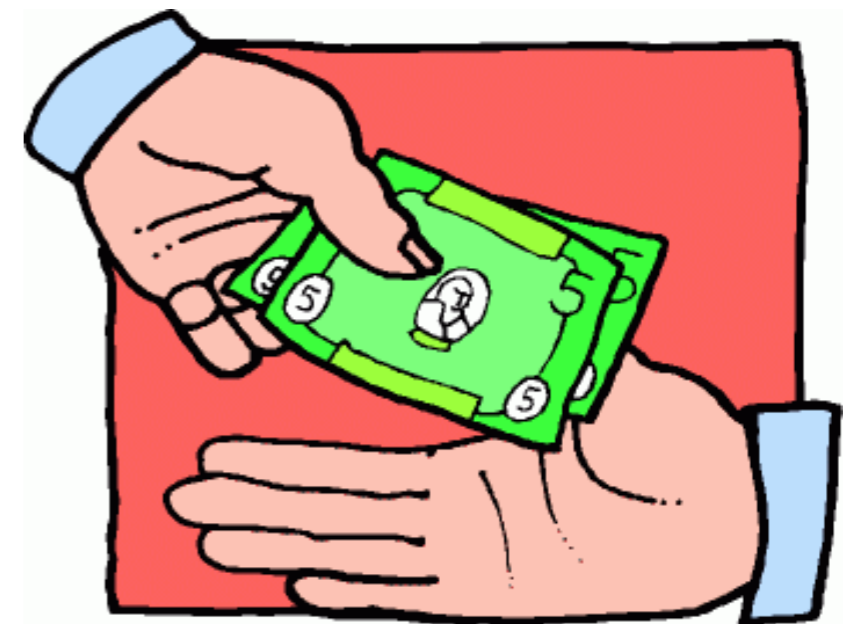
Hence we find the following course to be appropriate. If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability, be afforded an opportunity to pay the fine in reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict. The installment payments may be collected *200 as an incident of probation, but if probation is not otherwise warranted, the payments shall be made directly to the clerk of the court. If a defendant fails to meet the installments, he shall be recalled for reconsideration of his sentence. The court may reduce the fine, or suspend it, or modify the installment plan, or, if none of those alternatives is warranted, the court may impose a jail term to achieve the needed penological objective. If a jail sentence is thus substituted for the fine, the sentencing judge shall not be obliged to equate a day in jail with a statutorily stated dollar amount. On the contrary, such statutes must be deemed to prescribe only a minimum equivalency. The sentencing judge must impose a lesser jail term if it is adequate in the light of the total circumstances of the individual case.



3. Bearden v. Georgia, 461 US 660, 672 (1983).

The Fourteenth Amendment precludes a state court from automatically revoking probation and imposing a prison term for nonpayment of restitution.

In Bearden v. Georgia, the Supreme Court held that in probation revocation proceedings for failure to pay restitution, the sentencing court must determine if defendant “willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay.” If the court makes this determination, then it may revoke defendant's probation, and defendant may be resentenced to a term within the court's sentencing authority. If defendant cannot pay his restitution despite bona fide efforts, then the sentencing court must consider whether punishment other than incarceration would adequately meet the State's interests in punishment and deterrence. Only if the court determines that there is no appropriate alternative to incarceration may a defendant who has made bona fide efforts to pay be imprisoned for a failure to pay his restitution.



4. Financial obligations imposed under Title 2C.

Pursuant to NJSA 2C:46-2,

a. When a defendant sentenced to pay [a court-imposed financial obligation] ordered by a court defaults in the payment thereof or of any installment, upon the motion, the court shall recall him, or issue a summons or a warrant of arrest for his appearance.

The court shall afford the person notice and an opportunity to be heard on the issue of default.

Failure to make any payment when due shall be considered a default. The standard of proof shall be by a preponderance of the evidence, and the burden of establishing good cause for a default shall be on the person who has defaulted.

(1) If the court finds that the person has defaulted without good cause, the court shall:

- (a) Order the suspension of the driver's license or the nonresident reciprocity driving privilege of the person; and**
- (b) Prohibit the person from obtaining a driver's license or exercising reciprocity driving privileges until the person has made all past due payments; and**
- (c) Notify the Chief Administrator of the New Jersey Motor Vehicle Commission of the action taken; and**
- (d) Take such other actions as may be authorized by law.**

(2) If the court finds that the person defaulted on payment of a pay [a court-imposed financial obligation] without good cause and finds that the default was willful, the court may, in addition to the

action required by paragraph (1) of this subsection a., impose a term of imprisonment or participation in a labor assistance program or enforced community service to achieve the objective of the court-imposed financial obligation.

These options shall not reduce the amount owed by the person in default. The term of imprisonment or enforced community service or participation in a labor assistance program in such case shall be specified in the order of commitment. It need not be equated with any particular dollar amount but, in the case of a fine it shall not exceed one day for each \$50 of the fine nor shall it exceed a period of 90 consecutive days.

In no case shall the total period of imprisonment in the case of a disorderly persons' offense for both the sentence of imprisonment and for failure to pay a fine exceed six months.

(3) Except where incarceration is ordered pursuant to paragraph (2) of this subsection a., if the court finds that the person has defaulted the court may take one or more of the following actions:

(a) the court shall take appropriate action to modify or establish a reasonable schedule for payment;

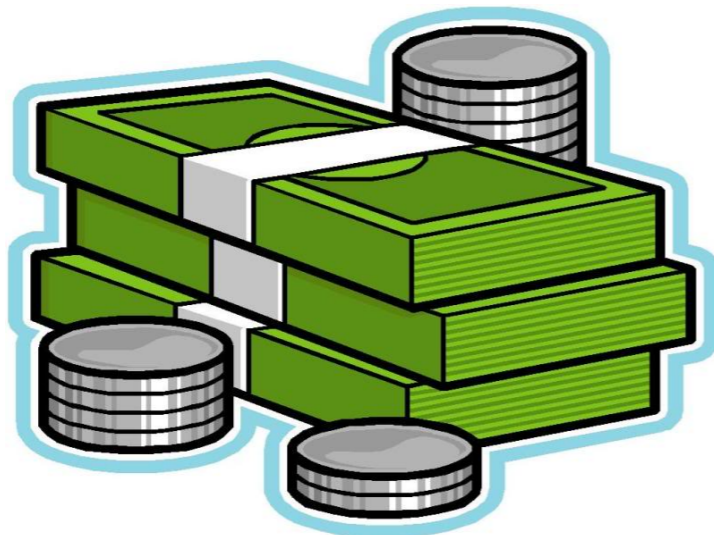
(b) in the case of a fine, if the court finds that the circumstances that warranted the fine have changed or that it would be unjust to require payment, the court may revoke or suspend the fine or the unpaid portion of the fine; or

(c) if the defendant has served jail time for default on a court-imposed financial obligation, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

5. Financial obligations imposed under Title 39

NJSA 39:5-36.

a. The court may incarcerate in the county jail or workhouse of the county where the offense was committed any person upon whom a penalty or surcharge pursuant to subsection f. of section 1 of [P.L. 2000, c. 75 \(C.39:4-97.2\)](#) has been imposed for a violation of any of the provisions of this subtitle where the court finds that the person defaulted on payment of the penalty or surcharge pursuant to subsection f. of section 1 of [P.L.2000, c. 75 \(C.39:4-97.2\)](#) without good cause and that the default was willful. Incarceration ordered under this subsection shall not reduce the amount owed by the person in default. In no case shall such incarceration exceed one day for each \$50 of the penalty or surcharge so imposed, nor shall such incarceration exceed a period of 90 consecutive days.



b. Except where incarceration is ordered pursuant to subsection a. of this section, if the court finds that the person has defaulted on the payment of a penalty the court may take one or more of the following actions:

(1) the court shall take appropriate action to modify or establish a reasonable schedule for payment;

(2) if the court finds that the circumstances that warranted the penalty have changed or that it would be unjust to require payment, the court may revoke or suspend the penalty or the unpaid portion of the penalty; or

(3) if the defendant has served jail time for default on a penalty, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such penalties and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.



Part III – Collection tools available to municipal courts

1. NJSA 2B:12-23.1 [Any municipal court obligation]

a. Notwithstanding any other provision of law to the contrary, if a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing or has failed to pay a previously imposed penalty, the court may order the person to perform community service in lieu of the payment of a penalty; or, order the payment of the penalty in installments for a period of time determined by the court. If a person defaults on any payment and a municipal court finds that the defendant does not have the ability to pay, the court may:

(1) reduce the penalty, suspend the penalty, or modify the installment plan;

(2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;

(3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;

(4) order the person to perform community service in lieu of payment of the penalty; or

(5) impose any other alternative permitted by law in lieu of payment of the penalty.

b. For the purposes of this section, “penalty” means any fine, statutorily-mandated assessment, surcharge or other financial penalty imposed by a municipal court, except restitution or a surcharge assessed pursuant to subsection f. of section 1 of [P.L.2000, c. 75 \(C.39:4-97.2\)](#).

2.) NJSA 39:4-203.1 [Title 39 fines]

Any defendant convicted of a traffic offense pursuant to Title 39 of the Revised Statutes or a parking offense, shall, upon a satisfactory showing of a condition of indigency or participation in a government-based income maintenance program, be permitted by the court to pay the fine in installments. The court shall set the amount and frequency of each installment. In addition, the court may waive an unpaid portion, up to \$200, of any court-imposed time-payment order, as a result of a conviction for a motor vehicle traffic violation or a parking offense, except for a violation of [R.S. 39:4-50](#) or section 2 of P.L.1981, c. 512 ([C.39:4-50.4a](#)), for a defendant who is indigent or is participating in a government-based income maintenance program and who has demonstrated an inability to comply with the time-payment order, and in lieu of the remaining unpaid amount, require the defendant to perform community service for a period of time to be determined by the court, or participate in any program authorized by law, or satisfy any other aspect of a sentence imposed. For the purposes of this section, the guideline for the court to determine indigency is an income up to 250 percent of the poverty level, as defined in section 4 of [P.L.2005, c. 156](#) ([C.30:4J-11](#)).



3.) NJSA 2B:19-6 [Comprehensive Enforcement Program]

b. (1) A municipal court may request that all matters which have not been resolved in accordance with an order of that court be transferred to the comprehensive enforcement program in accordance with the provisions of section 9 of [P.L.1995, c. 9](#) ([C.2B:19-9](#)) for such action as may be appropriate. All monies collected through the comprehensive enforcement program which result from the enforcing of orders transferred from any municipal court shall be subject to the 25% deduction authorized pursuant to section 4 of [P.L.1995, c. 9](#) ([C.2B:19-4](#)) except for monies collected in connection with the enforcement of orders related to parking violations.

4.) NJSA 2B:12-23 [Converting fines to community service]

- a. A person, sentenced by a municipal court to pay a fine, who defaults in payment may be ordered to perform community service in lieu of incarceration or other modification of the sentence with the person's consent.**
- b. The county or municipal official in charge of the community service program shall report to the municipal court any failure of a person subject to a court work order to report for work or to perform the assigned work. Upon receipt of the report, the court may revoke its community service order and impose any sentence consistent with the original sentence.**

5.) Ordinance violations – NJSA 40:49-5

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

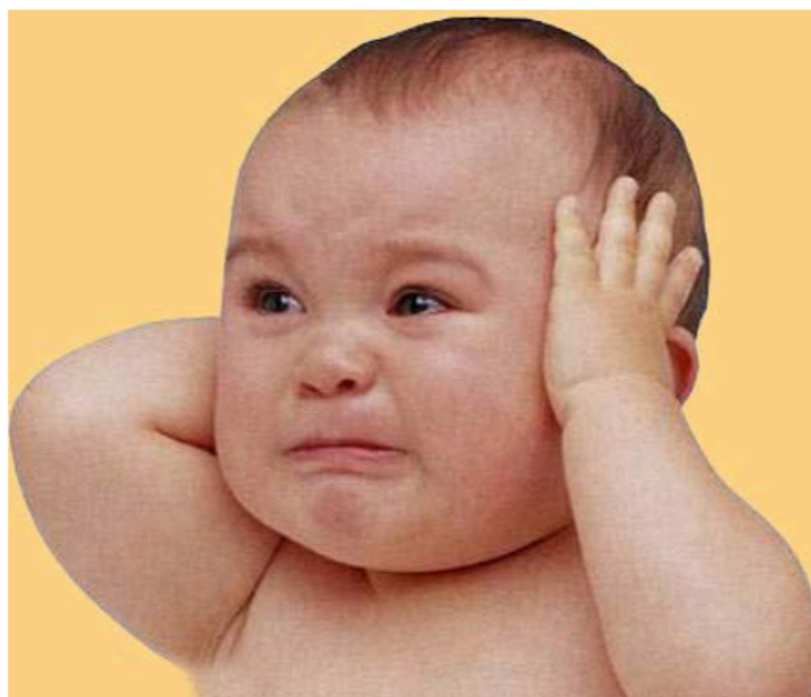
6.) Court Costs – NJSA 22A:3-6 [Statute from 1953]

A person who defaults in the payment of costs assessed against him in accordance with the provisions of [section 22A:3-4](#) of this Title shall be liable to imprisonment in the county jail for a period of one day for each dollar of costs imposed.



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