



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: SPECIAL COMMITTEE ON CRIMINAL JUSTICE FUNDING

FROM: Anne Sappenfield, Senior Staff Attorney, and Katie Bender-Olson, Staff Attorney

RE: Fees and Surcharges Collected by the Courts

DATE: November 11, 2010

This Memo discusses the collection of fees and surcharges by the courts. Specifically, the Memo provides background on the use of fees and surcharges as sources of revenue for government programs, discusses the stability of fees and surcharges as a funding source, and outlines methods for collecting fee and surcharge revenue. The Memo includes two enclosures created by the Office of the Director of State Courts that relate to fees and surcharges. *Enclosure A* is a table summarizing the fees and surcharges collected by the Wisconsin circuit courts and the distribution of revenue raised by each. *Enclosure B* is a revenue summary report detailing the revenue collected from each fee or surcharge in calendar year 2009.

BACKGROUND ON THE USE OF FEES AND SURCHARGES

State fines, forfeitures, fees, and surcharges are all sources of government revenue generated by court proceedings. Because state fines and forfeitures raise funds that can only be used for purposes specified in the Wisconsin Constitution, the Legislature has created various surcharges and fees as an alternative source for general purpose revenue and specific program funding.

Wisconsin Constitution, Article X, Section 2, requires that “clear proceeds” from state fines and forfeitures collected by counties for violations of penal law be deposited into the state’s common school fund for the benefit of public education. Fine and forfeiture revenues cannot be diverted to other programs or uses without amending the constitution.

Fees and surcharges are created because the revenue they raise is not limited in use. Unlike the proceeds from state fines and forfeitures, the proceeds generated by fees and surcharges are not constitutionally dedicated to the common school fund and can be used to fund state and local programs other than public education. The Wisconsin Legislature enacted the first surcharge, the Penalty

Surcharge, in 1977, for the purpose of funding law enforcement training. Since that time, the Legislature has enacted more than 35 fees and surcharges which are collected by state courts.

PROCEEDS FROM FEES AND SURCHARGES

Proceeds generated by court-collected surcharges typically fund specific programs, such as sexual assault victim services or law enforcement training. To fund these programs, the Legislature creates a program revenue appropriation in an amount it expects to collect from particular fees and surcharges. If actual proceeds generated by a fee or surcharge fall short of the amounts appropriated, there is a resulting deficit in the programs funded by the fee or surcharge.

A small number of surcharges generate proceeds that go into the state general fund. The revenues raised from these surcharges are not designated for a particular use and the Legislature may appropriate the funds for any purpose. The revenue generated by the Court Support Services Surcharge is all deposited into the state general fund. Portions of the revenue raised by the Justice Information Surcharge and the Consumer Protection Surcharge are deposited into the general fund. For the Justice Information Surcharge, \$1 of the \$21 surcharge is deposited into the general fund. The first \$185,000 raised by the Consumer Protection Surcharge is dedicated to specific consumer programs and only the remaining revenue is deposited into the general fund.

FEES AND SURCHARGES AS REVENUE SOURCES

The stability of fees and surcharges as a funding source depends upon the ability of the courts to collect fees and surcharges imposed. Evidence suggests that courts have been unable to collect the full amount of assessed surcharges. For example, the Legislative Fiscal Bureau determined that between 1999 and 2008, 86% of Penalty Surcharge amounts assessed were collected. However, over a shorter term, this percentage is likely lower. For example, shortfalls in programs funded by fees and surcharges indicate that courts are not collecting revenue at the projected levels.

The stability of fees and surcharges as a funding source also depends upon the ability of offenders and courts users to pay the fees and surcharges they owe. Court users, especially criminal defendants, may have limited resources to contribute towards court-related costs, including fees and surcharges. Chief Justice Shirley Abrahamson described this issue in her testimony to the Special Committee on Criminal Justice Funding and Strategies on August 30, 2010, by saying that the ability of citizens to pay has not increased along with increased fees and surcharges. Instead, the ability to pay fees and surcharges may have decreased given the current economic climate.

A lack of payer resources may also impose limits on revenue that can be raised by creating or increasing fees and surcharges. Additional funds from new or increased fees and surcharges may result in decreased collection of current fees and surcharges. The statutes create a hierarchy for the collection of surcharges in the criminal context. The first surcharge on the list must be paid in full before any funds are applied towards payment of the next surcharge on the list. [s. 973.05 (2m), Stats.] Creating a new surcharge or increasing an existing one may divert revenue that would otherwise have been paid to surcharges lower in priority under the statutes, effectively funding certain programs while decreasing funding for others.

RECENT SURCHARGE REVENUE

The use of fees and surcharges may be illustrated by examining the provisions of a specific surcharge, the distribution of funds generated by the surcharge, and the recent revenue and program deficit associated with the surcharge. The following three surcharges are outlined below: the Court Support Services Surcharge, the Drug Offender Diversion Surcharge, and the Penalty Surcharge. These surcharges were chosen because they represent a cross-section of surcharge assessment types and revenue distributions.

Court Support Services Surcharge

The Court Support Services Surcharge applies to a variety of court actions and claims and the amount of the surcharge corresponds to the type of action or claim. The surcharge is \$51 for small claims filings, such as garnishments and wage claims; \$68 for civil actions where no money judgment is sought, such as name changes and declaratory judgments; \$68 for forfeiture action judgments and appeals from municipal court or administrative decisions; and \$169 for civil actions asserting claims for more than \$5,000, such as personal injury or foreclosure actions. [s. 814.85 (1), Stats.]

Revenue generated by the Court Support Services Surcharge is general purpose revenue and does not fund particular programs. The Court Support Services Surcharge generates the highest amount of revenue of any fee or surcharge. Revenues from the surcharge totaled \$51,714,800 in fiscal year 2009-2010.

Drug Offender Diversion Surcharge

The Drug Offender Diversion Surcharge is a \$10 surcharge applied when a court imposes a sentence or places a person on probation for a property crime under ch. 943, Stats. The \$10 surcharge applies to each separate conviction. Revenues collected from the Drug Offender Diversion Surcharge fund grants administered by the Office of Justice Assistance for treatment, alternatives, and diversion programs, such as suspended or deferred prosecution for offenders who abuse drugs or alcohol. [s. 973.043, Stats.]

Revenues generated by the Drug Offender Diversion Surcharge totaled \$47,559.94 in fiscal year 2009-2010. However, the amount expended from the surcharge to fund treatment, alternatives, and diversion programs since their inception have exceeded the amounts collected. The programs funded by the Drug Offender Diversion Surcharge had an appropriations deficit of \$2,038,200 in fiscal year 2009-2010.

Penalty Surcharge

The Penalty Surcharge is a surcharge of 26% of any fine or forfeiture imposed on a defendant for the violation of a state law or a municipal or county ordinance. If the defendant was convicted of multiple offenses, the surcharge is based upon the total amount of fines or forfeitures for all offenses. Revenues generated by the Penalty Surcharge are allocated to appropriations in five state agencies to support a variety of specific program activities, including justice-related automation systems, victim-witness services, correctional officer and public defenders training, alcohol and other drug abuse programs, and anti-drug enforcement programs. [s. 757.05, Stats.]

Revenues from the Penalty Surcharge totaled \$16,736,392 in fiscal year 2009-2010. However, the amount appropriated from the surcharge for the varied programs it funds exceeded the amount collected. The programs funded by the Penalty Surcharge had an appropriations deficit of \$4,944,400 in fiscal year 2009-2010.

COLLECTION OF FINES, FEES, AND SURCHARGES

Criminal Action

Under current law, when a defendant is sentenced to pay a fine in a criminal action, the court may grant permission for the payment of the fine, plus costs, fees, and surcharges, to be made within a period of 60 days. If permission to pay within 60 days is not granted, the fine, plus costs, fees, and surcharges is payable immediately. The court may also grant additional time to pay if the court orders the payment of restitution as well.

Payment of surcharges is applied to the various applicable surcharges in the order set forth in current law. Until one surcharge is paid in full, no payment is applied to the next surcharge. After all surcharges are paid, payment is applied to the fine and the costs and fees imposed. The order of payment of surcharges is as follows:

1. Penalty Surcharge.
2. Jail Surcharge.
3. Part A of the Crime Victim and Witness Assistance Surcharge.
4. Part B of the Crime Victim and Witness Assistance Surcharge.
5. Crime Laboratories and Drug Law Enforcement Surcharge.
6. DNA Analysis Surcharge.
7. Child Pornography Surcharge.
8. Drug Abuse Program Improvement Surcharge.
9. Drug Offender Diversion Surcharge.
10. Driver Improvement Surcharge.
11. Truck Driver Education Surcharge.
12. Domestic Abuse Surcharge.
13. Consumer Protection Surcharge.
14. Natural Resources Surcharge.
15. Natural Resources Restitution Surcharge.

16. Environmental Surcharge.
17. Wild Animal Protection Surcharge.
18. Wildlife Violator Compact Surcharge.
19. Weapons Surcharge.
20. Uninsured Employer Surcharge.
21. Supplemental Food Enforcement Surcharge.
22. Ignition Interlock Surcharge.

Under current law, a court may stay the execution of part or all of the sentence and require the defendant to perform community service work. An applicable Driver Improvement Surcharge or Domestic Abuse Surcharge must be imposed, however, regardless of whether all or part of the sentence has been stayed. If a defendant fails to comply with the community service order, the court must order the defendant brought before the court for imposition of sentence. If the defendant complies with the community service order, he or she has satisfied that portion of the sentence.

If a defendant fails to pay the fine, surcharge, costs, or fees within the period specified by the court, the court may do any of the following:

1. Issue a judgment for the unpaid amount and direct the clerk of court to file and docket a transcript of the judgment, without fee.
2. Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, worker's compensation benefits, and other money due or to be due in the future to the clerk of circuit court.
3. Issue an order assigning lottery prizes for payment.

A child support withholding assignment or order has priority over any of the above assignments. [s. 973.05, Stats.]

Current law also provides that, if the fine, plus costs, fees, and surcharges are not paid or community service is not completed as required by the sentence, the defendant may be committed to the county jail until the fine, costs, fees, and surcharges are paid or discharged, or the community service work is completed, for a period fixed by the court not to exceed six months. [s. 973.07, Stats.]

Forfeiture Action

General Provisions

Current law does not specify the order in which surcharges must be paid when a defendant does not pay in full in a forfeiture action. Therefore, the current practice is to prorate any partial payment among all of the surcharges owed.

Under current law, as provided in criminal actions, if a defendant fails to pay a forfeiture, costs, fees, or surcharges within the period specified by the court, the court may issue a judgment for the unpaid amount. Also, the court may issue an order assigning not more than 25% of the defendant's income or lottery prizes for payment. A child support withholding assignment or order has priority over any of these assignments. [s. 778.30, Stats.]

Current law also provides that any judgment for payment of a forfeiture must direct that if the judgment is not paid, the defendant must be imprisoned for a specified time, not to exceed six months, or until otherwise discharged. [s. 778.09, Stats.]

Under current law, a municipality or county may certify a debt to the Department of Revenue (DOR) so that DOR may set off the debt against any state tax refund that is owed the municipality or county. Under this provision, "debt" includes an unpaid fine, fee, restitution, or forfeiture and any other debt that is at least \$20 if it has been reduced to a judgment or if the municipality or county to which the debt is owed has provided the debtor with reasonable notice and an opportunity to be heard with regard to the debt. The municipality or county must notify the debtor in writing of the certification and the right to appeal the certification. At the time of the certification, the municipality or county must furnish to DOR the name and Social Security Number or driver's license number of each individual debtor. [s. 71.935, Stats.]

Traffic Violations

If a defendant is found guilty of committing a traffic violation, the court may enter a judgment against the defendant in an amount that does not exceed the maximum forfeiture provided for the violation, plus costs, fees, and surcharges imposed under current law, and, in addition, may suspend or revoke the person's driver's license. The period of license suspension or revocation depends upon the offense. If the judgment is not paid, the court shall order any of the following:

1. That the defendant be imprisoned for a time specified by the court until the judgment is paid. Under this provision, the defendant may not be imprisoned for more than 90 days.
2. Instead of imprisonment and in addition to any other suspension or revocation, that the defendant's driver's license be suspended. The license must be suspended for 30 days or until the person pays the forfeiture, plus costs, fees, and surcharges imposed, but not to exceed two years. In general, if the court determines that the defendant is unable to pay the judgment because of poverty, the court may not suspend the defendant's driver's license without first providing the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income.
3. In addition to or instead of imprisonment or suspension, the court may notify the Department of Transportation that a judgment has been entered against the defendant and remains unpaid, or that the defendant has failed to comply with an installment payment plan ordered by the court.

[s. 345.47 (1), Stats.]

If a defendant fails to pay a Driver Improvement Surcharge within 60 days, the court may suspend the person's driver's license until the person pays the surcharge, except that the suspension period may not exceed two years. [s. 343.30 (1z), Stats.]

Department of Natural Resources Forfeitures

For Department of Natural Resources forfeitures, if a defendant fails to timely pay a judgment to pay a forfeiture plus costs, fees, and surcharges, the court may issue an arrest warrant or a summons ordering the defendant to appear in court, or both. If the court determines that a defendant is unable to pay a judgment for good cause or because of the defendant's indigence, the court may order that the amount of the judgment be modified, suspended, or permanently stayed. If the defendant fails to appear for a court hearing under this provision or if the court determines at the hearing that the failure of the defendant to pay is not for good cause or because of the defendant's indigence, the court must order one of the following:

1. That the defendant be imprisoned for a time not to exceed five days or until the amount is paid, whichever is less.
2. That the amount of the judgment be modified, suspended, or permanently stayed.

For a violation of ch. 29, Stats., Wild Animals and Plants, instead of an order of imprisonment, the court may revoke any hunting, trapping, or fishing privilege or license granted. For a violation of ch. 169, Stats., Captive Wildlife, instead of an order of imprisonment, the court may revoke any privilege or license granted under that chapter. Finally, for a violation relating to fencing of farm-raised deer, instead of an order of imprisonment, the court may suspend any fence inspection certificate issued under that section. [s. 23.795, Stats.]

Municipal Court

Under current law, if a defendant fails to pay a monetary judgment, which could be a judgment for payment of a forfeiture, plus costs, fees, and surcharges, the municipal court may order any one of the following, or any combination of the following:

1. Suspension of the defendant's driver's license until the defendant pays the judgment, but not to exceed two years. During the period of suspension, the defendant may request the court to reconsider the order of suspension based on an inability to pay the judgment because of poverty. If the court determines that the inability to pay is because of poverty, the court must withdraw the suspension and order one or more other sanctions, including community service.
2. Imprisonment until the forfeiture, assessments, surcharge, and costs are paid in full. The maximum period of imprisonment under this provision is 90 days, and the defendant must receive credit against the amount owed at the rate of at least \$50 for each day of imprisonment. Also, a defendant may not be imprisoned unless the court finds that the defendant meets one of the following conditions: has the ability to pay the judgment within a reasonable time; has failed, without good cause, to perform community service work; has failed to attend an indigency hearing; or has failed, without good cause, to complete an

assessment or treatment program related to alcohol or drugs that was ordered in lieu of a monetary forfeiture.

3. Assignment to the municipal court of not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, worker's compensation benefits, and other money due or to be due to the defendant, including lottery prizes.
4. Community service work for a public agency or nonprofit charitable organization.

The municipal court may, at any time, authorize payment by installment payments, or may modify, suspend, or permanently stay the monetary judgment, or order that the judgment be satisfied by community service.

The municipality may also enforce the judgment in the same manner as for a judgment in an ordinary civil action. Additionally, a municipal court may order the transfer of any of the defendant's money or property that the municipality is holding and that is unclaimed by the defendant for more than one year to pay forfeitures, fees, costs, or surcharges that the defendant failed to pay the municipality. [s. 800.095, Stats.]

Under current law, a municipal court may contract with a collection agency for the collection of unpaid forfeitures, assessments, and surcharges for ordinance violations. [s. 755.21, Stats.]

Collection by the Department of Corrections (DOC)

When a defendant is under the supervision of DOC, DOC may collect unpaid fines, fees, and surcharges.

Defendants Placed on Probation

For a defendant who is sentenced to pay a fine and is placed on probation, the court may make payment of the fine, plus costs, fees, and surcharges, a condition of probation. [s. 973.05 (2), Stats.]

Inmates

For DOC inmates, DOC administrative rules require distribution of inmate salaries or wages in a specific order. Specifically, the salaries or wages of any employed inmates must be disbursed by DOC in the following order:

1. The board of the inmate, including food and clothing and electronic monitoring fee charged.
2. Necessary travel expenses to and from work and other incidental expenses of the inmate.
3. Payment of the Crime Victim and Witness Assistance Surcharge.
4. Payment of the DNA Analysis Surcharge.
5. Support of the inmate's dependents, if any.

6. Payment of the Child Pornography Surcharge.
7. Payment of the Drug Offender Diversion Surcharge.
8. A reasonable room charge as determined by DOC.
9. Payment for legal representation by the Office of the State Public Defender.
10. Payment either in full or ratably of the inmate's obligations acknowledged by the inmate in writing or which have been reduced to judgment.
11. The balance, if any, to the inmate upon the inmate's discharge.

[s. DOC 303.065 (5), Wis. Adm. Code.]

If an inmate committed a crime on or after October 1, 1983, and has not paid the Crime Victim and Witness Surcharge, upon transfer to the first permanent placement and in all subsequent placements in correctional institutions, the institution business office must deduct 25% of all income earned by or received for the benefit of the inmate until the surcharge is paid in full. [s. 973.045 (4), Stats., and s. DOC 309.465, Wis. Adm. Code.]

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Enclosures