

27j3

**Gov Agency:** DOA (Office of Justice Assistance) – Penalty Assessment Revenue Distribution

**Recommendations:**

**Paper No. 187      Alternative 3**

**Comments:**

Retains DOJ's penalty assessment surcharge receipts appropriation and its receipt of 49.09% of penalty assessment revenues. This will provide the Law Enforcement Training Fund (LETf) with a dedicated source of revenue for law enforcement training. This provides for the stability of these training resources and the ability to plan for continued improvement.

If the LETf retains 49.09% of penalty assessment revenue and no other changes were made to the bill except for CCAP funding, the penalty assessment receipts appropriation would have a **deficit of \$8,663,200** under the bill.

**Prepared by: Deb**



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 27, 1999

Joint Committee on Finance

Paper #187

### *Penalty Assessment Revenue Allocations*

#### **Penalty Assessment Revenue Distribution (DOA -- Office of Justice Assistance)**

[LFB 1999-01 Budget Summary: Page 78, #1, Page 173, #25 and Page 494, #15]

#### **CURRENT LAW**

Whenever a court imposes a fine or forfeiture for a violation of state law or municipal or county ordinance (except for violations involving smoking in restricted areas, failing to properly designate smoking or nonsmoking areas, and nonmoving traffic violations or safety belt use), the court also imposes a penalty assessment of 23% of the total fine or forfeiture.

Under current law, penalty assessment revenues are deposited to the following program revenue appropriations on a percentage basis: (a) the Department of Justice's (DOJ) penalty assessment receipts appropriation for the law enforcement training fund (LETF) and crime lab equipment (49.09% of penalty assessment revenues); (b) DOJ's county-tribal receipts appropriation for the county-tribal law enforcement programs (4.55%); (c) the Office of Justice Assistance's (OJA's) anti-drug enforcement program--local appropriation which provides state match for the federal Byrne anti-drug law enforcement funds for OJA's anti-drug match local, state and administrative appropriations (22.73%); (d) the Department of Correction's (DOC) correctional officer training appropriation (9.09%); (e) the State Public Defender's (SPD) conferences and training appropriation (0.91%); (f) the Department of Public Instruction's (DPI) alcohol and other drug abuse (AODA) programs appropriation (8.48%); and (g) DPI's AODA--state operations appropriation (5.15%).

#### **GOVERNOR**

Make the following changes concerning the receipt and distribution of penalty assessment program revenues: (a) create a new appropriation under the Office of Justice Assistance (OJA) to receive all penalty assessment revenues; (b) delete certain existing penalty assessment appropriations and modify others that receive penalty assessment revenues to reflect

this change; (c) move the statutory language concerning levy of penalty assessment from Chapter 165 (Department of Justice) to Chapter 757 (general provisions concerning courts of record, judges, attorneys and clerks); (d) provide that all appropriations funded from penalty assessment revenues be annual appropriations limited to the appropriated amounts; and (e) provide that 90% of the unencumbered balances of certain penalty assessment appropriations on the effective date of the bill be transferred to the newly-created OJA penalty assessment receipts appropriation.

## DISCUSSION POINTS

### Penalty Assessment Revenue Receipts

1. Under Chapter 29, Laws of 1977, the Legislature created a penalty assessment surcharge in the amount of 10% of a fine or forfeiture imposed for the violation of state law, or a municipal or county ordinance (except for nonmoving traffic violations). The penalty assessment served as the funding source for the law enforcement training fund (LETF).

2. Over time, the penalty assessment percent has increased as have the uses of the revenues to include: (a) Alcohol and Other Drug Abuse (AODA) programs under the Department of Public Instruction (DPI); (b) correctional officer training under the Department of Corrections (DOC); (c) county-tribal law enforcement programs under DOJ; (d) state match for federal anti-drug programs under the Office of Justice Assistance (OJA); (e) youth diversion programs under DOC; and (f) training and conferences under the State Public Defender (SPD). The following table illustrates the history of increases in the penalty assessment surcharge and uses of penalty assessment revenue since 1977.

<u>Year</u>	<u>Penalty Assessment Surcharge (% of Fine or Forfeiture)</u>	<u>Distribution of Revenues/Programs Supported</u>
1977	10%	100% DOJ LETF.
1979	12%	83.3% DOJ LETF; 16.7% DPI AODA.
1981	12%	83.3% DOJ LETF; DOJ can transfer some of its funding to DHSS for correctional officer training; 16.7% DPI AODA.
1983	15%	73.3% DOJ LETF; 13.3% DHSS for correctional officer training; 13.4% DPI AODA.
1987	20%	55% DOJ LETF and crime lab equipment; 10% DHSS for correctional officer training; 15% OJA for anti-drug enforcement (state and local), and DHSS for youth diversion; 5% DOJ county-tribal programs; 15% DPI AODA.
1993	22%	49.09% DOJ LETF and crime lab and identification system equipment; 9.09% DOC correctional officer training; 22.7% OJA anti-drug enforcement and DHSS youth diversion; 4.54% DOJ county-tribal programs; 0.91% SPD conferences and training; 13.67% DPI AODA.
1995	23%	49.09% DOJ LETF and crime lab equipment; 9.09% DOC correctional officer training; 22.7% OJA anti-drug enforcement and DHSS youth diversion; 4.54% DOJ county-tribal programs; 0.91% SPD conferences and training; 13.67% DPI AODA.

3. Under the Governor's recommendation, statutory percentages designating receipt of penalty assessment revenues would be eliminated; instead, all penalty assessment revenues would initially be deposited into a newly-created appropriation under OJA. All state programs that currently receive a statutory percentage of penalty assessment revenues, with the exception of the county-tribal law enforcement program within DOJ, would continue to be funded with penalty assessment revenues. The amounts appropriated for the various programs would be transferred from the new appropriation under OJA.

4. The primary effect of this provision is that any growth in penalty assessment revenues would not accrue to the individual appropriations, but rather to one OJA receipts appropriation. Additionally, the provision to make all penalty assessment-funded appropriations annual would change DOJ's crime laboratory equipment and supplies appropriation from biennial to annual; and change DPI's AODA and OJA's anti-drug appropriations from continuing to annual.

5. The bill would also transfer 90% of the unencumbered balances of five of the seven appropriations that currently receive penalty assessment revenues to the new OJA appropriation on the effective date of the bill. (The exceptions are the OJA anti-drug enforcement--local appropriation and DOC's correctional officer training appropriation.) Under this provision, the Governor assumes the following amounts would be transferred to the new OJA receipts appropriation:

<u>Appropriation</u>	<u>90% Transfer Amount</u>
SPD Conferences and Training	\$63,400
DPI AODA Administration	710,700
DPI AODA Program	1,116,800
DOJ Penalty Assessment Surcharge (Law Enforcement Training Fund and Crime Lab)	1,370,000
DOJ County Tribal Program	<u>71,900</u>
TOTAL	\$3,332,800

6. In its deliberations of the Governor's proposed penalty assessment distribution, the Committee will need to be aware of the condition of the penalty assessment fund. The following table shows the condition of penalty assessment fund under the bill.

**OJA Penalty Assessment Receipts Fund Condition -- AB 133**

	<u>1999-00</u>	<u>2000-01</u>
<b>Revenues</b>		
Opening Balance	\$0	\$1,589,000
Revenue from Penalty Assessment	17,152,300	18,181,400
90% Balance Transfers	<u>3,332,800</u>	<u>0</u>
<b>Total Available</b>	<b>\$20,485,100</b>	<b>\$19,770,400</b>
<b>Appropriations &amp; Reserves</b>		
Appropriations	\$18,865,100	\$19,485,900
Compensation Reserves	<u>31,000</u>	<u>104,800</u>
<b>Total Appropriations + Reserves</b>	<b>\$18,896,100</b>	<b>\$19,590,700</b>
<b>Balance</b>	<b>\$1,589,000</b>	<b>\$179,700</b>

7. Penalty assessment revenues were reestimated using data collected through March, 1999, which showed that revenues for 1998-99 will not be as high as the Governor estimated. The reestimate assumes 5% increases in penalty assessment revenues in each year of the 1999-01 biennium. This reflects the average increase over the last four years. The Governor's recommendation assumes 6% annual increases for 1998-99 through 2000-01.

8. The 90% balance transfer amounts have also been reestimated. The two DPI AODA estimates are lower than projected because the State Budget Office approved a DPI request for additional expenditure authority that was not taken into account. The DOJ penalty assessment surcharge estimate is higher because the State Budget Office denied DOJ's s. 16.515 request for increased expenditure authority in 1998-99 for its "Training for Tomorrow" initiative. (This initiative is discussed in LFB Paper #188 entitled "Law Enforcement Officer Training and Crime Laboratories.") The following table shows the revised 90% balance transfer estimates.

<u>Appropriation</u>	<u>AB 133</u>	<u>Reestimate</u>	<u>Difference</u>
SPD Conferences and Training	\$63,400	\$93,800	\$30,400
DPI AODA Administration	710,700	363,000	-347,700
DPI AODA Programs	1,116,800	93,500	-1,023,300
DOJ Penalty Assessment Surcharge	1,370,000	1,960,200	590,200
DOJ County Tribal Programs	<u>71,900</u>	<u>54,100</u>	<u>-17,800</u>
<b>TOTAL</b>	<b>\$3,332,800</b>	<b>\$2,564,600</b>	<b>-\$768,200</b>

9. These amounts are based on estimated June 30, 1999, closing balances. However, under the bill, the transfers would not take effect until the effective date of the bill. If the transfer provisions are adopted by the Committee, a technical correction is needed to specify that the

amounts transferred to the new OJA appropriation would be 90% of the unencumbered balances on June 30, 1999, plus any revenues credited to the appropriations between June 30, 1999 and the effective date of the bill. This transfer would take place immediately before the transfer to the renumbered agency appropriations.

10. The following table shows the revised fund condition under the bill using the revised penalty assessment revenue projections and revised 90% balance transfer estimates.

**OJA Penalty Assessment Receipts Fund Condition -- AB 133  
As Reestimated**

	<u>1999-00</u>	<u>2000-01</u>
<b>Revenues</b>		
Opening Balance	\$0	- \$794,800
Revenue from Penalty Assessment	15,536,700	16,313,600
90% Balance Transfers	<u>2,564,600</u>	<u>0</u>
<b>Total Available</b>	<b>\$18,101,300</b>	<b>\$15,518,800</b>
<b>Appropriations &amp; Reserves</b>		
Appropriations	\$18,865,100	\$19,485,900
Compensation Reserves	<u>31,000</u>	<u>102,100</u>
<b>Total Appropriations + Reserves</b>	<b>\$18,896,100</b>	<b>\$19,588,000</b>
<b>Balance</b>	<b>-\$794,800</b>	<b>-\$4,069,200</b>

Under the revised fund condition, the penalty assessment receipts appropriation under the Governor's proposal would have a deficit of \$4,069,200 at the end of the 1999-01 biennium.

11. On May 5, 1999, the Joint Committee on Finance voted to provide the Circuit Court Automation Program (CCAP) with \$950,000 PR and 6.0 positions in 1999-00 and \$1,200,000 PR and 10.0 positions in 2000-01 (\$500,000 PR annually would be one-time funding), funded from penalty assessment revenues.

12. As a result of the Committee's action on May 5, 1999, the penalty assessment fund condition appears as follows:

**OJA Penalty Assessment Receipts Fund Condition -- AB 133 as Reestimated  
and Reflecting the Committee's May 5, 1999 Action on  
the Circuit Court Automation Program**

	<u>1999-00</u>	<u>2000-01</u>
<b>Revenues</b>		
Opening Balance	\$0	- \$1,744,800
Revenue from Penalty Assessment	15,536,700	16,313,600
90% Balance Transfers	<u>2,564,600</u>	<u>0</u>
 Total Available	 \$18,101,300	 \$14,568,800
<b>Appropriations &amp; Reserves</b>		
Appropriations	\$19,815,100	\$20,685,900
Compensation Reserves	<u>31,000</u>	<u>102,100</u>
Total Appropriations + Reserves	\$19,846,100	\$20,788,000
Balance	-\$1,744,800	-\$6,219,200

13. Under the Governor's recommendation, the statutory designation of 49.09% of penalty assessment monies dedicated for law enforcement training would no longer exist. One could argue, therefore, that the statutory language remaining under the bill that refers to a "law enforcement training fund" would no longer be accurate. Accordingly, if the Governor's proposal regarding the LETF was accepted, statutory references to the law enforcement training fund should be deleted.

14. In his testimony before the Joint Finance Committee on March 11, 1999, the Attorney General stated that the Governor's proposal concerning the LETF poses a serious threat to law enforcement training and asked that it be rejected.

15. The Law Enforcement Training Fund has provided a dedicated source of revenue for law enforcement training since its inception (training for jail and secure detention officers was subsequently added). Under s. 165.85(1) of the statutes, "[t]he legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety and welfare of the people of this state and is of such a nature as to require training, education and the establishment of standards of a proper professional character." Concerns have been expressed that the Governor's recommendation to remove the statutory fund, maintained for the purpose of providing state-wide law enforcement training, would have a negative impact on the stability of these training resources and the ability to plan for continued improvement.

16. Retaining the LETF's statutory receipt of 49.09% of penalty assessment revenues would reduce the amount of penalty assessment revenues available to fund the other programs under

the bill. The following fund condition shows the Governor's proposals under AB 133, as reestimated, with the following changes: (a) it reflects the Committee's action on May 5, 1999, with regard to CCAP; and (b) it excludes the LETF revenues (49.09% of penalty assessment receipts) and the Governor's recommended LETF-funded appropriations. The Governor's proposal to transfer, to the new OJA appropriation, 90% of the unencumbered balance from DOJ's penalty assessment surcharge receipts appropriation (the appropriation into which 49.09% of penalty assessment revenues is deposited) is included in the calculations.

**OJA Penalty Assessment Receipts Fund Condition -- AB 133 as Reestimated,  
with CCAP Funding Reflected and with LETF Revenues and Appropriations Removed**

	<u>1999-00</u>	<u>2000-01</u>
<b>Revenues</b>		
Opening Balance	\$0	-\$2,843,300
Revenue from Penalty Assessment	7,909,700	8,305,300
90% Balance Transfers	<u>2,564,600</u>	<u>0</u>
 Total Available	 \$10,474,300	 \$5,462,000
<b>Appropriations &amp; Reserves</b>		
Appropriations	\$13,286,600	\$14,023,100
Compensation Reserves	<u>31,000</u>	<u>102,100</u>
Total Appropriations + Reserves	\$13,317,600	\$14,125,200
 Balance	 -\$2,843,300	 -\$8,663,200

17. Consequently, if the LETF retained 49.09% of penalty assessment revenue and no other changes were made to the bill except for CCAP funding, the penalty assessment receipts appropriation would have a deficit of \$8,663,200 under the bill.

**Overview of Penalty Assessment Distribution**

18. This section of the paper provides an overview of the programs funded under AB 133 with penalty assessment revenues. This includes programs currently funded with penalty assessment revenues, as well as programs that have not previously been funded with penalty assessment revenues. The bill would distribute penalty assessment revenues as shown in the following table. The table separately identifies base funding (which includes standard budget adjustments) and funding increases provided under the bill. Note that this table does not include funding provided to CCAP as a result of the Joint Finance Committee's action on May 5, 1999.



## Appropriations Funded With Penalty Assessment Revenues Under AB 133

Agency/Purpose	1999-00	2000-01
DOJ – LETF State Operations		
Base	\$2,385,100	\$2,385,200
<i>LETF Increase</i>	\$32,800	\$32,800
<i>Wausau crime lab field response and training</i>	\$97,800	\$152,000
DOJ – LETF Local Assistance		
Base	\$3,420,100	\$3,420,100
<i>Increase</i>	\$215,400	\$295,400
DOJ Crime Lab Equipment		
Base	\$377,300	\$377,300
DOJ Division of Narcotics Enforcement Intelligence		
Base	\$1,265,700	\$1,266,600
DOJ County Reimbursement for Victim and Witness Assistance Programs		
Base	\$0	\$0
<i>Increase</i>	\$660,800	\$733,100
DOC – Correctional Officer Training		
Base	\$1,440,700	\$1,440,700
DOC – Youth Diversion Program		
Base	\$645,000	\$645,000
DOC – Information Technology		
Base	\$0	\$0
<i>Increase</i>	\$2,000,000	\$2,000,000
SPD – Conferences and Training		
Base	\$113,300	\$113,300
DPI – Alcohol and Other Drug Abuse (AODA) Program Administration		
Base	\$834,700	\$834,700
<i>Increase</i>	\$33,700	\$77,200
DPI – AODA Programs		
Base	\$1,248,500	\$1,248,500
<i>Increase</i>	\$178,600	\$250,100
DOA – Bureau of Justice Information Systems DA Information Technology Project		
Base	\$0	\$0
<i>Increase</i>	\$1,600,000	\$1,600,000
OJA – Anti-drug Enforcement Program Administration		
Base	\$115,600	\$115,600
<i>Increase</i>	\$20,000	\$20,000
OJA – Anti-drug Enforcement Program, Local		
Base	\$3,103,500	\$3,103,500
<i>Reduction*</i>	-\$1,920,400	-\$1,919,300
OJA – Anti-drug Enforcement Program, State		
Base	\$1,068,900	\$1,068,900
<i>Increase</i>	-\$72,000	\$225,300
<b>TOTAL Amount Appropriated</b>	<b>\$18,865,100</b>	<b>\$19,485,900</b>

\* Reflects reduction due to duplicate funding of DOJ DNE and DOC youth diversion, plus federal reestimates.

Note: Base includes standard budget adjustments.

19. The following issue papers have been prepared separately for the following programs that affect penalty assessment revenues:

- Law Enforcement Training and Crime Laboratories -- Justice (Paper #188)
- Reimbursement to Counties for Victim and Witness Services -- Justice (Paper #189)
- Bureau of Justice Information Systems District Attorney and Integrated Justice Information System Projects -- Administration (Paper #190)
- Penalty Assessment State Match Funding for the Federal Anti-Drug Enforcement Program -- Administration (Paper #191)
- Database Improvements -- Corrections (Paper #192)

20. The issue papers provide a series of alternatives which, if adopted, could serve to reduce the deficit. Alternatively, if the Committee wishes to accept the Governor's proposal but eliminate the deficit, the penalty assessment surcharge could be increased. It is estimated that every increase of 1% in the penalty assessment surcharge would generate \$487,500 in revenues in 1999-00, and \$650,000 in 2000-01. If the Governor's recommendation was approved, as modified by the Committee's action concerning CCAP, the penalty assessment surcharge would need to be increased by 6%, to 29%. If the Committee wishes to retain the LETF's statutory receipt of 49.09% of penalty assessment revenues, the penalty assessment surcharge would need to be increased by 8%, to 31%.

## **ALTERNATIVES FOR PENALTY ASSESSMENT REVENUE RECEIPTS**

### **OJA Penalty Assessment Surcharge Receipts Appropriation -- Governor's Recommendation**

1. Approve the Governor's recommendation to make the following changes concerning the receipt of penalty assessment program revenues: (a) create a new appropriation under the Office of Justice Assistance (OJA) to receive all penalty assessment revenues; (b) delete certain existing penalty assessment appropriations and modify others that receive penalty assessment revenues to reflect this change; (c) move the statutory language concerning levy of penalty assessment from Chapter 165 (Department of Justice) to Chapter 757 (general provisions concerning courts of record, judges, attorneys and clerks); (d) provide that all appropriations funded from penalty assessment revenues be annual appropriations limited to the appropriated amounts; and (e) provide that 90% of the unencumbered balances of DOJ's penalty assessment surcharge receipts appropriation, DOJ's county-tribal programs--surcharge receipts appropriation, the SPD's conferences and training appropriation, the Department of Public Instruction's (DPI) AODA programs appropriation, and DPI's AODA--state operations appropriation be transferred to the newly-created OJA penalty assessment receipts appropriation, but technically modify the transfer language to specify that the amounts transferred would be 90% of the unencumbered balances on June 30, 1999, plus any revenue credited to the appropriations between June 30, 1999, and the effective date of the bill, and would take place immediately before the transfer to the renumbered appropriations. Reestimate the amount of the unencumbered balances to be transferred to OJA from \$3,332,800 PR-REV to \$2,564,400 PR-REV. In addition, delete statutory language regarding the law enforcement training fund to reflect that there would no longer be a dedicated fund.

<b>Alternative 1</b>	<b>PR</b>
1999-01 REVENUE (Change to Bill)	- \$768,200

2. In addition to Alternative 1, increase the penalty assessment surcharge by 6%, to 29% of the total of a fine or forfeiture.

<b>Alternative 2</b>	<b>PR</b>
1999-01 REVENUE (Change to Bill)	\$6,825,000

### **Retain the Law Enforcement Training Fund**

3. Approve the Governor's recommendation, as modified under Alternative #1, except retain DOJ's penalty assessment surcharge receipts appropriation and its receipt of 49.09% of penalty assessment revenues. Under this alternative, 90% of the unencumbered balance of DOJ's penalty assessment surcharge receipts appropriation on June 30, 1999 (estimated to be \$1,960,200) would be transferred to the newly-created OJA appropriation as proposed by the Governor, and the remaining 10% would remain in DOJ's penalty assessment--surcharge receipts appropriation.

<b>Alternative 3</b>	<b>PR</b>
1999-01 REVENUE (Change to Bill)	- \$768,200

4. In addition to Alternative 3, increase the penalty assessment surcharge by 8%, to 31% of the total of a fine or forfeiture.

<b>Alternative 4</b>	<b>PR</b>
1999-01 REVENUE (Change to Bill)	\$9,100,000

Prepared by: Barbara Zabawa