



Legislative Fiscal Bureau

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

May 26, 2009

Joint Committee on Finance

Paper #516

Penalty Surcharge and Drug Offender Diversion Surcharge (DOA -- Office of Justice Assistance, Corrections -- Adult Corrections, Justice, Public Defender, and Public Instruction)

[LFB 2009-11 Budget Summary: Page 30, #2 (part), Page 32, #3 (part), Page 55, #7, Page 55, #8, Page 56, #9, Page 56, #10, Page 202, #2 (part), Page 220, #12, Page 427, #2 (part), Page 430, #7, Page 434, #12, Page 512, #2 (part), Page 514, #7, Page 524, #3 (part), Page 525, #6, Page 535, #2 (part), and Page 541, #18]

CURRENT LAW

Penalty Surcharge. 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, nonmoving traffic violations or violations of safety belt use), the court also imposes a penalty surcharge of 26% of the total fine or forfeiture. Penalty surcharge revenues are allocated to appropriations in five state agencies to support specific program activities. It is estimated that the penalty surcharge fund will conclude the 2007-09 biennium with a deficit of \$2,744,800 PR.

Drug Offender Diversion Surcharge. Under 2005 Wisconsin Act 25, the Legislature created the \$10 drug offender diversion surcharge to provide program revenue funding for a new treatment, alternatives, and diversion (TAD) program. The surcharge is imposed on property crime convictions under Chapter 943 of the statutes. It is estimated that the drug offender diversion surcharge fund will conclude the 2007-09 biennium with a deficit of \$2,116,000 PR.

GOVERNOR

Penalty Surcharge

Across-the-Board 1% Reductions. Reduce penalty surcharge funded appropriations by \$208,200 PR annually.

Across-the-Board 5% Reductions. Reduce penalty surcharge funded appropriations by \$1,032,500 PR in 2009-10, and \$1,032,000 PR in 2010-11.

Grants for Digital Recording of Custodial Interrogations by Law Enforcement Grant Program. Eliminate the digital recording of custodial interrogations by law enforcement grant program. Delete \$750,000 PR annually in base funding for the program and the statutory language governing the administration of the program.

Treatment, Alternatives, and Diversion (TAD) Program. Provide \$750,000 PR annually in penalty surcharge funding to the TAD grant program. Create a PR annual appropriation to receive and expend penalty surcharge funds for grants to counties under the TAD program. [An annual 5% penalty surcharge reduction and 1% across-the-board reduction were subsequently applied to reduce funding under the appropriation to \$705,000 PR annually.]

Penalty Surcharge Funding for the Youth Diversion Program. Annually, reduce the statutorily directed funding by \$76,600 PR to the following youth diversion programs: (a) -\$20,400 annually to an organization in Milwaukee County; (b) -\$11,800 annually to an organization in Racine County; (c) -\$11,800 annually to an organization in Kenosha County; (d) -\$11,800 annually to an organization located in Ward 2 in the City of Racine; (e) -\$11,800 annually to an organization in Brown County; and (f) -\$9,000 annually to an unspecified organization (which OJA has awarded to the City of Racine).

Penalty Surcharge Funding for the Transaction Information Management of Enforcement (TIME) System. Delete \$50,000 PR annually associated with estimated contract savings from reduced utilization of IT contractors.

Drug Offender Diversion Surcharge

Across-the-Board 1% Reduction. Delete \$7,600 PR annually under the grants for substance abuse treatment programs for criminal offenders PR appropriation.

Base Funding Reduction. Delete an additional \$739,900 PR annually in expenditure authority from this appropriation which: (a) funds grants to counties under the TAD program; and (b) allocates funding to the Department of Corrections to conduct evaluations of the program.

DISCUSSION POINTS

Drug Offender Diversion Surcharge Fund

1. The provisions of 2005 Wisconsin Act 25 created the TAD grant program under the Department of Administration's Office of Justice Assistance (OJA). The program is intended to provide grants to counties to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, which provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs.

2. Act 25 provided two program revenue funding sources for the program. Effective with the passage of Act 25, the existing drug abuse program improvement surcharge (DAPIS) was increased to 75% of the sum of the fine and penalty surcharge. Under the surcharge change, OJA would not receive any DAPIS revenue for the TAD program unless collections exceeded \$1,038,600 PR in 2005-06, and \$1,044,300 PR in 2006-07. Beginning July 1, 2007, two-thirds of DAPIS revenues were to be allocated to DHFS and one-third of DAPIS revenues were to be allocated to OJA to support the TAD program. (Traditionally, DAPIS revenues have been deposited exclusively to the alcohol and drug abuse initiatives appropriation of the Department of Health Services (DHS) to support programs that provide prevention, intervention, and treatment for alcohol and other drug abuse problems.) During 2005-07, the TAD program under OJA received no DAPIS funding.

3. Under 2007 Wisconsin Act 20 the Governor recommended, and the Legislature approved, the following modifications to the allocation of DAPIS revenue: (a) the first \$850,000 plus two-thirds of all funds collected in excess of \$1,275,000 in each fiscal year are credited to DHS for its alcohol and other drug programming; and (b) all moneys in excess of \$850,000 and up to \$1,275,000, plus one-third of moneys in excess of \$1,275,000 are credited to OJA for the TAD program. In 2007-08, DAPIS revenue collections equaled \$774,200 PR. Through May 12, 2009, DAPIS revenue collections for 2008-09 total \$607,900 PR. As a result, the TAD program under OJA will receive no DAPIS funding for 2007-09, and is not projected to receive DAPIS funding during 2009-11.

4. The provisions of 2005 Wisconsin Act 25 also created the \$10 drug offender diversion surcharge to provide grant funding for OJA's TAD program. Program expenditures for TAD have exceeded program revenues leading the program to operate in deficit. In 2006-07, the program received \$14,600 in drug offender diversion surcharge revenues, while in 2007-08, the program received \$25,700 in drug offender diversion surcharge revenues. The Department of Administration estimates drug offender diversion surcharge revenues of \$45,300 in 2008-09, and further estimates that the program will conclude the 2007-09 biennium with a deficit of \$2,116,000.

5. Under AB 75, the Governor recommends making the following changes to the drug offender diversion surcharge funding for the TAD program: (a) delete \$7,600 PR annually as part of an across-the-board 1% reduction; and (b) delete an additional \$739,900 PR annually in base expenditure authority. Under these changes, \$7,500 PR annually in drug offender diversion surcharge supported expenditure authority remains to OJA to fund Department of Corrections' evaluations of the TAD program as provided under statute. Under AB 75, it is estimated that the drug offender diversion surcharge fund will conclude the 2009-11 biennium with a deficit of \$2,040,400 (a reduction to the deficit of \$75,600 PR over the course of the biennium). [Alternative B1]

6. Program revenue accounts may not operate in deficit. In order to more closely monitor the administration's efforts to balance the drug offender diversion surcharge fund, the Committee could direct the Secretary of the Department of Administration to report to the Committee on a quarterly basis during 2009-11 as to: (a) drug offender diversion surcharge revenues during each quarter of each fiscal year; (b) expenditures from the drug offender diversion surcharge fund during each quarter of each fiscal year; and (c) the administration's plan to balance

the fund by the end of 2009-11. [Alternative B2]

Penalty Surcharge Fund Condition

7. Table 1 reflects the fund condition for the penalty surcharge if current law were to be maintained through 2009-11. While the fund would begin the 2009-10 fiscal year with a cumulative deficit of \$2,744,800 PR, under current law the penalty surcharge fund would be projected to end the biennium with a deficit of \$7,201,700 PR. [Alternative A6]

TABLE 1
Penalty Surcharge Fund Condition under Current Law

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$2,744,800	-\$4,897,700
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	0	0
Revenue Total	\$15,922,400	\$13,769,500
DPI--Aid for alcohol and other drug abuse programs	\$1,518,600	\$1,518,600
DPI--Alcohol and other drug abuse program	726,500	716,000
Corrections--Victim services and programs	292,200	292,200
Corrections--Correctional officer training	2,379,000	2,384,100
DOJ--Law enforcement training fund, local assistance	5,159,400	5,159,400
DOJ--Law enforcement training fund, state operations	3,780,100	3,780,100
DOJ--Crime laboratory equipment and supplies	364,100	364,100
DOJ--Transaction information management of enforcement system	968,300	968,300
DOJ--Drug enforcement intelligence operations	1,805,100	1,805,100
DOJ--Drug crimes enforcement; local grants	848,600	848,600
DOJ--Reimbursement to counties for victim-witness services	885,300	885,300
DOA--Law enforcement programs and youth diversion-administration	220,400	220,400
DOA--Youth diversion program	794,900	794,900
DOA--Treatment, alternatives, and diversion program	0	0
DOA--Grants for digital recording of custodial interrogations	750,000	750,000
SPD--Conferences and training	154,900	154,900
DOJ--Handgun Hotline	0	0
Total Expenditures	\$20,647,400	\$20,642,000
Supplements & Reserves	\$172,700	\$329,200
Closing Balance	-\$4,897,700	-\$7,201,700

8. Under AB 75, the Governor recommends: (a) reducing penalty surcharge funded appropriations by \$208,200 PR annually as part of an across-the-board 1% reduction; (b) reducing penalty surcharge funded appropriations by \$1,032,500 PR in 2009-10, and \$1,032,000 PR in 2010-11, as part of a 5% across-the-board funding reduction to these appropriations; (c) eliminating the digital recording of custodial interrogations by law enforcement grant program and its associated funding of \$750,000 PR annually; (d) providing a net \$705,000 PR annually to the TAD grant program under OJA and creating a PR annual "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation to receive and expend these funds for grants to counties under the TAD program; and (e) deleting \$50,000 PR annually

from TIME system funding associated with estimated contract savings from reduced utilization of IT contractors.

9. Under current law, the handgun hotline program at the Department of Justice (DOJ) is budgeted \$466,900 PR and 8.0 PR positions funded by a \$8 handgun purchaser record check fee. The provisions of AB 75 would combine the penalty surcharge and handgun purchaser record check fee funds and make them a single "criminal justice program support" fund. [Issue Paper #517 addresses the issue of the recommended creation of a criminal justice program support fund.]

10. With the recommended increase of the handgun purchaser record check fee to \$30, it is estimated that approximately 94% of the revenues to the criminal justice program support fund during 2009-11 would come from penalty surcharge revenues. Under AB 75, handgun hotline expenditures would make up approximately 2.5% of total expenditures under the criminal justice program support fund. The revenue and expenditures of the current law penalty surcharge fund would predominate any recommended criminal justice program support fund under AB 75. Increased fees from handgun purchases, however, would be utilized to fund programs currently supported by the penalty surcharge.

11. Table 2 reflects the fund condition for the criminal justice program support fund under AB 75. While the fund would begin the 2009-10 fiscal year with a cumulative deficit of \$3,912,900 PR, it is projected to end the biennium with a deficit of \$4,298,600 PR.

TABLE 2
Criminal Justice Program Support Fund under AB 75
(Combines the Penalty Surcharge and Handgun Hotline Funds)

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$3,912,900	-\$4,021,100
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	<u>1,242,000</u>	<u>1,242,000</u>
Revenue Total	\$15,996,300	\$15,888,100
DPI--Aid for alcohol and other drug abuse programs	\$1,427,500	\$1,427,500
DPI--Alcohol and other drug abuse program	683,600	673,600
Corrections--Victim services and programs	274,800	274,800
Corrections--Correctional officer training	2,232,500	2,237,600
DOJ--Law enforcement training fund, local assistance	4,849,800	4,849,800
DOJ--Law enforcement training fund, state operations	3,553,500	3,553,500
DOJ--Crime laboratory equipment and supplies	342,300	342,300
DOJ--Transaction information management of enforcement system	860,000	860,000
DOJ--Drug enforcement intelligence operations	1,697,700	1,697,700
DOJ--Drug crimes enforcement; local grants	797,700	797,700
DOJ--Reimbursement to counties for victim-witness services	832,100	832,100
DOA--Law enforcement programs and youth diversion-administration	207,300	207,300
DOA--Youth diversion program	747,100	747,100
DOA--Treatment, alternatives, and diversion program	705,000	705,000
DOA--Grants for digital recording of custodial interrogations	0	0
SPD--Conferences and training	145,800	145,800
DOJ--Handgun Hotline	<u>467,000</u>	<u>467,000</u>
Total Expenditures	\$19,823,700	\$19,818,800
Supplements & Reserves	\$193,700	\$367,900
Closing Balance	-\$4,021,100	-\$4,298,600

12. Table 3 reflects the penalty surcharge fund condition under AB 75, if the Committee were to delete the creation of the criminal justice program support fund. While the fund would begin the 2009-10 fiscal year with a deficit of \$2,744,800 PR, it is projected to end the biennium with a deficit of \$4,620,800 PR. [Alternative A1]

TABLE 3

Penalty Surcharge Fund Condition under AB 75, Without Handgun Hotline

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$2,744,800	-\$3,607,000
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	<u>0</u>	<u>0</u>
Revenue Total	\$15,922,400	\$15,060,200
DPI--Aid for alcohol and other drug abuse programs	\$1,427,500	\$1,427,500
DPI--Alcohol and other drug abuse program	683,600	673,600
Corrections--Victim services and programs	274,800	274,800
Corrections--Correctional officer training	2,232,500	2,237,600
DOJ--Law enforcement training fund, local assistance	4,849,800	4,849,800
DOJ--Law enforcement training fund, state operations	3,553,500	3,553,500
DOJ--Crime laboratory equipment and supplies	342,300	342,300
DOJ--Transaction information management of enforcement system	860,000	860,000
DOJ--Drug enforcement intelligence operations	1,697,700	1,697,700
DOJ--Drug crimes enforcement; local grants	797,700	797,700
DOJ--Reimbursement to counties for victim-witness services	832,100	832,100
DOA--Law enforcement programs and youth diversion-administration	207,300	207,300
DOA--Youth diversion program	747,100	747,100
DOA--Treatment, alternatives, and diversion program	705,000	705,000
DOA--Grants for digital recording of custodial interrogations	0	0
SPD--Conferences and training	145,800	145,800
DOJ--Handgun Hotline	<u>0</u>	<u>0</u>
Total Expenditures	\$19,356,700	\$19,351,800
Supplements & Reserves	\$172,700	\$329,200
Closing Balance	-\$3,607,000	-\$4,620,800

13. The penalty surcharge fund is projected to conclude the 2007-09 biennium with a deficit of \$2,744,800 PR. Under the provisions of AB 75, the deficit in the penalty surcharge fund (either alone or combined with the handgun hotline) would increase over the course of the biennium to either \$4,298,600 PR or \$4,620,800 PR. Under state law, however, program revenue accounts may not operate in deficit. Under s. 16.40(7) of the statutes, DOA is required to collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues. Under s. 16.513 of the statutes, if DOA projects that there are insufficient moneys, assets, or accounts receivable to cover expenditures under a program revenue appropriation(s), the affected agencies must propose and submit to DOA a plan to assure that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation(s). Any such plan approved by DOA must be forwarded to the Joint Committee on Finance for its approval under 14-day passive review.

14. When addressing funding shortfalls, the Governor and Legislature have often utilized across-the-board funding reductions. Under AB 75, the Governor has recommended a series of 1% and 5% across-the-board reductions to balance the budget. Also, under AB 75, both a 1% and a 5% across-the-board reduction have been applied to appropriations funded by the penalty

surcharge. Given the size of the deficit in the fund, an additional across-the-board funding reduction of either 11% or 12% would still be required to balance the penalty surcharge fund during 2009-11. The 11% reduction would be required if the penalty surcharge fund were combined with the handgun hotline fund. The 12% reduction would be required if the penalty surcharge fund remained a separate fund.

15. Alternatively, the Governor and Legislature have, at times, considered fee increases when addressing shortfalls in program revenue accounts. Given the size of the deficit in the fund, the penalty surcharge (currently 26% of the underlying fine or forfeiture) would need to be increased by an additional 4% or 5% to balance the fund during 2009-11. The 4% increase would be required if the penalty surcharge fund were combined with the handgun hotline fund. The 5% increase would be required if the penalty surcharge fund remained a separate fund.

16. There are a number of issues that should be considered in regards to any proposal to increase the penalty surcharge:

First, the penalty surcharge is broadly applied to civil judgments in municipal and circuit courts, as well as to criminal convictions. An analysis of the penalty surcharge has found that in recent years there has been a substantial decline in the number of civil judgments, as well as a more modest decline in the number of criminal convictions to which the surcharge applies. While in calendar year 2003 there were 565,396 civil judgments (including 389,621 civil traffic judgments) in municipal courts, by calendar year 2007 (the last year for which data is available), the number of civil judgments in municipal courts had decreased to 460,384 (including 301,355 civil traffic judgments). A similar trend emerged in the circuit courts. While in calendar year 2003 there were 565,613 civil judgments (including 483,838 civil traffic judgments) in circuit courts, by calendar year 2008 the number of civil judgments in circuit courts had decreased to 486,758 (including 418,914 civil traffic judgments). A more modest decline in recent criminal convictions has also emerged. In calendar year 2006 there were 181,662 criminal convictions in circuit court. By calendar year 2008, there were 175,748 criminal convictions in circuit court.

There are a number of possible explanations for these trends including: (a) changing law enforcement strategies; (b) increased deferred prosecution and diversion efforts; (c) exercise of discretion by law enforcement; (d) exercise of discretion by prosecutors; (e) exercise of judicial discretion; and (f) increased public compliance with state laws. Estimates as to how much the penalty surcharge must be increased to eliminate the deficit in the fund assume that civil and criminal conviction rates will remain at current levels throughout 2009-11.

Second, an analysis of court collections indicates that there may be limitations to the ability to increase collections from court-imposed surcharges. For example, following a criminal conviction the \$10 drug offender diversion surcharge is number nine in order of collection of surcharges. This surcharge is assessed if a court imposes a sentence or places a person on probation for a property crime conviction under Chapter 943 of the statutes. Under 2005 Senate Bill 142, it was estimated that if this surcharge was created, that it would generate \$265,000 annually in additional revenue to the state, based on the number of property crime convictions under Chapter 943 of the statutes in 2004. Once created, however, revenues have not met this original estimate. In

2006-07, the \$10 drug offender diversion surcharge generated \$14,600 in revenues. In 2007-08, the amount of revenue generated by this new surcharge increased to \$25,700. Through April of the current fiscal year, \$32,900 in revenues has been collected under this surcharge.

Third, increased penalty surcharge collections may come at the expense of other surcharge funds that are lower down the priority list for collection in the criminal context (the penalty surcharge is collected first). In addition, in the civil context available funds to pay surcharge obligations are generally prorated. Increasing this surcharge may affect the collections rate for other surcharges collected in the civil context, such as the crime laboratories and drug law enforcement surcharge. Under AB 75, it is estimated that the crime laboratories and drug law enforcement surcharge fund will conclude the 2009-11 biennium with a deficit of \$6,445,500 PR.

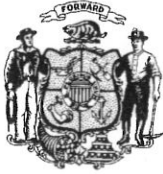
Finally, other economic and criminal justice trends could reduce estimated collections under a penalty surcharge increase. In particular, increasing unemployment and other economic strains on household income could reduce the collections rate for court surcharges.

17. Under AB 75, there is no available penalty surcharge funding (either alone or in combination with handgun purchaser record check fees) during 2009-11 to pay for grants to counties under OJA's TAD program. Deleting the TAD program from the penalty surcharge fund would reduce the 2010-11 closing deficit in the fund (either alone or combined with the handgun hotline) to either -\$2,888,600 PR or -\$3,210,800 PR. [Alternative A2]

18. Under AB 75, penalty surcharge funding for the grants for digital recording of custodial interrogations by law enforcement grant program would be deleted. The grant program was created by the Legislature in response to the Supreme Court decision in *State v. Jerrell*. In this case, the court held that custodial interrogations of juveniles must be electronically recorded when feasible, and when the interrogation occurs in a place of detention, must be recorded without exception. Under this digital recording grants program created under 2005 Wisconsin Act 60, OJA must provide grants to law enforcement agencies for the purchase, installation, or maintenance of digital recording equipment for making recordings of custodial interrogations or for training personnel to use such equipment.

19. In explaining the rationale for the deletion of this grant program, the administration indicated that, "Over 300 grants have been awarded to state and local law enforcement agencies in the past three years. A survey on the digital recording capacity of law enforcement agencies in Wisconsin was distributed via e-mail earlier this year by OJA. Nearly 300 law enforcement agencies of every size and geographic region completed the survey. The results indicated that the majority of law enforcement agencies had established a baseline digital recording capacity as called for in the authorizing statute. The greatest emerging needs that were identified in the survey and by OJA's advisory committee were for storage capacity of recorded interviews, interview training and ensuring equipment and data compatibility between law enforcement, prosecutors, defense attorneys and the courts. All of these expenses are not allowable grant expenditures under statute. In short, the original goal of the program has been met."

20. In response to these findings of the administration, the Committee could elect to



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the fund by the end of 2009-11. [Alternative B2]

Penalty Surcharge Fund Condition

7. Table 1 reflects the fund condition for the penalty surcharge if current law were to be maintained through 2009-11. While the fund would begin the 2009-10 fiscal year with a cumulative deficit of \$2,744,800 PR, under current law the penalty surcharge fund would be projected to end the biennium with a deficit of \$7,201,700 PR. [Alternative A6]

TABLE 1
Penalty Surcharge Fund Condition under Current Law

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$2,744,800	-\$4,897,700
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	<u>0</u>	<u>0</u>
Revenue Total	\$15,922,400	\$13,769,500
DPI--Aid for alcohol and other drug abuse programs	\$1,518,600	\$1,518,600
DPI--Alcohol and other drug abuse program	726,500	716,000
Corrections--Victim services and programs	292,200	292,200
Corrections--Correctional officer training	2,379,000	2,384,100
DOJ--Law enforcement training fund, local assistance	5,159,400	5,159,400
DOJ--Law enforcement training fund, state operations	3,780,100	3,780,100
DOJ--Crime laboratory equipment and supplies	364,100	364,100
DOJ--Transaction information management of enforcement system	968,300	968,300
DOJ--Drug enforcement intelligence operations	1,805,100	1,805,100
DOJ--Drug crimes enforcement; local grants	848,600	848,600
DOJ--Reimbursement to counties for victim-witness services	885,300	885,300
DOA--Law enforcement programs and youth diversion-administration	220,400	220,400
DOA--Youth diversion program	794,900	794,900
DOA--Treatment, alternatives, and diversion program	0	0
DOA--Grants for digital recording of custodial interrogations	750,000	750,000
SPD--Conferences and training	154,900	154,900
DOJ--Handgun Hotline	<u>0</u>	<u>0</u>
Total Expenditures	\$20,647,400	\$20,642,000
Supplements & Reserves	\$172,700	\$329,200
Closing Balance	-\$4,897,700	-\$7,201,700

8. Under AB 75, the Governor recommends: (a) reducing penalty surcharge funded appropriations by \$208,200 PR annually as part of an across-the-board 1% reduction; (b) reducing penalty surcharge funded appropriations by \$1,032,500 PR in 2009-10, and \$1,032,000 PR in 2010-11, as part of a 5% across-the-board funding reduction to these appropriations; (c) eliminating the digital recording of custodial interrogations by law enforcement grant program and its associated funding of \$750,000 PR annually; (d) providing a net \$705,000 PR annually to the TAD grant program under OJA and creating a PR annual "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation to receive and expend these funds for grants to counties under the TAD program; and (e) deleting \$50,000 PR annually

from TIME system funding associated with estimated contract savings from reduced utilization of IT contractors.

9. Under current law, the handgun hotline program at the Department of Justice (DOJ) is budgeted \$466,900 PR and 8.0 PR positions funded by a \$8 handgun purchaser record check fee. The provisions of AB 75 would combine the penalty surcharge and handgun purchaser record check fee funds and make them a single "criminal justice program support" fund. [Issue Paper #517 addresses the issue of the recommended creation of a criminal justice program support fund.]

10. With the recommended increase of the handgun purchaser record check fee to \$30, it is estimated that approximately 94% of the revenues to the criminal justice program support fund during 2009-11 would come from penalty surcharge revenues. Under AB 75, handgun hotline expenditures would make up approximately 2.5% of total expenditures under the criminal justice program support fund. The revenue and expenditures of the current law penalty surcharge fund would predominate any recommended criminal justice program support fund under AB 75. Increased fees from handgun purchases, however, would be utilized to fund programs currently supported by the penalty surcharge.

11. Table 2 reflects the fund condition for the criminal justice program support fund under AB 75. While the fund would begin the 2009-10 fiscal year with a cumulative deficit of \$3,912,900 PR, it is projected to end the biennium with a deficit of \$4,298,600 PR.

TABLE 2
Criminal Justice Program Support Fund under AB 75
(Combines the Penalty Surcharge and Handgun Hotline Funds)

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$3,912,900	-\$4,021,100
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	<u>1,242,000</u>	<u>1,242,000</u>
Revenue Total	\$15,996,300	\$15,888,100
DPI--Aid for alcohol and other drug abuse programs	\$1,427,500	\$1,427,500
DPI--Alcohol and other drug abuse program	683,600	673,600
Corrections--Victim services and programs	274,800	274,800
Corrections--Correctional officer training	2,232,500	2,237,600
DOJ--Law enforcement training fund, local assistance	4,849,800	4,849,800
DOJ--Law enforcement training fund, state operations	3,553,500	3,553,500
DOJ--Crime laboratory equipment and supplies	342,300	342,300
DOJ--Transaction information management of enforcement system	860,000	860,000
DOJ--Drug enforcement intelligence operations	1,697,700	1,697,700
DOJ--Drug crimes enforcement; local grants	797,700	797,700
DOJ--Reimbursement to counties for victim-witness services	832,100	832,100
DOA--Law enforcement programs and youth diversion-administration	207,300	207,300
DOA--Youth diversion program	747,100	747,100
DOA--Treatment, alternatives, and diversion program	705,000	705,000
DOA--Grants for digital recording of custodial interrogations	0	0
SPD--Conferences and training	145,800	145,800
DOJ--Handgun Hotline	<u>467,000</u>	<u>467,000</u>
Total Expenditures	\$19,823,700	\$19,818,800
Supplements & Reserves	\$193,700	\$367,900
Closing Balance	-\$4,021,100	-\$4,298,600

12. Table 3 reflects the penalty surcharge fund condition under AB 75, if the Committee were to delete the creation of the criminal justice program support fund. While the fund would begin the 2009-10 fiscal year with a deficit of \$2,744,800 PR, it is projected to end the biennium with a deficit of \$4,620,800 PR. [Alternative A1]

TABLE 3

Penalty Surcharge Fund Condition under AB 75, Without Handgun Hotline

<u>Appropriation</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$2,744,800	-\$3,607,000
Penalty Surcharge Revenue	18,667,200	18,667,200
Handgun Hotline Revenue	<u>0</u>	<u>0</u>
Revenue Total	\$15,922,400	\$15,060,200
DPI--Aid for alcohol and other drug abuse programs	\$1,427,500	\$1,427,500
DPI--Alcohol and other drug abuse program	683,600	673,600
Corrections--Victim services and programs	274,800	274,800
Corrections--Correctional officer training	2,232,500	2,237,600
DOJ--Law enforcement training fund, local assistance	4,849,800	4,849,800
DOJ--Law enforcement training fund, state operations	3,553,500	3,553,500
DOJ--Crime laboratory equipment and supplies	342,300	342,300
DOJ--Transaction information management of enforcement system	860,000	860,000
DOJ--Drug enforcement intelligence operations	1,697,700	1,697,700
DOJ--Drug crimes enforcement; local grants	797,700	797,700
DOJ--Reimbursement to counties for victim-witness services	832,100	832,100
DOA--Law enforcement programs and youth diversion-administration	207,300	207,300
DOA--Youth diversion program	747,100	747,100
DOA--Treatment, alternatives, and diversion program	705,000	705,000
DOA--Grants for digital recording of custodial interrogations	0	0
SPD--Conferences and training	145,800	145,800
DOJ--Handgun Hotline	<u>0</u>	<u>0</u>
Total Expenditures	\$19,356,700	\$19,351,800
Supplements & Reserves	\$172,700	\$329,200
Closing Balance	-\$3,607,000	-\$4,620,800

13. The penalty surcharge fund is projected to conclude the 2007-09 biennium with a deficit of \$2,744,800 PR. Under the provisions of AB 75, the deficit in the penalty surcharge fund (either alone or combined with the handgun hotline) would increase over the course of the biennium to either \$4,298,600 PR or \$4,620,800 PR. Under state law, however, program revenue accounts may not operate in deficit. Under s. 16.40(7) of the statutes, DOA is required to collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues. Under s. 16.513 of the statutes, if DOA projects that there are insufficient moneys, assets, or accounts receivable to cover expenditures under a program revenue appropriation(s), the affected agencies must propose and submit to DOA a plan to assure that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation(s). Any such plan approved by DOA must be forwarded to the Joint Committee on Finance for its approval under 14-day passive review.

14. When addressing funding shortfalls, the Governor and Legislature have often utilized across-the-board funding reductions. Under AB 75, the Governor has recommended a series of 1% and 5% across-the-board reductions to balance the budget. Also, under AB 75, both a 1% and a 5% across-the-board reduction have been applied to appropriations funded by the penalty

surcharge. Given the size of the deficit in the fund, an additional across-the-board funding reduction of either 11% or 12% would still be required to balance the penalty surcharge fund during 2009-11. The 11% reduction would be required if the penalty surcharge fund were combined with the handgun hotline fund. The 12% reduction would be required if the penalty surcharge fund remained a separate fund.

15. Alternatively, the Governor and Legislature have, at times, considered fee increases when addressing shortfalls in program revenue accounts. Given the size of the deficit in the fund, the penalty surcharge (currently 26% of the underlying fine or forfeiture) would need to be increased by an additional 4% or 5% to balance the fund during 2009-11. The 4% increase would be required if the penalty surcharge fund were combined with the handgun hotline fund. The 5% increase would be required if the penalty surcharge fund remained a separate fund.

16. There are a number of issues that should be considered in regards to any proposal to increase the penalty surcharge:

First, the penalty surcharge is broadly applied to civil judgments in municipal and circuit courts, as well as to criminal convictions. An analysis of the penalty surcharge has found that in recent years there has been a substantial decline in the number of civil judgments, as well as a more modest decline in the number of criminal convictions to which the surcharge applies. While in calendar year 2003 there were 565,396 civil judgments (including 389,621 civil traffic judgments) in municipal courts, by calendar year 2007 (the last year for which data is available), the number of civil judgments in municipal courts had decreased to 460,384 (including 301,355 civil traffic judgments). A similar trend emerged in the circuit courts. While in calendar year 2003 there were 565,613 civil judgments (including 483,838 civil traffic judgments) in circuit courts, by calendar year 2008 the number of civil judgments in circuit courts had decreased to 486,758 (including 418,914 civil traffic judgments). A more modest decline in recent criminal convictions has also emerged. In calendar year 2006 there were 181,662 criminal convictions in circuit court. By calendar year 2008, there were 175,748 criminal convictions in circuit court.

There are a number of possible explanations for these trends including: (a) changing law enforcement strategies; (b) increased deferred prosecution and diversion efforts; (c) exercise of discretion by law enforcement; (d) exercise of discretion by prosecutors; (e) exercise of judicial discretion; and (f) increased public compliance with state laws. Estimates as to how much the penalty surcharge must be increased to eliminate the deficit in the fund assume that civil and criminal conviction rates will remain at current levels throughout 2009-11.

Second, an analysis of court collections indicates that there may be limitations to the ability to increase collections from court-imposed surcharges. For example, following a criminal conviction the \$10 drug offender diversion surcharge is number nine in order of collection of surcharges. This surcharge is assessed if a court imposes a sentence or places a person on probation for a property crime conviction under Chapter 943 of the statutes. Under 2005 Senate Bill 142, it was estimated that if this surcharge was created, that it would generate \$265,000 annually in additional revenue to the state, based on the number of property crime convictions under Chapter 943 of the statutes in 2004. Once created, however, revenues have not met this original estimate. In

2006-07, the \$10 drug offender diversion surcharge generated \$14,600 in revenues. In 2007-08, the amount of revenue generated by this new surcharge increased to \$25,700. Through April of the current fiscal year, \$32,900 in revenues has been collected under this surcharge.

Third, increased penalty surcharge collections may come at the expense of other surcharge funds that are lower down the priority list for collection in the criminal context (the penalty surcharge is collected first). In addition, in the civil context available funds to pay surcharge obligations are generally prorated. Increasing this surcharge may affect the collections rate for other surcharges collected in the civil context, such as the crime laboratories and drug law enforcement surcharge. Under AB 75, it is estimated that the crime laboratories and drug law enforcement surcharge fund will conclude the 2009-11 biennium with a deficit of \$6,445,500 PR.

Finally, other economic and criminal justice trends could reduce estimated collections under a penalty surcharge increase. In particular, increasing unemployment and other economic strains on household income could reduce the collections rate for court surcharges.

17. Under AB 75, there is no available penalty surcharge funding (either alone or in combination with handgun purchaser record check fees) during 2009-11 to pay for grants to counties under OJA's TAD program. Deleting the TAD program from the penalty surcharge fund would reduce the 2010-11 closing deficit in the fund (either alone or combined with the handgun hotline) to either -\$2,888,600 PR or -\$3,210,800 PR. [Alternative A2]

18. Under AB 75, penalty surcharge funding for the grants for digital recording of custodial interrogations by law enforcement grant program would be deleted. The grant program was created by the Legislature in response to the Supreme Court decision in *State v. Jerrell*. In this case, the court held that custodial interrogations of juveniles must be electronically recorded when feasible, and when the interrogation occurs in a place of detention, must be recorded without exception. Under this digital recording grants program created under 2005 Wisconsin Act 60, OJA must provide grants to law enforcement agencies for the purchase, installation, or maintenance of digital recording equipment for making recordings of custodial interrogations or for training personnel to use such equipment.

19. In explaining the rationale for the deletion of this grant program, the administration indicated that, "Over 300 grants have been awarded to state and local law enforcement agencies in the past three years. A survey on the digital recording capacity of law enforcement agencies in Wisconsin was distributed via e-mail earlier this year by OJA. Nearly 300 law enforcement agencies of every size and geographic region completed the survey. The results indicated that the majority of law enforcement agencies had established a baseline digital recording capacity as called for in the authorizing statute. The greatest emerging needs that were identified in the survey and by OJA's advisory committee were for storage capacity of recorded interviews, interview training and ensuring equipment and data compatibility between law enforcement, prosecutors, defense attorneys and the courts. All of these expenses are not allowable grant expenditures under statute. In short, the original goal of the program has been met."

20. In response to these findings of the administration, the Committee could elect to

delete the grants for digital recording of custodial interrogations by law enforcement grant program. Alternatively, as there will be an ongoing need to purchase, install, and maintain digital recording equipment by law enforcement as a result of the Supreme Court decision in *State v. Jerrell*, the Committee could elect to restore grant funding of \$705,000 PR annually to this program. (This alternative would restore base funding of \$750,000 PR annually, but would reduce base funding by 6% annually to reflect reductions made to other penalty surcharge appropriations under AB 75.) However, under AB 75, the penalty surcharge fund (either alone or in combination with the handgun hotline fund) will be in deficit throughout the entire 2009-11 biennium. Restoring funding for this program would exacerbate this deficit. [Alternative A3]

21. The Committee could also consider utilizing federal Byrne Justice Assistance Grant funds received under the federal American Recovery and Reinvestment Act (ARRA) to fund activities otherwise supported by the penalty surcharge. The State of Wisconsin will be provided a one-time Byrne award under ARRA of \$18,843,600 FED. The administration indicates that these funds should be available to the state by July, 2009. Table 4 identifies the administration's plan for ARRA Byrne funding.

TABLE 4

Administration Plan for Utilization of Federal ARRA Byrne Funding

<u>Program</u>	<u>Amount</u>
Programs Targeting Youthful Offenders (Age 14-25)	\$3,850,000
Multijurisdictional Crime Enforcement Task Forces	3,000,000
Department of Corrections Programming	2,700,000
Treatment, Alternatives, and Diversion (TAD) Grants	1,300,000
First Offender/Non-Violent Diversion Grants	1,300,000
Communications Interoperability	1,000,000
Assess, Inform, and Measure (AIM) Grant	834,200
Local Law Enforcement Programs	500,000
State Crime Laboratories--Digital Image Equipment	500,000
Wisconsin Justice Information Sharing Program	450,000
Felmers/Chaney Community Based Offender Reintegration	350,000
Small Police Agency Technology Improvement Grants	309,400
Racial Disparity--Data Collection Software/Traffic Stops	300,000
DOJ--Live Scan Fingerprint Workstations	250,000
Racial Disparity--Minority Law Student Internships	<u>200,000</u>
Subtotal	\$16,843,600
OJA--Administration	\$1,200,000
OJA--Program Performance Evaluation	<u>800,000</u>
Subtotal	\$2,000,000
Total State ARRA Byrne Award	\$18,843,600

22. Federal Byrne funds may be utilized for training, personnel, equipment, supplies,

contractual support, and information systems for criminal justice. Under AB 75, \$4,849,800 PR annually in penalty surcharge funding is budgeted to reimburse local law enforcement agencies for the training of law enforcement recruits, as well as for annual recertification training for existing law enforcement officers. As at least 61.51% of the Byrne award must be utilized for local initiatives, and in order to simplify the use of Byrne funds to support activities that are otherwise supported by the penalty surcharge, the Committee could consider creating a single PR local law enforcement training reimbursement appropriation under DOJ to receive federal Byrne funds. The appropriation language would authorize DOJ to utilize the ARRA Byrne funds to reimburse local law enforcement agencies for their recruit and annual recertification training costs.

23. In order to eliminate the deficit in the penalty surcharge fund, the Committee could consider directing: (a) OJA, after consulting with DOJ, to deposit sufficient ARRA Byrne funds in the newly created PR Byrne appropriation to eliminate the deficit in the penalty surcharge fund (by reducing the AB 75 draw on penalty surcharge funds); and (b) DOJ to reduce its expenditure of penalty surcharge funds for local law enforcement training reimbursement purposes by an amount equal to the Byrne funds deposited to the PR local law enforcement training reimbursement appropriation. [Alternative A5]

24. Depending on the alternatives selected by the Committee, the penalty surcharge deficit is estimated to range from \$2,888,600 PR (maintain the combination of the penalty surcharge and handgun hotline funds and delete TAD funding) to \$6,030,800 PR (recreate separate penalty surcharge fund, and maintain TAD and digital recording funding). These deficit estimates assume that the Committee would maintain the funding reductions applied to these appropriations under the bill.

25. One of the stated federal purposes for ARRA funding is to "preserve and create jobs." There are 54.56 base year state positions in criminal justice that are currently funded with the penalty surcharge. Utilization of federal Byrne ARRA funds to support these positions would be consistent with the intent of ARRA. Any necessary federally funded positions could be created by the Governor utilizing current statutory authority.

26. Under any alternatives selected by the Committee, in order to more closely monitor the administration's efforts to balance the penalty surcharge fund, the Committee could direct the Secretary of the Department of Administration to report to the Committee on a quarterly basis during 2009-11 as to: (a) penalty surcharge revenues during each quarter of each fiscal year; (b) expenditures from the penalty surcharge fund during each quarter of each fiscal year; and (c) the administration's plan to balance the fund by the end of 2009-11. [Alternative A4]

ALTERNATIVES

A. Penalty Surcharge

1. Approve the Governor's recommendation to: (a) reduce penalty surcharge funded appropriations by \$208,200 PR annually as part of an across-the-board 1% reduction in most non-federal appropriations; (b) reduce penalty surcharge funded appropriations by \$1,032,500 PR in

2009-10, and \$1,032,000 PR in 2010-11, as part of a 5% across-the-board funding reduction to these appropriations (generally after standard budget adjustment); (c) eliminate the digital recording of custodial interrogations by law enforcement grant program and its associated funding of \$750,000 PR annually; (d) provide a net \$705,000 PR annually to the treatment, alternatives, and diversion (TAD) grant program and create a PR annual "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation to receive and expend these funds for grants to counties under the TAD program; (e) delete \$50,000 PR annually associated with estimated contract savings from reduced utilization of IT contractors for the transaction information management of enforcement (TIME) system; and (f) modify the statutory directives for grant funding for the youth diversion program for 2009-11 to reflect penalty surcharge funding changes provided under AB 75.

2. Delete \$705,000 PR annually in penalty surcharge funding to the treatment, alternatives, and diversion (TAD) grant program, and delete the creation of a PR annual "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation.

ALT A2	Change to Bill
	Funding
PR	-\$1,410,000

3. Restore the digital recording of custodial interrogations by law enforcement grant program and provide funding of \$705,000 PR annually. (This alternative would restore base funding of \$750,000 PR annually, but would reduce base funding by 6% annually to reflect reductions made to other penalty surcharge appropriations.)

ALT A3	Change to Bill
	Funding
PR	\$1,410,000

4. Direct the Secretary of the Department of Administration (DOA) to report to the Committee on a quarterly basis during 2009-11 as to: (a) penalty surcharge revenue collections during each quarter of each fiscal year; (b) expenditures from the penalty surcharge fund during each quarter of each fiscal year; and (c) DOA plans to balance the fund by the end of 2009-11.

5. Create a PR continuing appropriation under the Department of Justice (DOJ) to receive federal Byrne Justice Assistance Grant funds. Provide that the Department may utilize the funding deposited to the appropriation to reimburse local law enforcement agencies for their recruit and annual recertification training costs. Direct DOA's Office of Justice Assistance (OJA), after consulting with DOJ, to deposit sufficient ARRA Byrne funds in the appropriation to eliminate the deficit in the penalty surcharge fund (by reducing the AB 75 draw on penalty surcharge funds). Direct DOJ to reduce its expenditure of penalty surcharge funds for local law enforcement training reimbursement purposes by an amount equal to the Byrne funds deposited to this appropriation.

6. Delete provisions.

ALT A6	Change to Bill
	Funding
PR	\$2,580,900

B. Drug Offender Diversion Surcharge

1. Approve the Governor's recommendation to: (a) delete \$7,600 PR annually under the grants for substance abuse treatment programs for criminal offenders PR appropriation as part of an across-the-board 1% reduction in most non-federal appropriations; and (b) delete an additional \$739,900 PR annually in expenditure authority from this appropriation. [Under this alternative \$7,500 PR annually in base expenditure authority would remain in this appropriation to fund Department of Corrections evaluations of the TAD program as provided under state statute.]

2. Direct the Secretary of the Department of Administration to report to the Committee on a quarterly basis during 2009-11 as to: (a) drug offender diversion surcharge revenue collections during each quarter of each fiscal year; (b) expenditures from the drug offender diversion surcharge fund during each quarter of each fiscal year; and (c) DOA plans to balance the fund by the end of 2009-11.

3. Delete provisions.

ALT B3	Change to Bill
	Funding
PR	\$1,494,800

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