



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 #515

Increase Crime Laboratories and Drug Law Enforcement Surcharge (Justice)

[LFB 2009-11 Budget Summary: Page 430, #6]

CURRENT LAW

When a court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law, or municipal or county ordinance, a crime laboratories and drug law enforcement surcharge of \$8 is generally imposed. Currently, this surcharge, along with revenue from a \$250 DNA surcharge, supports: (a) the state's DNA databank; (b) DNA evidence prosecution efforts; (c) the state crime laboratories; and (d) drug law enforcement efforts.

GOVERNOR

Increase the crime laboratories and drug law enforcement surcharge from the current \$8 to \$13. Provide that the increased surcharge would first apply to violations committed on or after the effective date of the budget act.

DISCUSSION POINTS

State Functions Supported by the Surcharges

1. The 2008-09 budget for activities funded by the \$8 crime laboratories and drug law enforcement surcharge and the \$250 DNA surcharge is \$9,460,400 PR and 71.5 PR positions including: (a) \$6,217,800 PR and 44.50 PR positions for the state crime laboratories; (b) \$2,410,200 PR and 21.00 PR positions for the narcotics bureau at the Department of Justice (DOJ); (c) \$632,800 PR and 5.00 PR positions annually for the Division of Legal Services at DOJ; (d) \$139,200 PR and 1.00 PR position to the District Attorney function to support a DNA evidence prosecutor position; and (e) \$60,400 PR to the Department of Corrections to support the collection of DNA samples from individuals entering the prison system.

2. The state's three crime laboratories are located in Madison, Milwaukee, and Wausau. Employees of the state crime laboratories may undertake investigation of criminal conduct only upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, state agency head, the Attorney General or the Governor. Following such a request, the laboratories must collaborate fully in the complete investigation of criminal conduct and bring to bear the full range of their forensic skills. These efforts may involve field investigations at the scene of the crime. Both the Wausau and Madison crime laboratories have a mobile unit available for such field investigations 24 hours a day, seven days a week. Under s. 165.77 of the statutes, the state crime laboratories are also required to provide DNA analysis and maintain a DNA databank.

3. The narcotics bureau administers a statewide drug enforcement program to stem the flow of drugs into and within the state. The narcotics bureau: (a) participates in cooperative anti-drug efforts with local, state, and federal law enforcement agencies; (b) provides investigative assistance to local law enforcement; and (c) initiates independent drug investigations.

4. The Division of Legal Services: (a) provides training to law enforcement agencies and prosecutors regarding drug laws, issues regarding investigations, search and seizure, electronic surveillance, DNA evidence, drug prosecutions and post-conviction DNA testing; (b) represents the state in felony appeals and in selected misdemeanor drug cases that involve issues of statewide importance; (c) assists prosecutors and law enforcement agencies in regards to specific investigations/cases, including the approval of wiretap applications, certain drug-related cases and complex crimes; and (d) acts as a legal advisor to the state crime laboratories on a variety of issues.

5. The DNA evidence prosecutor under the District Attorney is primarily responsible for: (a) prosecuting criminal cases where DNA evidence plays a critical role; (b) developing and presenting appropriate training sessions statewide relating to the use of DNA evidence; and (c) providing expert advice on DNA evidence to a variety of criminal justice agencies in the state.

Analysis of the State Crime Laboratories and Drug Law Enforcement Surcharge and DNA Surcharge Fund Condition

6. Under state law, 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.

7. Nonetheless, in recent state fiscal years an increasingly large deficit has developed in the \$8 crime laboratories and drug law enforcement surcharge and \$250 DNA surcharge fund. (Both surcharges are deposited to a joint receipts appropriation and are utilized and treated as a

single PR fund.) The fund began the 2004-05 state fiscal year with a positive balance of \$242,700 PR, but concluded the year with a deficit of \$328,900 PR. The deficit in the fund increased to: (a) -\$1,321,200 PR at the end of 2005-06; (b) -\$2,373,600 PR at the end of 2006-07; and (c) -\$3,763,800 PR at the end of 2007-08. Based upon budgeted expenditure authority and a re-estimate of available revenues, it is now projected that the fund will conclude 2008-09 with a deficit of \$5,475,000 PR.

8. Table 1 reflects the fund condition for the crime laboratories, drug law enforcement, and DNA surcharge fund if the \$8 crime laboratories and drug law enforcement surcharge remained unchanged. If the current law fee were to be maintained, the deficit for the fund would grow from -\$5,475,000 PR at the beginning of 2009-10, to an estimated -\$9,987,800 PR at the end of 2010-11. [Alternative 4]

TABLE 1

Crime Laboratories, Drug Law Enforcement, and DNA Surcharge Fund Condition if \$8 Crime Laboratories and Drug Law Enforcement Surcharge is Maintained

	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$5,475,000	-\$7,617,900
Revenue		
Crime laboratory surcharge	\$6,080,600	\$6,080,600
\$250 DNA surcharge	<u>1,314,000</u>	<u>1,314,000</u>
Total Revenue	\$7,394,600	\$7,394,600
Expenditures		
Drug law enforcement, crime laboratories, and genetic evidence	\$8,335,800	\$8,335,800
Crime laboratories, deoxyribonucleic acid analysis	745,200	745,200
Deoxyribonucleic acid evidence prosecutor	<u>135,600</u>	<u>135,600</u>
Total Expenditures	\$9,216,600	\$9,216,600
Supplements & Reserves	\$320,900	\$547,900
Closing Balance	-\$7,617,900	-\$9,987,800

9. Table 2 reflects the fund condition for the crime laboratories, drug law enforcement, and DNA surcharge fund if the \$8 crime laboratories and drug law enforcement surcharge was increased to \$13 as recommended under AB 75. While in the deficit in the fund is projected to continue to grow under the provisions of AB 75, increasing the fee to \$13 is projected to slow the growth in the deficit. If the crime laboratories and drug law enforcement surcharge was increased to \$13, the deficit for the fund would grow from -\$5,475,000 PR at the beginning of 2009-10, to -\$6,445,500 PR at the end of 2010-11. [Alternative 1]

TABLE 2**Crime Laboratories, Drug Law Enforcement, and DNA Surcharge Fund Condition if Crime Laboratories and Drug Law Enforcement Surcharge Increased to \$13**

	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$5,475,000	-\$6,363,700
Revenue		
Crime laboratory surcharge		
Base Revenue	\$6,080,600	\$6,080,600
Fee Increase	1,254,200	2,288,100
\$250 DNA surcharge	<u>1,314,000</u>	<u>1,314,000</u>
Total Revenue	\$8,648,800	\$9,682,700
Expenditures		
Drug law enforcement, crime laboratories, and genetic evidence	\$8,335,800	\$8,335,800
Crime laboratories, deoxyribonucleic acid analysis	745,200	745,200
Deoxyribonucleic acid evidence prosecutor	<u>135,600</u>	<u>135,600</u>
Total Expenditures	\$9,216,600	\$9,216,600
Supplements & Reserves	\$320,900	\$547,900
Closing Balance	-\$6,363,700	-\$6,445,500

10. Upon a criminal conviction, state law specifies the order of payment for twenty state-created surcharges. Table 3 identifies the current order of surcharge payments upon a criminal conviction. Not all surcharges are collected for each criminal conviction. Rather, some surcharges are more broadly applied, while others apply in more limited circumstances. The \$8 crime laboratories and drug law enforcement surcharge is fifth in the order of payment, while the \$250 DNA surcharge is sixth in the order of payment.

TABLE 3

Order of Payment of Surcharges Following a Criminal Conviction.

<u>Order of Payment</u>	<u>Surcharge</u>
1	Penalty Surcharge (26% of the fine or forfeiture)
2	Jail Surcharge (1% of the fine or forfeiture, or \$10, whichever is greater)
3	Part A of the Crime Victim and Witness Assistance Surcharge (\$40 per misdemeanor conviction, \$60 per felony conviction)
4	Part B of the Crime Victim and Witness Assistance Surcharge (\$20 for each criminal conviction)
5	Crime Laboratories and Drug Law Enforcement Surcharge (generally \$8 per criminal or civil conviction)
6	Deoxyribonucleic Acid Surcharge (generally \$250 per criminal conviction)
7	Child Pornography Surcharge (\$500 per image)
8	Drug Abuse Program Improvement Surcharge (75% of the fine and penalty assessment imposed)
9	Drug Offender Diversion Surcharge (\$10 per property crime conviction)
10	Driver Improvement Surcharge (\$365 for certain OWI convictions)
11	Truck Driver Education Surcharge (\$8 per traffic conviction)
12	Domestic Abuse Surcharge (\$100 per offense)
13	Consumer Protection Surcharge (25% of the total fine or forfeiture)
14	Natural Resources Surcharge (75% of the fine or forfeiture)
15	Natural Resources Restitution Surcharge (equal to the fee which should have been paid)
16	Environmental Surcharge (10% of the fine or forfeiture)
17	Wild Animal Protection Surcharge (\$8.75 to \$2,000 depending on animal)
18	Wildlife Violator Compact Surcharge (\$5 for certain wild animal or plant violations)
19	Weapons Surcharge (75% of fine or forfeiture, up to \$1,000)
20	Uninsured Employer Surcharge (75% of the fine or forfeiture, which can range from \$10 to \$10,000)

11. There are a number of issues that should be considered in regards to any proposal to increase the \$8 crime laboratories and drug law enforcement surcharge:

First, like the penalty surcharge, the crime laboratories and drug law enforcement 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. The current fiscal estimates 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, the \$10 drug offender diversion surcharge is number nine in order of collection of surcharges under current law. 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 crime laboratory and drug law enforcement surcharge collections may come at the expense of other surcharge funds that are lower down the priority list for collection in the criminal context. 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 penalty surcharge. Under AB 75, as introduced, the administration estimated that the penalty surcharge fund will conclude the 2009-11 biennium with a deficit of approximately \$5 million.

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

12. When addressing funding shortfall, the Governor and the 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. Even if the Legislature were to approve the \$5 fee increase, however, given the size of the deficit in the fund, an across-the-board funding reduction of 34% would still be required to balance the fund during 2009-11.

13. 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

14. Federal Byrne funds may be utilized for training, personnel, equipment, supplies, contractual support, and information systems for criminal justice. Under AB 75, \$8,335,800 PR annually in crime laboratory and DNA surcharge revenues is budgeted to DOJ's drug law enforcement, crime laboratories, and genetic evidence activities appropriation. In order to simplify the use of Byrne funds to support activities that are otherwise supported by the crime laboratory and DNA surcharges, the Committee could consider creating a single PR appropriation under DOJ to receive federal Byrne funds that would authorize the same expenditures as the current law drug law enforcement, crime laboratories, and genetic evidence activities appropriation. The Committee could consider modifying the provisions of AB 75 by providing \$6,445,500 in ARRA Byrne funds to this appropriation in 2009-10 to eliminate the deficit in the crime laboratories, drug law enforcement, and DNA surcharge fund (by reducing the draw on crime laboratory and DNA surcharge revenues). Expenditure authority under DOJ's existing drug law enforcement, crime laboratories, and genetic evidence activities appropriation could be reduced by a corresponding amount. [Alternative 2]

15. One of the stated federal purposes for ARRA funding is to "preserve and create jobs." There are 71.5 state positions in criminal justice that are currently funded with the \$8 crime laboratories and drug law enforcement surcharge and the \$250 DNA 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.

16. In order to more closely monitor the administration's efforts to balance the 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) revenue receipts to the fund during each quarter of each fiscal year; (b) expenditures from the fund during each quarter of each fiscal year; and (c) joint plans of DOA and DOJ to balance the fund by the end of 2009-11. [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation to increase the crime laboratories and drug law enforcement surcharge from the current \$8 to \$13. Provide that the increased surcharge would first apply to violations committed on or after the effective date of the budget act.

2. 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 appropriation for activities relating to drug law enforcement, drug law violation prosecution assistance, and activities of the state and regional crime laboratories. Provide \$6,445,500 PR in ARRA Byrne funds to this appropriation in 2009-10. Reducing DOJ's existing drug law enforcement, crime laboratories, and genetic evidence activities appropriation by an equal \$6,445,500 PR in 2009-10, which is funded by crime laboratory and DNA surcharge revenues. [Adoption of this alternative would eliminate the deficit in the crime laboratories, drug law enforcement, and DNA surcharge fund under AB 75 by reducing the draw on crime laboratory and DNA surcharge revenues during 2009-10.]

3. Direct the Secretary of the Department of Administration to report to the Committee on a quarterly basis during 2009-11 as to: (a) revenue collected under the crime laboratories and drug law enforcement surcharge and the DNA surcharge during each quarter of each fiscal year; (b) expenditures from these revenue sources during each quarter of each fiscal year; and (c) joint plans of the Departments of Administration and Justice to balance the fund by the end of 2009-11.

4. Delete provision.

ALT 4	Change to Bill
	Revenue
PR-REV	- \$3,542,300

Prepared by: Paul Onsager