



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 9, 2017

Joint Committee on Finance

Paper #408

Crime Laboratory and Drug Law Enforcement Surcharge and DNA Surcharge Overview (Justice)

CURRENT LAW

A court must impose a \$13 crime laboratory and drug law enforcement (CLDLE) surcharge on an individual if the court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of most state laws or municipal or county ordinances. The CLDLE surcharge is not imposed for violations of smoking prohibition laws, the lack of motor vehicle insurance, nonmoving traffic violations, safety belt use violations, and certain violations regarding special identification cards for the physically disabled.

If a court imposes a sentence or places a person on probation, the court must impose a deoxyribonucleic acid (DNA) analysis surcharge. The DNA surcharge totals \$250 for each felony conviction and \$200 for each misdemeanor conviction.

Revenue from the CLDLE surcharge and the DNA surcharge is received by the Department of Justice's (DOJ) crime laboratories and DNA analysis continuing PR appropriation (referred to as the CLDLE and DNA surcharge fund). The Department may utilize the fund appropriation to support the costs of the crime laboratories to provide DNA analysis, to administer the DNA databank, and to reimburse local law enforcement agencies, the Department of Corrections, and the Department of Health Services for the costs of submitting biological specimens to the crime laboratories for DNA analysis. The fund is also utilized to transfer funding to appropriations within DOJ and the District Attorney function to support the following: crime laboratory equipment and supplies; drug law enforcement, crime laboratories, and genetic evidence activities; and a statewide DNA evidence prosecutor position.

GOVERNOR

The bill would increase expenditures from the CLDLE and DNA surcharge fund by

providing expenditure authority for the following: (a) \$1,000,000 PR annually to support increased costs for DNA analysis kits utilized by the crime laboratories; (b) \$500,000 PR annually on a one-time basis to support drug law enforcement activities of DOJ's Division of Criminal Investigation; and (c) \$200,000 PR in 2017-18 and \$300,000 PR in 2018-19 for additional crime laboratory equipment and supplies.

In addition, the bill appropriates \$750,000 PR annually on a one-time basis to support law enforcement activities related to Internet crimes against children (ICAC). The bill inadvertently does not provide a revenue source for the amounts appropriated to support ICAC investigations. However, the administration indicates that its intent was to provide that funding for ICAC would be supported by a transfer of funds from DOJ's drug law enforcement, crime laboratories, and genetic evidence activities annual PR appropriation. This appropriation is supported by a transfer of funds from the CLDLE and DNA surcharge fund.

DISCUSSION POINTS

1. As identified above, the bill utilizes revenue from the CLDLE surcharge and the DNA surcharge to support additional expenditures for DNA analysis kits, drug law enforcement activities of DOJ's Division of Criminal Investigation (DCI), crime laboratories equipment and supplies, and ICAC investigations. Each of these issues will be addressed in greater detail under separate papers. The purpose of this paper is to provide background information for the Committee on the condition of the CLDLE and DNA surcharge fund under the bill. In addition, this paper identifies alternatives for the Committee's consideration that would align the structure of the CLDLE and DNA surcharge fund with the structure of other surcharge funds utilized to support state criminal justice programs.

Condition of the CLDLE and DNA Surcharge Fund

2. The CLDLE and DNA surcharge fund is generally utilized to support activities of the state's three crime laboratories, reimbursement for law enforcement agencies and certain state agencies for the cost of submitting biological samples to the state crime laboratories for DNA analysis, criminal investigations within DOJ's Division of Criminal Investigation, and a statewide DNA evidence prosecutor position. The fund is supported by two separate surcharges (the CLDLE surcharge and the DNA surcharge). Revenue from these two surcharges is pooled together in the CLDLE and DNA surcharge fund appropriation and is not distinguished for the purposes of making expenditures and transferring funding to other appropriations.

3. The CLDLE surcharge was most recently increased from \$8 to \$13 under 2009 Act 28. The surcharge was increased in response to a growing deficit in the CLDLE and DNA surcharge fund. Since Act 28, the surcharge has remained level at \$13. From 2008-09 (the fiscal year before Act 28) to 2015-16, revenue from the CLDLE surcharge increased by 33% from \$6,624,500 to \$8,789,800.

4. The DNA surcharge was significantly expanded under 2013 Act 20 with the expansion of the collection of biological specimens from criminal offenders. Prior to Act 20, generally, individuals convicted of a felony or certain misdemeanors were required to submit a biological

sample for DNA analysis. A court was required to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a violation of: (a) sexual assault; (b) first or second degree sexual assault of a child; (c) engaging in repeated acts of sexual assault of the same child; and (d) sexual assault of a child placed in substitute care. Courts were also authorized, but not required, to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a felony conviction. Under 2013 Act 20, individuals arrested for certain violent felonies, and individuals convicted of any misdemeanor, were newly required to submit biological samples for DNA analysis. Act 20 also provided that a court must impose a DNA surcharge whenever the court imposes a sentence or places a person on probation. The surcharge totals \$250 for each felony conviction and \$200 for each misdemeanor conviction. From 2012-13 (the fiscal year prior to 2013 Act 20) to 2015-16, revenue from the DNA surcharge increased by 444%, from \$927,700 to \$5,043,200.

5. Due to significant increases in the CLDLE surcharge and the DNA surcharge, the fund has operated with a surplus in recent fiscal years. Table 1 identifies the projected condition of the CLDLE and DNA surcharge fund for 2016-17. Annual revenue is based on revenue received through February, 2017, as well as historical monthly revenue received by the fund since the expansion of the DNA surcharge. As indicated in Table 1, the fund is projected to end 2016-17 with a balance of \$5,160,800.

TABLE 1

CLDLE and DNA Surcharge Fund Projected Condition, 2016-17

Beginning Balance	\$4,406,600
Revenue	14,813,700
Obligations	14,059,500
Closing Balance	\$5,160,800

6. The CLDLE and DNA surcharge fund supports the following appropriations within DOJ and the District Attorney function: crime laboratories and DNA analysis; drug law enforcement, crime laboratories, and genetic evidence activities; crime laboratory equipment and supplies; and a statewide DNA evidence prosecutor. The bill would utilize the CLDLE and DNA surcharge fund to support the following increased expenditures: (a) \$1,000,000 PR annually to support increased costs for DNA analysis kits utilized by the state crime laboratories; (b) \$500,000 PR annually on a one-time basis to support drug law enforcement activities of DCI; and (c) \$200,000 PR in 2017-18 and \$300,000 PR in 2018-19 for new crime laboratory equipment and supplies. [The bill also utilizes the fund to support \$600 annually for holiday pay for special agents.] In addition, the bill provides DOJ \$750,000 PR annually on a one-time basis for Internet crimes against children investigation activities. While inadvertently not provided under the bill, the administration indicates that its intent was to support funding for the ICAC appropriation by a transfer of funds from DOJ's drug law enforcement, crime laboratories, and genetic evidence activities appropriation.

7. Table 2 identifies the estimated condition of the CLDLE and DNA surcharge fund under the bill during the 2017-19 biennium. Based on historical revenue receipts since the expansion of the DNA surcharge under 2013 Act 20, revenue of \$15,000,000 annually is estimated for the 2017-19 biennium. As discussed above, the Governor intends for \$750,000 PR annually for ICAC investigation activities to be supported by a transfer of funds from the drug law enforcement, crime laboratories, and genetic evidence activities appropriation. This intent is reflected in Table 2 through a decrease of \$750,000 in the drug law enforcement appropriation, and a corresponding increase of \$750,000 in the ICAC appropriation. Funding for ICAC is provided on a one-time basis.

TABLE 2

CLDLE and DNA Surcharge Condition Statement under Budget Bill

		<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
<i>Beginning Balance</i>		\$4,406,600	\$5,160,800	\$3,925,100
<i>Revenue</i>		\$14,813,700	\$15,000,000	\$15,000,000
<i>Obligations</i>				
<u>Appropriation</u>	<u>Purpose</u>			
Crime laboratories and DNA analysis -- s. 20.455(2)(Lm)	Adjusted base	\$4,321,200	\$4,321,200	\$4,321,200
	Standard budget adjustments	0	491,900	505,100
	DNA analysis kits	<u>0</u>	<u>1,000,000</u>	<u>1,000,000</u>
	Subtotal	\$4,321,200	\$5,813,100	\$5,826,300
Drug law enforcement, crime laboratories, and genetic evidence activities -- s. 20.455(2)(kd)	Adjusted base	\$8,597,300	\$8,731,500	\$8,731,500
	Standard budget adjustments	0	144,100	168,800
	Transfer of funds for ICAC ^{1,2}	0	-750,000	-750,000
	DCI drug law enforcement ²	0	500,000	500,000
	Holiday pay for special agents	<u>0</u>	<u>600</u>	<u>600</u>
	Subtotal	\$8,597,300	\$8,626,200	\$8,650,900
Crime laboratory equipment and supplies -- s.20.455(2)(jb)	Adjusted base	\$558,100	\$558,100	\$558,100
	New equipment and supplies	<u>0</u>	<u>200,000</u>	<u>300,000</u>
	Subtotal	\$558,100	\$758,100	\$858,100
Internet crimes against children ^{1,2} -- s. 20.455(2)(hd)		\$0	\$750,000	\$750,000
DNA evidence prosecutor -- s. 20.475(1)(km)		153,900	90,400	90,400
Estimated increased costs for salaries and fringe benefits		<u>429,000</u>	<u>197,900</u>	<u>427,300</u>
Total Obligations		\$14,059,500	\$16,235,700	\$16,603,000
<i>Ending Balance</i>		\$5,160,800	\$3,925,100	\$2,322,100

¹ The condition statement reflects the administration's intent to support \$750,000 PR annually for the ICAC appropriation from a transfer of funds from the drug law enforcement, crime laboratories, and genetic evidence activities appropriation.

² Funding for DCI drug law enforcement activities as well as Internet crimes against children investigation activities is provided on a one-time basis, and would, therefore, not continue after the 2017-19 biennium.

8. As identified in Table 2, under the bill, the CLDLE and DNA surcharge fund is estimated to conclude 2018-19 with a balance of \$2,322,100. Therefore, one could argue that money

is available in the fund to support the expenditures recommended by the Governor. On the other hand, under the Governor's recommendations, the fund is projected to operate in a structural deficit during the 2017-19 biennium. In 2017-18, total obligations are estimated to exceed revenue by \$1,235,700, while in 2018-19, total obligations are estimated to exceed revenue by \$1,603,000. In reviewing the structural deficit, note that \$500,000 PR annually for drug law enforcement activities is provided on a one-time basis, and would, therefore, not be included in DOJ's base budget for the 2019-21 biennium.

Appropriation Structure of the CLDLE and DNA Surcharge Fund

9. The state utilizes revenue from various surcharges assessed on criminal and civil offenders to support many programs that generally relate to the criminal justice system. For surcharge revenue that is utilized to support several different appropriations, the following appropriation structure is typically established.

Surcharge revenue is first received by the state in a continuing PR appropriation that is not authorized to make expenditures for any purpose. This continuing appropriation is considered the surcharge fund. Rather than be authorized to make expenditures, the continuing appropriation (the fund) is utilized to transfer amounts to different annual PR appropriations that are authorized to support specific programs and state operations. Agencies are not authorized to make expenditures from the annual appropriations that exceed amounts appropriated by the Legislature. Therefore, the total maximum amount that is transferred from the surcharge fund in a given fiscal year is known at the time of budget development. To the extent that agencies do not spend the full amount that is transferred from the surcharge fund to an appropriation, unexpended amounts revert to the surcharge fund.

Certain surcharge funds, such as the penalty surcharge fund and the justice information system (JIS) surcharge fund, are established with the structure described above. Similar to the CLDLE and DNA surcharge fund, the penalty surcharge fund and the JIS surcharge fund support several appropriations that fund various state programs and operations.

10. The appropriation structure for the CLDLE and DNA surcharge fund is established in a different manner than described above. The appropriation structure for the CLDLE and DNA surcharge fund is established as follows.

Revenue from the CLDLE surcharge and the DNA surcharge is received by DOJ's crime laboratories and DNA analysis continuing PR appropriation. This continuing appropriation is considered the CLDLE and DNA surcharge fund. The fund appropriation is utilized to transfer monies to other annual appropriations within DOJ and the District Attorney function to support activities of the state crime laboratories, criminal investigation activities of DOJ's Division of Criminal Investigation, and a statewide DNA evidence prosecutor position. In addition, DOJ is authorized to make expenditures from the fund appropriation to support the costs of the crime laboratories to provide DNA analysis, to administer the DNA databank, and to reimburse local law enforcement agencies, the Department of Corrections, and the Department of Health Services for the costs of submitting biological specimens to the crime laboratories for DNA analysis. Since the fund appropriation is continuing, DOJ may make expenditures from the

appropriation that exceed amounts appropriated by the Legislature.

The main difference between the structure of the CLDLE and DNA surcharge fund and other surcharge funds is that DOJ is authorized to utilize the fund appropriation to make expenditures and transfer monies, as opposed to only transfer monies.

11. Modifying the appropriation structure for the CLDLE and DNA surcharge fund to more closely align with the structure utilized for other surcharge funds (such as the penalty surcharge fund or JIS surcharge fund) would provide the Legislature greater oversight over the amount that is spent from the CLDLE and DNA surcharge fund in a given fiscal year. One could argue that this oversight may be of value given that: (a) surcharge revenue may fluctuate from year to year; and (b) certain surcharge funds, such as the penalty surcharge fund and the JIS surcharge fund, have operated in deficit in recent fiscal years due to obligations exceeding annual revenues. Therefore, the Legislature may wish to more closely oversee the use of surcharge revenue in general.

12. Based on the considerations discussed above, the Committee could convert the appropriation structure for the CLDLE and DNA surcharge fund to more closely align with the appropriation structure for other surcharge funds [Alternative 1]. Under this alternative, the following would occur:

- *Create a New Appropriation for Surcharge Revenue Receipt.* A new continuing PR appropriation would be created within DOJ for the purpose of receiving revenue from the CLDLE surcharge and the DNA surcharge. This new appropriation would act as the CLDLE and DNA surcharge fund. No funding would be appropriated to this new appropriation. The appropriation would not be authorized to make expenditures. However, the appropriation would be authorized to transfer funds to the following appropriations within DOJ and the District Attorney function: (a) DOJ's crime laboratories and DNA analysis appropriation; (b) DOJ's crime laboratories, drug law enforcement, and genetic evidence activities appropriation; (c) DOJ's crime laboratories equipment and supplies appropriation; and (d) the District Attorney's appropriation for a statewide DNA evidence prosecutor position. The amounts transferred to these appropriations would equal the amounts appropriated by the Legislature for each of these appropriations. Further, these appropriations would be modified to provide that any unencumbered amounts in a given fiscal year would revert to the new CLDLE and DNA surcharge fund.

- *Modify the Crime Laboratories and DNA Analysis Appropriation.* The Department's crime laboratories and DNA analysis continuing PR appropriation would be modified to reflect the fact that the appropriation would no longer be utilized to directly receive CLDLE surcharge and DNA surcharge revenue. Further, the appropriation would be modified to reflect the fact that the appropriation would no longer be utilized to make transfers to other appropriations. Finally, the appropriation would be converted from a continuing PR appropriation to an annual PR appropriation. As an annual PR appropriation, DOJ could not utilize this appropriation to make expenditures beyond amounts that are appropriated by the Legislature in a given fiscal year.

13. On the other hand, the Committee could maintain current law [Alternative 2]. Since the crime laboratories and DNA analysis appropriation is continuing, the current appropriation structure

for the CLDLE and DNA surcharge fund provides DOJ greater flexibility in managing its resources for DNA analysis, administering the DNA databank, and reimbursing law enforcement agencies for submission of biological specimens for DNA analysis. Given that the Department does not have complete control over its workload and costs related to these functions, providing DOJ flexibility to manage its resources may be warranted.

ALTERNATIVES

1. Modify the appropriation structure of the CLDLE and DNA surcharge fund to more closely align with the appropriation structure utilized for other surcharge funds. Specifically, make the following appropriation modifications:

- *Create a New Appropriation for Surcharge Revenue Receipt.* Create a new continuing PR appropriation within DOJ for the purpose of only receiving revenue from the CLDLE surcharge and the DNA surcharge. Authorize the appropriation to transfer funds to the following appropriations within DOJ and the District Attorney function: (a) DOJ's crime laboratories and DNA analysis appropriation; (b) DOJ's crime laboratories, drug law enforcement, and genetic evidence activities appropriation; (c) DOJ's crime laboratories equipment and supplies appropriation; and (d) the District Attorney's appropriation for a statewide DNA evidence prosecutor position. Modify these appropriations to provide that any unencumbered amounts in a given fiscal year would revert to the new CLDLE and DNA surcharge fund.

- *Modify the Crime Laboratories and DNA Analysis Appropriation.* Modify DOJ's crime laboratories and DNA analysis appropriation to no longer be utilized to directly receive CLDLE surcharge and DNA surcharge revenue or make transfers to other appropriations. Convert the appropriation from a continuing PR appropriation to an annual PR appropriation.

2. Maintain current law.

Prepared by: Michael Steinschneider