



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #191

### **Penalty Assessment and Law Enforcement Training Fund Assessment (DOA -- Office of Justice Assistance, Electronic Government & Justice)**

[LFB 2001-03 Budget Summary: Page 86, #3, Page 87, #4, Page 258, #1 and Page 435, #6]

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#### **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, nonmoving traffic violations or violations of safety belt use), the court also imposes a penalty assessment of 23% of the total fine or forfeiture.

Under current law, twenty-seven fifty-fifths of all penalty assessment surcharge revenues (which represents approximately 11.29% of the total fine or forfeiture) are deposited to the Department of Justice's (DOJ) penalty assessment surcharge receipts appropriation. The remaining twenty-eight fifty-fifths of penalty assessment surcharge revenues (which represents approximately 11.71% of the total fine or forfeiture) are deposited to the Office of Justice Assistance's (OJA) penalty assessment surcharge receipts appropriation.

#### **GOVERNOR**

Increase the surcharge imposed on fines and forfeitures, as excepted under current law, from 23% to 24% and establish a penalty assessment surcharge of 13% and a law enforcement training fund assessment surcharge of 11% as follows:

Make the following changes concerning the penalty assessment surcharge: (a) reduce the penalty assessment surcharge from 23% to 13% of the total fine or forfeiture imposed 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); and (b) provide that all penalty assessment surcharge revenues be credited to OJA's penalty assessment surcharge receipts appropriation. In addition,

delete obsolete non-statutory language concerning transfer of funds to the penalty assessment surcharge receipts appropriation during the 1999-01 biennium.

Delete DOJ's receipt of penalty assessment revenues for the law enforcement training fund and crime laboratory equipment and instead create a new law enforcement training fund assessment, imposed whenever the penalty assessment surcharge is assessed, equal to 11% of the total fine or forfeiture, with revenues from the new assessment credited to DOJ for the law enforcement training fund and crime laboratory equipment. Provide that all law enforcement training fund assessment revenues be deposited in DOJ's penalty assessment surcharge receipts appropriation which would be renamed the law enforcement training fund assessments, receipts appropriation.

Provide that whenever payments of assessments are made a condition of probation by the court, payment would first be applied to payment of the penalty assessment until paid in full and then applied to the law enforcement training fund assessment until paid in full.

Provide that these changes would first take effect and apply to assessments imposed on the effective date of the bill.

## **DISCUSSION POINTS**

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) the Department of Correction's (DOC) victim services and programs appropriation; (c) correctional officer training under DOC; (d) the Department of Justice's (DOJ) drug enforcement intelligence operations appropriation; (e) DOJ's reimbursement to counties for victim/witness services appropriation; (f) DOA's Bureau of Justice Information Systems; (g) matching funds for federal anti-drug programs under the Office of Justice Assistance (OJA); (h) youth diversion programs under DOC; and (i) 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 authorized to 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.
1999	23%	49.09% DOJ (LETF and crime laboratory equipment and supplies); and 50.91% OJA (various programs as outlined above).

3. Under current law, twenty-eight fifty-fifths of penalty assessment surcharge revenues are deposited to OJA's penalty assessment surcharge receipts appropriation and twenty-seven fifty-fifths are deposited to DOJ for the law enforcement training fund and for crime laboratory equipment and supplies. The bill would eliminate DOJ's receipt of penalty assessment surcharge revenues and instead create a new law enforcement training fund assessment. Under the bill, all penalty assessment surcharge revenue would now be credited to OJA's penalty assessment surcharge receipts appropriation for distribution as provided in the appropriation.

4. OJA's penalty assessment surcharge receipts appropriation currently receives twenty-eight fifty-fifths of all penalty assessment surcharge revenues, which represents approximately 11.71% of the total fine or forfeiture. Under the bill, the penalty assessment would be set at 13% of the total fine or forfeiture amount, and OJA would receive the entire amount. The increase in program revenue to OJA, estimated by the Governor, as a result of this change would be

\$1,001,500 PR-REV annually.

5. The bill would create a new law enforcement training fund (LETF) assessment, imposed whenever the penalty assessment surcharge is assessed, equal to 11% of the total fine or forfeiture. Law enforcement training fund assessment revenues would be deposited in DOJ's penalty assessment surcharge receipts appropriation which would be renamed the law enforcement training fund assessments, receipts appropriation. DOJ currently receives twenty-seven fifty-fifths of penalty assessment surcharge revenues, which represents approximately 11.29% of the total fine or forfeiture. The decrease in program revenue to DOJ's receipts appropriation as a result of the recommended change is estimated by the Governor to be -\$225,700 PR-REV annually. Under the bill, the law enforcement training fund and crime laboratory equipment appropriations would now receive PR funding from the new law enforcement training fund assessment.

6. The net result of these changes would be an increase of 1% in penalty assessments imposed, from a penalty assessment surcharge of 23% of the total fine or forfeiture to 24% of the total fine or forfeiture (13% penalty assessment and 11% law enforcement training fund assessment). The net revenue change is estimated by the Governor to be \$775,800 PR-REV annually.

7. Under SB 55, the condition of the OJA penalty assessments receipts fund shows a balance of \$270,600 at the end of the biennium, and the law enforcement training fund would reflect a balance of \$632,200.

8. Penalty assessment revenues were reestimated using more recent data along with revisions of opening balances and program reserves. The following tables show the revised fund conditions under the bill for the two revenue receipts appropriations.

**Revised Penalty Assessment Receipts Fund Condition Under  
Governor's 2001-03 Budget Recommendations**

	<u>2001-02</u>	<u>2002-03</u>
<b>Revenues</b>		
Opening balance	\$1,357,000	\$372,300
Revenues	<u>9,808,100</u>	<u>10,560,500</u>
Total available	\$11,165,100	\$10,932,800
<b>Appropriations and Reserves</b>		
Appropriations	\$10,583,500	\$11,016,700
Program reserves	<u>209,300</u>	<u>211,400</u>
Total appropriations plus reserves	\$10,792,800	\$11,228,100
Balance	\$372,300	-\$295,300

**Revised LETF Assessment Receipts Fund Condition Under  
Governor's 2001-03 Budget Recommendations**

	<u>2001-02</u>	<u>2002-03</u>
<b>Revenues</b>		
Opening balance	\$1,513,100	\$976,700
Revenues	<u>8,566,400</u>	<u>8,935,800</u>
Total available	\$10,079,500	\$9,912,500
 <b>Appropriations and Reserves</b>		
Appropriations	\$8,920,000	\$8,953,100
Program reserves	<u>182,800</u>	<u>226,600</u>
Total appropriations plus reserves	\$9,102,800	\$9,179,700
 Balance	 \$976,700	 \$732,800

9. As shown in the above tables, if the Governor's recommendation is approved, it is estimated that OJA's penalty assessment receipts appropriation would have a deficit of \$295,300 at the end of the biennium, while DOJ's law enforcement training fund receipts appropriation would have a balance of \$732,800.

10. The following discussion points address ways to deal with the estimated OJA deficit.

11. Based on reestimates of available federal, anti-drug Byrne grant funding in the upcoming biennium, there will be less of a need for penalty assessment match dollars for Byrne grant funding than was provided under the bill. As a result, the deficit in the penalty assessment receipts appropriation can be reduced and it is estimated that OJA's penalty assessment receipts appropriation would end the biennium no more than \$90,000 out of balance. [Byrne grant and associated penalty assessment match funding is addressed in Paper #192, Federal Byrne Anti-Drug Grant and Associated Penalty Assessment Match Funding.]

12. DOA's Bureau of Justice Information Systems (BJIS) receives \$2 of the \$9 justice information system fee (a fee on fines and certain civil court forfeitures) to support development and operations of integrated information technology systems among justice agencies at the state and local level. In addition, \$1 of the fee is deposited to the general fund as GPR-Earned. Based on revised revenue estimates, it appears that an additional \$51,000 PR annually in BJIS expenditures could be supported from the fee and a corresponding reduction made in BJIS' penalty assessment funding. Further, based on these revised estimates, the GPR-Earned associated with the justice information system fee could be increased by \$83,200 in 2001-02 and \$112,200 in 2002-03. It is estimated that this change would result in a small, positive closing balance (0.1% of revenues) in the OJA penalty assessment receipts appropriation at the end of 2002-03.

13. However, if the Governor's recommendations to increase the assessment overall

from 23% to 24% by reducing the penalty assessment and creating a new law enforcement training fund assessment were not approved, an additional deficit would be created in the OJA penalty assessment receipts appropriation. The DOJ penalty assessment surcharge receipts appropriation would have a larger balance at the end of the biennium, because DOJ would receive slightly more penalty assessment revenues than it would receive in law enforcement training fund revenues under the bill. The following two tables show the conditions of the respective funds if the current law provision of a 23% penalty assessment is maintained.

**OJA PA Receipts Appropriation Fund Condition if Current Law Maintained**

	<u>2001-02</u>	<u>2002-03</u>
<b>Revenues</b>		
Opening balance	\$1,357,000	-\$376,200
Revenues	<u>9,059,600</u>	<u>9,512,600</u>
Total available	\$10,416,600	\$9,136,400
 <b>Appropriations and Reserve</b>		
Appropriations	\$10,583,500	\$11,016,700
Program reserves	<u>209,300</u>	<u>211,400</u>
Total appropriations plus reserves	\$10,792,800	\$11,228,100
 Balance	 -\$376,200	 -\$2,091,700

**LETF PA Receipts Appropriation Fund Condition if Current Law Maintained**

	<u>2001-02</u>	<u>2002-03</u>
<b>Revenues</b>		
Opening balance	\$1,513,100	\$1,145,000
Revenues	<u>8,734,700</u>	<u>9,171,400</u>
Total available	\$10,247,800	\$10,316,400
 <b>Appropriations and Reserves</b>		
Appropriations	\$8,920,000	\$8,953,100
Program reserves	<u>182,800</u>	<u>226,600</u>
Total appropriations plus reserves	\$9,102,800	\$9,179,700
 Balance	 \$1,145,000	 \$1,136,700

14. The penalty assessment receipts appropriation could be brought into balance by decreasing appropriations, increasing revenues or some combination. The attachment identifies programs funded with penalty assessment revenues under the bill. With the exception of DOC correctional officer training, programs are generally funded at base levels with modest increases or decreases in funding. The increases provided for correctional officer training result from an

increasing number of correctional officers, hired as a result of attrition, needing to be trained (as the authorized number of officers increase, so do the number of annual vacancies).

15. A source of potential revenue for the OJA penalty assessment receipts appropriation could be the transfer of unencumbered balances from the appropriations that receive penalty assessment funding. Once credited to a program revenue appropriation, unencumbered balances at the end of a fiscal year are retained in that appropriation. All the appropriations that receive penalty assessment revenues are annual appropriations. Any unencumbered balances at the end of either year of the biennium remain in the respective appropriations, but may not be expended in a subsequent year unless expenditure authority is provided by the Committee or Legislature.

16. Estimates have been made of the unencumbered balances on June 30, 2001, for the appropriations funded with penalty assessment revenues to see if revenues from those accounts would be available for transfer to the penalty assessment receipts appropriation. Retaining some balance in the appropriations may be appropriate to provide for program reserves associated with pay plan and other allowable reserve items. Accordingly, the following table shows the estimated amount of revenue that could be transferred if 85% of the unencumbered balances on June 30, 2001 were transferred to the OJA receipts appropriation.

OJA -- Penalty Assessment State Match	\$808,100
OJA -- Local Penalty Local Assessment Match	219,800
OJA -- Penalty Assessment Administrative Match	117,800
DPI -- AODA Program	85,000
DOC -- Victim/Witness Services	<u>62,700</u>
Total	\$1,293,400

17. If the Governor's recommendation was approved, along with reestimates under BJIS and the federal Byrne program, the transfer of an estimated \$1.3 million to the penalty assessment receipts appropriation would provide an estimated closing balance on June 30, 2003 of \$1,305,400. Some balance in the account is appropriate, in case revenues are less than estimated. To maintain a balance of 2% of revenues would require \$211,200. The remaining revenues of \$1,094,200 could be transferred to the general fund as GPR-Earned.

18. If the Governor's recommendation was not approved, even with the transfers of 85% of the unencumbered balances from the above appropriations, increased use by BJIS of justice information system fees and a decreased need for penalty assessment match money for Byrne grants, there would still be a potential deficit of \$491,000 in the OJA penalty assessment receipts appropriation at the end of the 2001-03 biennium. There would, however, also be a balance of \$1,136,700 in DOJ's penalty assessment receipts appropriation. An alternative to transfer 40% of the unencumbered balance of DOJ's penalty assessment receipts appropriation on June 30, 2001 to the OJA penalty assessment receipts appropriation would result in an estimated \$605,200 being transferred from DOJ to OJA. Under this alternative, this would leave an estimated closing balance

of \$531,500 in the DOJ penalty assessment receipts appropriation and an estimated closing balance of \$114,200 in the OJA penalty assessment receipts appropriation on June 30, 2003.

**ALTERNATIVES TO BILL**

1. Approve the Governor’s recommendation to: (a) reduce the penalty assessment surcharge from 23% to 13% of the total fine or forfeiture imposed for various violations of state law or municipal or county ordinance; (b) provide that all penalty assessment surcharge revenues be credited to OJA’s penalty assessment surcharge receipts appropriation; (c) create a new law enforcement training fund assessment, imposed whenever the penalty assessment surcharge is assessed, equal to 11% of the total fine or forfeiture; (d) deposit all law enforcement training fund assessment revenues in DOJ’s penalty assessment surcharge receipts appropriation renamed the law enforcement training fund assessments, receipts appropriation; (e) provide that whenever payments of assessments are made a condition of probation by the court, payment would first be applied to payment of the penalty assessment until paid in full and then applied to the law enforcement training fund assessment until paid in full; and (f) provide that these changes would first take effect and apply to assessments imposed on the effective date of the bill.

2. Maintain current law and retain a 23% penalty assessment surcharge, with twenty-seven fifty-fifths of revenue deposited to the Department of Justice’s penalty assessment receipts appropriation and twenty-eight fifty fifths deposited to the Office of Justice Assistance’s penalty assessment surcharge receipts appropriation.

<b>Alternative 2</b>	<b>PR</b>
<b>2001-03 REVENUE</b> (Change to Bill)	- \$1,551,600

3. Approve Alternative 1. In addition: (a) provide that \$51,000 PR annually appropriated to the Bureau of Justice Information Systems (BJIS) be provided from justice information system fee revenues rather than penalty assessment revenues; (b) reestimate the amount of GPR-Earned to be deposited to the general fund associated with \$1 of justice information fee revenues by \$83,200 in 2001-02 and \$112,200 in 2002-03; (c) transfer 85% of the unencumbered balances on June 30, 2001, of OJA’s anti-drug enforcement program, penalty assessment--state, local and administration appropriations; DPI’s aid for alcohol and other drug abuse programs appropriation; and DOC’s victim services and programs appropriation to OJA’s penalty assessment receipts appropriation; and (d) transfer to the general fund as GPR-Earned \$1,094,200 from OJA’s penalty assessment receipts appropriation in 2001-02.

<b>Alternative 3</b>	<b>GPR</b>
<b>2001-03 REVENUE</b> (Change to Bill)	\$1,289,600



4. Approve Alternative 2. In addition: (a) provide that \$51,000 PR annually appropriated to the Bureau of Justice Information Systems (BJIS) be provided from justice information system fee revenues rather than penalty assessment revenues; (b) reestimate the amount of GPR-Earned to be deposited to the general fund associated with \$1 of justice information fee revenues by \$83,200 in 2001-02 and \$112,200 in 2002-03; (c) transfer 85% of the unencumbered balances on June 30, 2001, of the following appropriations to the OJA penalty assessment surcharge, receipts appropriation: OJA's anti-drug enforcement program, penalty assessment--state, local and administration appropriations; DPI's aid for alcohol and other drug abuse programs appropriation; and DOC's victim services and programs appropriation; and (d) transfer 40% of the unencumbered balance on June 30, 2001, of DOJ's penalty assessment surcharge, receipts appropriation to the OJA penalty assessment surcharge, receipts appropriation.

<b>Alternative 4</b>	<b>GPR</b>
<b>2001-03 REVENUE</b> (Change to Bill)	\$195,400

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**ATTACHMENT**

**Appropriations Funded with Penalty Assessment Revenues Under the Governor's Recommendations**

<u>Agency/Purpose</u>	<u>2001-02</u>	<u>2002-03</u>
DOJ -- Narcotics Intelligence Operations Base plus SBAs	\$1,405,100	\$1,419,400
DOJ -- Victim-Witness Reimbursements to Counties Base	\$773,000	\$773,000
DOC -- Correctional Officer Training Base plus SBAs Increase Total	\$1,610,200 <u>241,500</u> \$1,851,700	\$1,618,500 <u>241,500</u> \$1,860,000
DOC -- Office of Victim Services Base plus SBAs	\$174,400	\$174,400
DOC -- Youth Diversion Base Transfer to OJA Total	\$720,000 <u>-720,000</u> \$0	\$720,000 <u>-720,000</u> \$0
DPI -- Alcohol and Other Drug Abuse (AODA) Administration Base plus SBAs Decrease Total	\$931,600 <u>-150,000</u> \$781,600	\$931,600 <u>-150,000</u> \$781,600
DPI -- AODA Aid Base	\$1,498,600	\$1,498,600
OJA -- Local 15% Match for Federal Byrne Program Base Increase Total	\$1,184,200 <u>176,000</u> \$1,360,200	\$1,184,200 <u>86,000</u> \$1,270,200
OJA -- State 25% Match for Federal Byrne Program Base Decrease/Increase Total	\$1,294,200 <u>-464,200</u> \$830,000	\$1,294,200 <u>35,800</u> \$1,330,000
OJA -- Federal Byrne Program Administration Match Base plus SBAs Increase Total	\$131,200 <u>3,000</u> \$134,200	\$131,800 <u>3,000</u> \$134,800
OJA -- Youth Diversion Program Grants Transfer from DOC	\$720,000	\$720,000
OJA -- Youth Diversion Program Administration Increase	\$18,400	\$18,400
BJIS -- Operations and Maintenance Base Decrease Total	\$1,226,700 <u>-318,200</u> \$908,500	\$1,226,700 <u>-318,200</u> \$908,500
SPD -- Conferences and Training Base plus SBAs	127,800	127,800
Total	\$10,583,500	\$11,016,700

Note: SBAs are Standard Budget Adjustments