



## Legislative Fiscal Bureau

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May 30, 2007

Joint Committee on Finance

Paper #499

### Reimbursement for County Victim and Witness Assistance Programs (Justice)

#### *Base Agency*

[LFB 2007-09 Budget Summary: Page 370, #5]

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#### **CURRENT LAW**

Counties are eligible to receive reimbursement from the state for not more than 90% of the costs incurred in providing victim and witness services. To be eligible for reimbursement, a county must provide all of the following services to victims and witnesses: (a) court appearance notification services, including cancellation of appearances; (b) victim compensation and social services referrals, including witness fee collection, case-by-case referrals and public information; (c) escort and other transportation services related to the investigation or prosecution of the case, if necessary or advisable; (d) case progress notification services which may be combined with court appearance notification services; (e) assistance in providing the court with information pertaining to the economic, physical and psychological effect of the crime upon the victim of a felony; (f) employer intercession services; (g) expedited return of property services; (h) protection services; (i) family support services; and (j) waiting facilities.

A crime victim and witness surcharge is assessed against any person who is convicted of a misdemeanor or felony violation of state law. A surcharge of \$60 is assessed for each misdemeanor offense or count, and a surcharge of \$85 is assessed for each felony offense or count. The initial \$40 assessed for a misdemeanor and the initial \$65 assessed for a felony is termed "Part A" of the surcharge. The additional \$20 assessed for both a misdemeanor and a felony is termed "Part B" of the surcharge. Part A revenues fund county victim and witness services programs and compensation awards to crime victims. Part B revenues provide funding for the sexual assault victim services program.

Under 2005 Wisconsin Act 25, the imposition of the crime victim and witness surcharge was extended to the specific situation where: (a) a criminal complaint is issued charging a person

with a crime for an offense that could subject the person to a forfeiture or to prosecution for a crime; (b) the prosecutor decides to defer or suspend the criminal prosecution; and (c) as a result the person agrees to pay a forfeiture. The amount of the crime victim and witness surcharge is dependent on the crime for which the person was originally charged in the criminal complaint.

In 2006-07, \$5,244,400 (all funds) is budgeted to reimburse counties for victim and witness services: (a) \$2,566,600 PR in crime victim and witness surcharge funding; (b) \$1,422,200 GPR; (c) \$370,300 PR in federal Byrne Justice Assistance Grant Program funds; and (d) \$885,300 PR in state penalty surcharge funding.

## **GOVERNOR**

Provide \$1,460,000 PR annually to increase the amounts available to reimburse counties for up to 90% of their victim and witness assistance program costs. The increased expenditure authority would be funded from additional crime victim and witness assistance surcharge revenues.

Provide that the crime victim and witness assistance surcharge no longer be imposed in the specific situation where: (a) a criminal complaint is issued charging a person with a crime for an offense that could subject the person to a forfeiture or to prosecution for a crime; (b) the prosecutor decides to defer or suspend the criminal prosecution; and (c) as a result, the person agrees to pay a forfeiture.

Instead, specify that the crime victim and witness assistance surcharge be imposed if: (a) a person is charged with one or more crimes in a complaint; (b) as a result of the complaint being amended, the person is charged with a civil offense in lieu of one of those crimes; and (c) the court finds that the person committed the civil offense on or after the effective date of this change to the surcharge. The amount of the surcharge would be based on whether the original underlying charge was a felony charge (in which case an \$85 surcharge would be assessed), or a misdemeanor charge (in which case a \$60 surcharge would be assessed). Direct that all revenue generated under these new provisions be allocated for victim and witness assistance programs and for crime victim compensation awards ("Part A" of the surcharge). Under the bill, the administration estimates the surcharge amendments at \$660,000 annually in additional revenue during 2007-09.

## **DISCUSSION POINTS**

### **Background**

1. Under current law, counties are eligible to receive reimbursement from the state for not more than 90% of the costs incurred in providing victim and witness services. By rule, the following categories of county costs are reimbursable under the program: (a) salaries and benefits; (b) overtime and night differentials; (c) travel expenses; (d) space rental; (e) staff development

activities; (f) public information; (g) telephone costs; (h) maintenance, repair and replacement of equipment; (i) office supplies; (j) property and equipment with a useful life exceeding one year and costing more than \$500; and (k) contractual services. In 2005-06, counties reported aggregate costs of \$9,558,600 under the program.

2. To receive reimbursement, a county board must file a reimbursement claim with DOJ, which, in turn, determines the level of services for which a county may be reimbursed. DOJ bases this determination on a county's level of staffing for the program.

3. The actual percentage of county costs that is reimbursed varies each year depending upon the availability of state funds, the costs of the counties' programs, and the number of counties operating approved programs. The following table summarizes: (a) the total reported annual county costs during each of the last 10 fiscal years of those counties participating in the program; (b) the total annual state reimbursements; (c) the percentage of county costs actually reimbursed; and (d) the number of counties receiving reimbursement for victim and witness assistance services costs.

**State Victim and Witness Assistance Reimbursement to Counties**

<u>Fiscal Year</u>	<u>Reported County Costs</u>	<u>Amount of State Reimbursement</u>	<u>Percentage of Counties' Cost Reimbursed</u>	<u>Number of Counties Receiving Reimbursement</u>
1996-97	\$5,652,100	\$4,069,100	72%	64
1997-98	5,994,000	4,655,000	78	66
1998-99	6,622,500	4,772,000	72	68
1999-00	7,287,900	5,044,700	69	70
2000-01	7,883,900	5,325,100	68	70
2001-02	8,296,500	5,483,500	66	70
2002-03	8,626,400	5,348,400	62	70
2003-04	8,671,700	5,203,000	60	70
2004-05	8,903,600	5,296,600	59	70
2005-06	9,558,600	5,161,700	54	71

4. In 2005 Act 25, the Part A surcharge was increased from \$30 for each misdemeanor offense to \$40, and from \$50 for each felony offense to \$65. The increased surcharge first applied to surcharges imposed in late July, 2005.

5. In order to increase county reimbursement funding for these services the provisions of SB 40 would: (a) increase expenditure authority to reimburse counties for their victim and witness assistance program costs by \$1,460,000 PR annually; (b) estimate additional revenues to be generated by the 30% increase in the crime victim and witness surcharge under 2005 Wisconsin Act 25 by \$800,000 PR annually; and (c) expand the application of the crime victim and witness surcharge to also include certain civil offenses, and estimate the additional revenue to be generated

by this change at \$660,000 PR annually.

### **Victim and Witness Surcharge Part A Increase Under 2005 Wisconsin Act 25**

6. Prior to the increase to the Part A portion of the surcharge under 2005 Wisconsin Act 25, the last time the victim and witness surcharge was increased was under 1993 Wisconsin Act 16, which created Part B of the surcharge. It took approximately five years for the increase to the surcharge from the creation of the Part B portion to be fully realized. It should be noted, however, that approximately half of the revenue growth from the fully implemented Part B portion of the surcharge was being recognized by the second year after the increase.

7. The provisions of 2005 Wisconsin Act 25 increased Part A of the victim and witness surcharge by approximately 30%. Based on the prior history of revenue growth when Part B of the surcharge was created, it was assumed under 2005 Wisconsin Act 25 that one-quarter of the revenue growth from this surcharge increase would likely be realized in 2005-06 (a 7.5% increase over 2004-05 projected revenue), and that one-half of the revenue growth from this surcharge increase would likely be realized in 2006-07 (a 15% increase over 2004-05 projected revenue).

8. In actuality, Part A revenue increased by 7.1% in 2005-06, and is estimated to increase by 9.5% in 2006-07, over the prior year. As Part A revenue growth under 2005 Wisconsin Act 25 followed a similar pattern to revenue growth when Part B of the surcharge was created, it is estimated that Part A revenue will continue to grow at a 7.5% annual rate during 2007-09. Utilizing these assumptions, estimated Part A revenue of \$3,414,700 in 2006-07, will increase to \$3,670,800 in 2007-08, and to \$3,926,900 in 2008-09. As base expenditure authority for Part A funded appropriations equals \$3,055,400 PR annually, reimbursement funding to counties for their victim and witness assistance programs could increase by \$615,400 PR in 2007-08, and by \$871,500 PR in 2008-09.

### **Expansion of the Application of the Surcharge Beyond Criminal Convictions**

9. Prior to 2005 Wisconsin Act 25, the crime victim and witness surcharge was only assessed against an individual convicted of a misdemeanor or felony violation of state law. Under its 2005-07 agency budget request, however, DOJ requested that the victim and witness surcharge be expanded beyond this historic application if either: (a) a court would impose a civil forfeiture (provided the civil violation had a criminal law parallel); or (b) the case was resolved through a diversion or deferred prosecution agreement.

10. While the Governor did not include this expansion of the surcharge under the Governor's 2005-07 budget, the Joint Committee on Finance did debate this surcharge change. The Committee did not adopt the change recommended by DOJ, but rather provided that the surcharge would now also be imposed in the specific situation where: (a) a criminal complaint is issued charging a person with a crime for an offense that could subject the person to a forfeiture or to prosecution for a crime; (b) the prosecutor decides to defer or suspend the criminal prosecution; and (c) as a result the person agrees to pay a forfeiture. This change, adopted by the Committee, was

enacted into law under Act 25. This extension of the surcharge has apparently generated little revenue as few cases involve both a deferral or suspension of the criminal prosecution and payment of a civil forfeiture in lieu of an original criminal charge.

11. In its 2007-09 agency budget request, the Department of Justice requested that this imposition of the victim and witness surcharge on certain civil violations be deleted. Instead, the Department requested that the victim and witness surcharge be imposed if: (a) a person is charged with one or more crimes in a complaint; (b) as a result of the complaint being amended, the person is charged with a civil offense in lieu of one of those crimes; and (c) the court finds that the person committed the civil offense on or after the effective date of this change to the surcharge. The Governor included this request in the Department's budget under SB 40, and it is estimated under the bill that this surcharge change would generate an additional \$660,000 annually in Part A revenue during 2007-09.

12. Historically, the victim and witness surcharge has only been imposed on individuals convicted of misdemeanor or felony violations under state law. A strong public policy rationale exists for this surcharge imposition, as the surcharge, in effect, serves as one way that convicted defendants are required to provide restitution to their victims by requiring convicted defendants to provide funding for victim and witness services.

13. Likewise, it could be argued that the recommended extension of the surcharge to civil forfeitures under the circumstances identified above would also be appropriate. As an individual charged with a criminal violation which is subsequently dropped in lieu of a civil violation may have committed a crime and victimized an individual or individuals, it could be viewed as appropriate to require such an individual to also pay a crime victim and witness surcharge.

14. On the other hand, individuals in the past have only been required to pay the surcharge if they were found guilty of a criminal act by a court of law. It could be argued that requiring individuals to provide funding for victim and witness services who have not been convicted of a crime is inappropriate. Although the imposition of a surcharge is not a criminal sanction, it could be argued that in this context this surcharge is more akin to criminal restitution.

15. If the Committee elects to extend the surcharge as recommended under the bill, DOJ staff has indicated that the bill language should be amended to provide that the surcharge could be imposed even if the formal criminal complaint was not amended, but rather the criminal charge was reduced by the court to a civil infraction on the record. Department staff indicates that the formal criminal complaint is not always amended when an individual has a criminal charge(s) dismissed and agrees to the payment of a forfeiture for a civil violation(s).

16. The bill estimates that this surcharge change would generate \$660,000 annually in additional revenue. The estimate of revenue in the budget bill assumes, based on calendar year 2004 data, that the full \$60 Part A portion of the crime victim and witness surcharge would be collected on all misdemeanor charges reduced to civil forfeiture violations (with a 5% reduction to

account for a lag time in collecting the new surcharge). It is anticipated that prosecutors would be less likely to reduce felony criminal charges to a civil forfeiture violation under the surcharge change.

17. The revenue estimate under the bill may overstate possible collections under the surcharge change. The estimate assumes that the crime victim and witness surcharge would be fully collected on all misdemeanor charges reduced to civil forfeiture violations, based on calendar year 2004 data and factoring in a 5% reduction to account for a lag time in collecting the new surcharge. In many cases, however, an individual may be charged with multiple misdemeanor violations. First, it is possible under the revised surcharge that some of the original charges against an individual would now be dropped outright, and that an individual would only pay a civil forfeiture for a subset of the original charges. Second, it is not known to what extent the surcharge change could affect other terms of settlements reached between prosecutors and those initially accused of committing a crime(s), including increased use of diversion or suspended prosecution agreements in lieu of any civil forfeitures. Finally, in the past there has generally been a significant lag time before revenue from an increased crime victim and witness surcharge has been fully realized. This revenue estimate includes a 5% reduction for a lag time in collecting the expanded surcharge, instead of a four or five year delay as has been experienced in the past. (On the other hand, individuals affected by this expanded surcharge could be in better financial position to meet this obligation as these individuals would not be subject to jail or prison time if all misdemeanor charges were dropped.)

18. As a result, it could be concluded that the revenue that may be generated under this surcharge change is unknown at this time. The Committee could elect to approve the extension of the crime victim and witness surcharge to civil forfeiture violations as recommended under the bill, but not provide additional expenditure authority for reimbursements to county victim and witness programs until it becomes clear the additional revenues that are being generated as a result of the surcharge change. If additional revenues would support increased reimbursements, the Department could subsequently submit a request for increased expenditure authority during the 2007-09 biennium to the Committee under the 14-day passive review process.

19. If the agency is provided increased expenditure authority to make reimbursements to counties for victim and witness programs as recommended under the bill (based on an estimate of increased revenue of \$660,000 annually), a deficit could develop in the Part A crime victim and witness surcharge fund during 2007-09 if the revenue does not increase as projected. As program revenue accounts may not operate in deficit under state law, any deficit situation created in this biennium could require the Legislature to reduce expenditure authority for reimbursements for county victim and witness programs in future biennia in order to eliminate the deficit.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendations to: (a) provide \$1,460,000 annually to increase the amounts available to reimburse counties for up to 90% of their victim and witness assistance program costs; and (b) amend the extension of the crime victim and witness surcharge to

civil forfeiture violations. Estimate additional revenue from the surcharge change at \$660,000 PR annually.

ALT 1	Change to Bill		Change to Base	
	Revenue	Funding	Revenue	Funding
PR	\$0	\$0	\$1,320,000	\$2,920,000

2. Delete the recommendations. Instead, based on a re-estimate of available Part A crime victim and witness surcharge revenues, provide \$615,400 PR in 2007-08, and \$871,500 PR in 2008-09, in additional expenditure authority to the Department of Justice's victim and witness surcharge general services appropriation to provide additional funding for reimbursements to counties for their victim and witness assistance program costs.

ALT 2	Change to Bill		Change to Base	
	Revenue	Funding	Revenue	Funding
PR	-\$1,320,000	-\$1,433,100	\$0	\$1,486,900

3. Adopt the revisions of the bill regarding the application of the crime victim and witness surcharge to civil violations. Re-estimate additional revenue from this surcharge change at \$0 annually until revenue growth from the surcharge can be more definitively determined. *[This alternative may be selected in addition to Alternative 2.]*

4. Amend the bill language to provide that the surcharge may be imposed even if the formal criminal complaint is not amended, provided the criminal charge is reduced by the court to a civil infraction on the record. *[This alternative may be selected in addition to Alternative 1 or Alternative 3.]*

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