



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #417

### Penalty Surcharge Fund (Justice)

[LFB 2015-17 Budget Summary: Page 269, #8 and Page 116, #4]

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#### CURRENT LAW

Subject to certain exceptions, whenever a court imposes a fine or forfeiture for a violation of state law or municipal or county ordinance, the court must impose a penalty surcharge totaling 26% of the total fine or forfeiture. The penalty surcharge is not imposed, however, when the court imposes a fine or forfeiture for a violation relating to the following: (a) prohibitions against smoking; (b) failure to carry proof of motor vehicle insurance; (c) nonmoving traffic violations; (d) lack of possession of a special identification card for the physically disabled; and (e) safety belt use.

Revenues from the penalty surcharge are received by the Department of Justice's (DOJ) penalty surcharge PR appropriation (known as the penalty surcharge fund). Under current law, monies are transferred from the penalty surcharge fund to other appropriations within DOJ, the Department of Corrections, the Department of Public Instruction, and the Office of the Public Defender.

Similar to the penalty surcharge, revenues from the \$21.50 justice information system (JIS) surcharge are utilized to support programs within the Department of Administration, DOJ, the Department of Corrections, and the Circuit Courts. The JIS surcharge is generally assessed with a court fee for the commencement of certain court proceedings.

Revenues from the crime laboratory and drug law enforcement (CLDLE) surcharge and the deoxyribonucleic acid (DNA) surcharge are utilized to support operations of DOJ related to drug law enforcement and the state's three crime laboratories, located in Madison, Milwaukee, and Wausau. In addition to these surcharges, the penalty surcharge currently supports crime laboratory equipment and supplies. The \$13 CLDLE surcharge is assessed if a 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 DNA surcharge is assessed if a court imposes a sentence or places a person on probation. The DNA surcharge totals \$250 for each felony conviction and \$200 for each misdemeanor conviction.

## **GOVERNOR**

Provide that the CLDLE surcharge and the DNA surcharge, rather than the penalty surcharge, support crime laboratory equipment and supplies. Further, provide that the penalty surcharge, rather than the JIS surcharge, provide partial support for court interpreters. [The bill also modifies the fund condition of the penalty surcharge through the creation of the state justice assistance grant program and the elimination of existing grant programs. This issue is addressed in a separate paper.]

## **DISCUSSION POINTS**

1. Under 2005 Acts 25 and 60, the penalty surcharge was increased from 24% of the underlying fine and forfeiture amount to 26%. From 2005-06 through 2014-15 (projected), the state has generated, on average, \$17,994,800 in penalty surcharge revenue on an annual basis. During this time period, surcharge collections have varied from year to year, with a high of \$20,049,100 collected in 2007-08 to a low of \$15,480,000 projected to be collected in 2014-15.

2. Penalty surcharge revenue collections can vary from year to year for a number of reasons including: (a) changes in the total number of civil violations under state law and municipal and county ordinances to which the surcharge applies; (b) changes in the number of criminal convictions; (c) the total amount of forfeitures assessed on state law and county and municipal ordinance violations; (d) the total amount of fines assessed to criminal defendants; (e) the ability of individuals to pay their court-ordered legal obligations; and (f) the intensity of collection efforts. Further, uncharacteristically large civil judgements can increase penalty surcharge revenues in a given year. For example, surcharge revenue in 2013-14 includes a judgment of \$1,444,900 from the state's litigation against Pharmacia, a drug company and subsidiary of Pfizer, Inc., for Medicaid fraud and deceptive trade practices.

3. Table 1 identifies the penalty surcharge revenues collected from 2007-08 through 2014-15. When reviewing Table 1, the following should be noted: (a) revenues from the judgement against Pharmacia in 2013-14 have been removed; (b) \$2,005,200 received in 2011-12 from a reversion of accumulated unencumbered balances in appropriations supported by the penalty surcharge have been removed; and (c) a similar accounting period was applied to each fiscal year. After accounting for these factors, Table 1 indicates that penalty surcharge revenues have declined by an average of 3.6% annually since 2007-08. [Note that 2011-12 was the first fiscal year in which unencumbered balances in appropriations supported by the penalty surcharge fund were required to revert to the fund. As a result, an uncommonly large amount of funding reverted to the fund in 2011-12. Any monies that reverted to the fund subsequent to 2011-12 are included in the amounts identified in Table 1.]

**TABLE 1**

**Penalty Surcharge Revenue Collected from 2011-12 through 2014-15**

| <u>Fiscal Year</u> | <u>Revenue</u> | <u>Percent Decrease</u> |
|--------------------|----------------|-------------------------|
| 2007-08            | \$20,049,100   |                         |
| 2008-09            | 18,853,000     | -6.0%                   |
| 2009-10            | 17,990,700     | -4.6                    |
| 2010-11            | 17,772,800     | -1.2                    |
| 2011-12            | 16,943,200     | -4.7                    |
| 2012-13            | 16,821,700     | -0.7                    |
| 2013-14            | 15,745,100     | -6.4                    |
| 2014-15 (Est.)     | 15,480,000     | -1.7                    |

4. Table 2 provides the projected condition of the penalty surcharge fund during 2014-15. As the table below indicates, it is anticipated that expenditures will exceed revenue collections, and as a result the penalty surcharge fund is projected to end 2014-15 with a balance of -\$3,831,600.

**TABLE 2**

**Projected Fund Condition of Penalty Surcharge During 2014-15**

|                 | <u>2014-15</u>    |
|-----------------|-------------------|
| Opening Balance | -\$2,048,000      |
| Revenue         | 15,480,000        |
| Obligations     | <u>17,263,600</u> |
| Ending Balance  | -\$3,831,600      |

5. On December 30, 2014, the Secretary of the Department of Administration submitted plans under s. 16.513 of the statutes for unsupported overdrafts in 13 appropriations, including the penalty surcharge fund. As a part of the s. 16.513 plan, the administration recommended a "review of fund balances within the Department [of Justice] for potential reallocation to address the deficit and to review the appropriations supported by the surcharge to determine whether alternative revenue sources can be utilized through legislative changes."

6. Under AB 21/SB 21, the following modifications would be made to the penalty surcharge fund to address the deficit: (a) the state justice assistance grant program would be created and the youth diversion grant program would be eliminated (the law enforcement officer grant program and child advocacy center grant program would also be eliminated, but these grant programs are supported by the JIS surcharge); (b) crime laboratory equipment and supplies would be supported by the CLDLE surcharge and the DNA surcharge, rather than the penalty surcharge;

and (c) expenses related to court interpreters would be, in part, supported by the penalty surcharge rather than the JIS surcharge.

7. When the administration initially submitted AB 21/SB 21, it was projected that the state would collect \$17,700,000 from the penalty surcharge in 2014-15, 2015-16, and 2016-17. Based upon these original revenue estimates, the penalty surcharge fund was projected to be in structural balance during the 2015-17 biennium. The initial projections were partially based on past revenue collection data that included the large, one-time judgment against Pharmacia in 2013-14 as well as the large reversion of funding in 2011-12. Since the submission of the bill, however, additional collection data has become available. As a result, it is anticipated that the state will collect \$15,480,000 from the penalty surcharge during 2014-15. Further, in light of this additional collection data, penalty surcharge revenue projections for the 2015-17 biennium have been reevaluated in consultation with the administration. Based on an analysis of past revenue collections, it is currently estimated that the state will collect \$15,583,100 in 2015-16 and \$15,431,700 in 2016-17 from the penalty surcharge. Estimated revenues in 2015-16 represent a 0.7% increase over collections anticipated in 2014-15. Further, estimated revenues in 2016-17 represent a 1% decrease over collections anticipated in 2015-16.

8. Modifying the penalty surcharge might affect revenue collections. As noted above, however, there are several variables that could affect revenue collections in a given year, and as a result, it is difficult to identify the effect that any modification to the surcharge would have on collections. For one, variations in charging practices as well as the number of criminal and civil offenses in a given year would cause collections to differ. Further, an individual's ability to pay surcharge costs in a timely manner could affect collections. Finally, while modifying the penalty surcharge could affect amounts collected, such a modification could also affect amounts collected from other surcharges. When an individual is charged with a crime or a civil offense, generally, several surcharges and fees are imposed on the individual in addition to the fine or forfeiture. If an individual is unable to pay the total amount assessed within 60 days, the courts will typically authorize the individual to enter into a payment plan. If the total amount owed is increased, for example, it may take the individual a greater amount of time to pay all of their assessments, which could delay revenue collections from all state surcharges and fees.

9. Table 3 identifies the projected condition of the penalty surcharge fund during 2014-15, and during the 2015-17 biennium, if all of the Governor's recommendations related to the fund are eliminated and current law is maintained. As indicated in Table 3, under current law, the penalty surcharge fund is projected to end the 2015-17 biennium with a deficit totaling \$7,639,900. Further, the fund would be projected to operate under a structural deficit during the biennium. In 2015-16, obligations would be projected to exceed revenues by \$1,818,900, and during 2016-17, obligations would be projected to exceed revenues by \$1,989,400.

**TABLE 3****Projected Penalty Surcharge Fund Condition During the 2015-17 Biennium  
Under Current Law (Alternative B3)**

|                    |   | <u>2014-15</u>      | <u>2015-16</u>      | <u>2016-17</u>      |
|--------------------|---|---------------------|---------------------|---------------------|
|                    | Beginning Balance   | -\$2,048,000        | -\$3,831,600        | -\$5,650,500        |
|                    | Revenues  | \$15,480,000        | \$15,583,100        | \$15,431,700        |
|                    | <i>Obligations</i>  |                     |                     |                     |
| Justice            | Law enforcement training fund; local assistance                 | \$4,364,800         | \$4,364,800         | \$4,364,800         |
|                    | Law enforcement training fund; state operations                 | 3,015,200           | 3,063,600           | 3,067,000           |
|                    | Drug enforcement intelligence operations                        | 1,680,500           | 1,652,700           | 1,667,500           |
|                    | Reimbursement to counties for victim-witness services           | 748,900             | 748,900             | 748,900             |
|                    | Drug crimes enforcement; local grants                           | 717,900             | 717,900             | 717,900             |
|                    | Transaction information management of enforcement (TIME) system | 724,300             | 713,700             | 714,300             |
|                    | Youth diversion grant program                                   | 672,400             | 672,400             | 672,400             |
|                    | Crime laboratory equipment and supplies                         | 558,100             | 558,100             | 558,100             |
|                    | Law enforcement programs - administration                       | 161,100             | 175,100             | 175,300             |
| Public Instruction | Aid for alcohol and other drug abuse programs                   | 1,284,700           | 1,284,700           | 1,284,700           |
|                    | Alcohol and other drug abuse programs                           | 591,800             | 609,500             | 609,500             |
| Corrections        | Correctional officer training                                   | 2,322,600           | 2,416,600           | 2,416,600           |
|                    | Victim services and programs                                    | 276,500             | 272,200             | 272,200             |
| Public Defender    | Conferences and training  | 144,800             | 151,800             | 151,900             |
|                    | Total Obligations   | <u>\$17,263,600</u> | <u>\$17,402,000</u> | <u>\$17,421,100</u> |
|                    | Ending Balance  | -\$3,831,600        | -\$5,650,500        | -\$7,639,900        |

10. A separate paper has been prepared on the Governor's recommendation to create a state justice assistance grant (SJAG) program and eliminate the youth diversion grant program, law enforcement officer grant program, and the child advocacy center grant program. Under the bill, DOJ would receive \$525,100 PR annually from the penalty surcharge to partially support the state justice assistance grant program. Under current law, DOJ receives \$672,400 PR annually from the penalty surcharge to partially support the youth diversion grant program. As a result, the proposal would reduce overall expenditures from the penalty surcharge fund by \$147,300 PR annually. Given the impact that the SJAG proposal would have on the penalty surcharge fund, the following discussion points are divided into two sections: (a) the condition of the penalty surcharge fund under AB 21/SB 21 if the Committee decides to approve of the Governor's recommendation related to SJAG; and (b) the condition of the penalty surcharge fund under AB 21/SB 21 if the Committee decides to deny the Governor's recommendation related to SJAG.

**If the State Justice Assistance Grant Program Is Approved**

11. It may be beneficial to first review the anticipated fund condition during the 2015-17 biennium under current law (except for the creation of SJAG and the elimination of youth diversion grants).

12. Table 4 identifies the condition of the penalty surcharge fund if the SJAG program is established and the youth diversion grant program is eliminated, as recommended under the bill, but all other modifications to the penalty surcharge fund under the bill are deleted and base appropriation levels are maintained [Alternative A3]. As the table indicates, under this alternative, the fund would be projected to end 2015-16 with a deficit of \$5,503,200 and end 2016-17 with a deficit of \$7,345,300. Further, the fund would be projected to operate under a structural deficit (obligations would exceed revenues) in both 2015-16 and 2016-17. In 2015-16, obligations would be projected to exceed revenues by \$1,671,600. In 2016-17, obligations would be projected to exceed revenues by \$1,842,100.

**TABLE 4**

**Condition of the Penalty Surcharge Fund During the 2015-17 Biennium if the State Justice Assistance Grant is Established and No Other Action Related to the Fund is Taken (Alternative A3)**

|                    |   | <u>2014-15</u> | <u>2015-16</u> | <u>2016-17</u> |
|--------------------|---|----------------|----------------|----------------|
|                    | Beginning Balance   | -\$2,048,000   | -\$3,831,600   | -\$5,503,200   |
|                    | Revenues  | \$15,480,000   | \$15,583,100   | \$15,431,700   |
|                    | <i>Obligations*</i>   |                |                |                |
| Justice            | Law enforcement training fund -- local assistance               | \$4,364,800    | \$4,364,800    | \$4,364,800    |
|                    | Law enforcement training fund -- state operations               | 3,015,200      | 3,063,600      | 3,067,000      |
|                    | Drug enforcement intelligence operations                        | 1,680,500      | 1,652,700      | 1,667,500      |
|                    | Reimbursement to counties for victim-witness services           | 748,900        | 748,900        | 748,900        |
|                    | Drug crimes enforcement local grants                            | 717,900        | 717,900        | 717,900        |
|                    | Transaction information management of enforcement (TIME) system | 724,300        | 713,700        | 714,300        |
|                    | Youth diversion grant program                                   | 672,400        | 0              | 0              |
|                    | Crime laboratory equipment and supplies                         | 558,100        | 558,100        | 558,100        |
|                    | State justice assistance grants (under AB 21/SB 21)             | 0              | 525,100        | 525,100        |
|                    | Law enforcement programs administration                         | 161,100        | 175,100        | 175,300        |
| Public Instruction | Aid for alcohol and other drug abuse programs                   | 1,284,700      | 1,284,700      | 1,284,700      |
|                    | Alcohol and other drug abuse programs administration            | 591,800        | 609,500        | 609,500        |
| Corrections        | Correctional officer training                                   | 2,322,600      | 2,416,600      | 2,416,600      |
|                    | Victim services and programs                                    | 276,500        | 272,200        | 272,200        |
| Public Defender    | Conferences and training  | <u>144,800</u> | <u>151,800</u> | <u>151,900</u> |
|                    | Total Obligations   | \$17,263,600   | \$17,254,700   | \$17,273,800   |
|                    | Ending Balance  | -\$3,831,600   | -\$5,503,200   | -\$7,345,300   |

\*Under Alternative A3, the penalty surcharge fund would continue to support crime laboratory equipment and supplies and it would not provide partial support for court interpreters.

13. As previously indicated, in addition to establishing the SJAG program and eliminating the youth diversion program, the bill modifies the penalty surcharge fund in the following two ways: (a) crime laboratory equipment and supplies would be supported by the CLDLE surcharge

and the DNA surcharge, rather than the penalty surcharge; and (b) expenses related to court interpreters would be, in part, supported by the penalty surcharge rather than the JIS surcharge. These additional modifications to the fund would reduce overall penalty surcharge obligations by \$325,400 PR annually. Table 5 identifies the condition of the penalty surcharge fund if the Committee approves these additional modifications [Alternative A1]. Alternative A1 reflects the condition of the penalty surcharge fund under AB 21/SB 21, with the revised revenue projections.

**TABLE 5**

**Condition of the Penalty Surcharge Fund During the 2015-17 Biennium Under AB/SB 21  
(Alternative A1)**

|                    |   | <u>2014-15</u> | <u>2015-16</u> | <u>2016-17</u> |
|--------------------|---|----------------|----------------|----------------|
|                    | Beginning Balance   | -\$2,048,000   | -\$3,831,600   | -\$5,177,800   |
|                    | Revenues  | \$15,480,000   | \$15,583,100   | \$15,431,700   |
|                    | <i>Obligations</i>  |                |                |                |
| Justice            | Law enforcement training fund -- local assistance               | \$4,364,800    | \$4,364,800    | \$4,364,800    |
|                    | Law enforcement training fund -- state operations               | 3,015,200      | 3,063,600      | 3,067,000      |
|                    | Drug enforcement intelligence operations                        | 1,680,500      | 1,652,700      | 1,667,500      |
|                    | Reimbursement to counties for victim-witness services           | 748,900        | 748,900        | 748,900        |
|                    | Drug crimes enforcement -- local grants                         | 717,900        | 717,900        | 717,900        |
|                    | Transaction information management of enforcement (TIME) system | 724,300        | 713,700        | 714,300        |
|                    | Youth diversion grant program                                   | 672,400        | 0              | 0              |
|                    | Crime laboratory equipment and supplies                         | 558,100        | 0              | 0              |
|                    | State justice assistance grants (under AB 21/SB 21)             | 0              | 525,100        | 525,100        |
|                    | Law enforcement programs administration                         | 161,100        | 175,100        | 175,300        |
| Public Instruction | Aid for alcohol and other drug abuse programs                   | 1,284,700      | 1,284,700      | 1,284,700      |
|                    | Alcohol and other drug abuse programs administration            | 591,800        | 609,500        | 609,500        |
| Corrections        | Correctional officer training                                   | 2,322,600      | 2,416,600      | 2,416,600      |
|                    | Victim services and programs                                    | 276,500        | 272,200        | 272,200        |
| Circuit Courts     | Court Interpreters (under AB 21/SB 21)                          | 0              | 232,700        | 232,700        |
| Public Defender    | Conferences and training  | 144,800        | 151,800        | 151,900        |
|                    | Total Obligations   | \$17,263,600   | \$16,929,300   | \$16,948,400   |
|                    | Ending Balance  | -\$3,831,600   | -\$5,177,800   | -\$6,694,500   |

14. Despite the fact that the penalty surcharge fund is in deficit, the bill provides that reimbursement to counties for court interpreters would be partially supported by penalty surcharge revenues, rather than JIS surcharge revenues. [Reimbursement to counties for court interpreters is also supported under current law through a GPR appropriation.] Note that under AB 21/SB 21, the JIS surcharge fund is also projected to end 2015-16 and 2016-17 in deficit. The JIS surcharge fund is projected to end 2015-16 with a balance of -\$966,800 and end 2016-17 with a balance of -\$960,700. [A separate paper is prepared on this issue.]

15. The CLDLE surcharge and DNA surcharge fund supports DOJ's operations related to drug law enforcement and the state's three crime laboratories. Under AB 21/SB 21, the CLDLE

surcharge and DNA surcharge fund is projected to end 2015-16 with a balance of \$1,389,800 and end 2016-17 with a balance of \$1,089,000. While the fund is projected to end the 2015-17 biennium with a positive balance, it should be noted that the fund is projected to operate under a structural deficit. In 2015-16, expenditures are estimated to exceed revenues by \$280,100, and in 2016-17, expenditures are estimated to exceed revenues by \$300,800. Table 6 identifies the projected condition of the CLDLE surcharge and DNA surcharge fund during the 2015-17 biennium, under the bill.

**TABLE 6**

**Projected Fund Condition of the CLDLE Surcharge and DNA Surcharge  
During the 2015-17 Biennium Under AB 21/SB 21**

|                 | <u>2014-15</u>    | <u>2015-16</u>    | <u>2016-17</u>    |
|-----------------|-------------------|-------------------|-------------------|
| Opening Balance | \$1,420,500       | \$1,669,900       | \$1,389,800       |
| Revenues        | 13,189,900        | 13,189,900        | 13,189,900        |
| Expenditures    | <u>12,940,500</u> | <u>13,470,000</u> | <u>13,490,700</u> |
| Ending Balance  | \$1,669,900       | \$1,389,800       | \$1,089,000       |

16. The Committee could approve the Governor's recommendation [Alternative A1]. Under this alternative, the following changes to the penalty surcharge fund would be made: (a) crime laboratory equipment and supplies would supported by the CLDLE surcharge and the DNA surcharge, rather than the penalty surcharge; and (b) expenses related to court interpreters would be, in part, supported by the penalty surcharge rather than the JIS surcharge. This alternative presupposes that the Committee has decided to approve the Governor's recommendation to establish the state justice assistance grant program and eliminate the youth diversion grant program.

17. As Table 5 indicates, even with the modifications to the penalty surcharge fund recommended under AB 21/SB 21, the fund is projected to operate under a structural deficit in 2015-16 and 2016-17. In 2015-16, obligations are projected to exceed revenues by \$1,346,200, and in 2016-17, obligations are projected to exceed revenues by \$1,516,700. In order to address this structural deficit, the Committee could consider across-the-board reductions to appropriations supported by the penalty surcharge.

18. The appropriations supported by the penalty surcharge under AB 21/SB 21, as identified in Table 5, provide funding for a wide variety of state functions.

- Justice - law enforcement training fund, local assistance provides reimbursement funding to local law enforcement agencies for preparatory training and annual recertification training for local law enforcement officers.
- Justice - law enforcement training fund, state operations provides administrative funding for the program as well as reimbursement funding to state law enforcement agencies for preparatory training and annual recertification training for state law enforcement officers.



- Justice - drug enforcement intelligence operations provides funding for drug enforcement tactical and strategic intelligence units.
- Justice - reimbursement to counties for victim-witness services provides reimbursement funding to counties to offset the cost of operating county victim/witness programs.
- Justice - drug crimes enforcement provides funding to support local anti-drug task forces.
- Justice - TIME system provides funding to DOJ to provide information technology services for the system which provides criminal history and other related law enforcement data to law enforcement agencies.
- Justice - state justice assistance grants (created under AB 21/SB 21) would support grants to local units of government, state agencies, and private organizations for a variety of criminal justice purposes.
- Justice - law enforcement program administration supports the costs to DOJ related to administering several criminal justice grant programs.
- Public Instruction - aid for alcohol and other drug abuse programs supports school district projects designed to assist minors experiencing problems from the use of alcohol or other drugs and to prevent alcohol and other drug abuse by minors.
- Public Instruction - alcohol and other drug abuse programs supports the administration of penalty surcharge funded alcohol and other drug abuse programs.
- Corrections - correctional officer training provides funding for correctional officer training.
- Corrections - victim services and program provides funding for victim advocates.
- Circuit Courts - court interpreters provides funding to reimburse counties for the actual expenses paid for interpreters.
- State Public Defender - conferences and training provides funding to the SPD to sponsor training and conferences for both staff attorneys and private bar attorneys who accept assignment of SPD cases.

19. In order to address the anticipated structural deficit of the penalty surcharge fund during the 2015-17 biennium, across-the-board expenditure reductions could be applied to all of the appropriations supported by the penalty surcharge. Table 7 identifies projected penalty surcharge revenues and expenditures during the 2015-17 biennium if various across-the-board expenditure reductions are applied to appropriations supported by the penalty surcharge. As Table 7 indicates, projected revenues would exceed expenditures in both 2015-16 and 2016-17 if a 9% annual reduction is applied. As a result, the Committee could apply a 9% annual reduction to all of the appropriations supported by the penalty surcharge [Alternative A2]. Under this alternative,

projected revenues would exceed obligations by \$177,400 in 2015-16 and \$8,700 in 2016-17. This alternative would result in overall penalty surcharge expenditure reductions totaling \$1,523,600 PR in 2015-16 and \$1,525,400 PR in 2016-17.

**TABLE 7**

**Revenues and Expenditures of the Penalty Surcharge Fund  
Under AB 21/SB 21 With Across-The-Board Reductions**

| Expenditure<br>Reduction<br>Percentage | 2015-16      |               |            | 2016-17      |               |            |
|--|--------------|---------------|------------|--------------|---------------|------------|
|  | Revenues     | Expenditures* | Difference | Revenues     | Expenditures* | Difference |
| 5%                                     | \$15,583,100 | \$16,082,900  | -\$499,800 | \$15,431,700 | \$16,101,100  | -\$669,400 |
| 6                                      | 15,583,100   | 15,913,500    | -330,400   | 15,431,700   | 15,931,500    | -499,800   |
| 7                                      | 15,583,100   | 15,744,000    | -160,900   | 15,431,700   | 15,761,900    | -330,200   |
| 8                                      | 15,583,100   | 15,575,000    | 8,100      | 15,431,700   | 15,592,500    | -160,800   |
| 9                                      | 15,583,100   | 15,405,700    | 177,400    | 15,431,700   | 15,423,000    | 8,700      |
| 10                                     | 15,583,100   | 15,236,200    | 346,900    | 15,431,700   | 15,253,600    | 178,100    |

\*Expenditure totals assume: (a) the state justice assistance grant program has been approved, as provided under AB 21/SB 21; (b) the elimination of the youth diversion program has been approved, as recommended under AB 21/SB 21; (c) crime laboratory equipment and supplies are not supported by the penalty surcharge, as recommended under AB 21/SB 21; and (d) the penalty surcharge would provide partial support for court interpreters, as recommended under AB 21/SB 21.

20. Table 8 provides the condition of the penalty surcharge fund during the 2015-17 biennium with a 9% across-the-board reduction. While estimated revenues would exceed expenditures under Alternative A2, the penalty surcharge fund would be anticipated to end the 2015-17 biennium with a balance of -\$3,645,500. In order to eliminate the penalty surcharge deficit during the 2015-17 biennium, it is estimated that a 19.8% reduction (-\$6,708,000 PR over the 2015-17 biennium) would have to be applied to each appropriation supported by the penalty surcharge.

**TABLE 8****Condition of the Penalty Surcharge Fund With a 9% Across-the-Board Expenditure Reduction Applied During the 2015-17 Biennium, Under AB/SB 21 (Alternative A2)**

|                    |   | <u>2014-15</u> | <u>2015-16</u> | <u>2016-17</u> |
|--------------------|---|----------------|----------------|----------------|
|                    | Beginning Balance   | -\$2,048,000   | -\$3,831,600   | -\$3,654,200   |
|                    | Revenues  | \$15,480,000   | \$15,583,100   | \$15,431,700   |
|                    | <i>Obligations</i>  |                |                |                |
| Justice            | Law enforcement training fund -- local assistance               | \$4,364,800    | \$3,972,000    | \$3,972,000    |
|                    | Law enforcement training fund -- state operation                | 3,015,200      | 2,787,900      | 2,791,000      |
|                    | Drug enforcement intelligence operations                        | 1,680,500      | 1,504,000      | 1,517,400      |
|                    | Reimbursement to counties for victim-witness services           | 748,900        | 681,500        | 681,500        |
|                    | Drug crimes enforcement local grants                            | 717,900        | 653,300        | 653,300        |
|                    | Transaction information management of enforcement (TIME) system | 724,300        | 649,500        | 650,000        |
|                    | Youth diversion grant program                                   | 672,400        | 0              | 0              |
|                    | Crime laboratory equipment and supplies                         | 558,100        | 0              | 0              |
|                    | State justice assistance grants                                 | 0              | 477,800        | 477,800        |
|                    | Law enforcement programs administration                         | 161,100        | 159,300        | 159,500        |
| Public Instruction | Aid for alcohol and other drug abuse programs                   | 1,284,700      | 1,169,100      | 1,169,100      |
|                    | Alcohol and other drug abuse programs administration            | 591,800        | 554,600        | 554,600        |
| Corrections        | Correctional officer training                                   | 2,322,600      | 2,199,100      | 2,199,100      |
|                    | Victim services and programs                                    | 276,500        | 247,700        | 247,700        |
| Circuit Courts     | Court Interpreters  | 0              | 211,800        | 211,800        |
| Public Defender    | Conferences and training  | <u>144,800</u> | <u>138,100</u> | <u>138,200</u> |
|                    | Total Obligations   | \$17,263,600   | \$15,405,700   | \$15,423,000   |
|                    | Ending Balance  | -\$3,831,600   | -\$3,654,200   | -\$3,645,500   |

**If the State Justice Assistance Grant Program Is Not Approved**

21. As previously indicated, if the Committee decides to delete the Governor's recommendation to establish a state justice assistance grant program, and instead decides to maintain current law to retain the youth diversion grant program, law enforcement officer grant program, and child advocacy center grant program, penalty surcharge obligations during the 2015-17 biennium would increase by \$147,300 PR annually. The increase in penalty surcharge obligations would be due to the fact that base penalty surcharge funding for the youth diversion grant program totals \$672,400 PR annually, while the bill provides the state justice assistance grant program \$525,100 PR annually from the penalty surcharge.

22. In reviewing the fund condition of the penalty surcharge if the state justice assistance grant proposal is deleted and the youth diversion grant program is retained, it may be beneficial to first review the anticipated fund condition during the 2015-17 biennium under current law. Subsequently, the fund condition could be reviewed as modified under AB 21/SB 21 (excluding the creation of SJAG and the elimination of the youth diversion program).

23. Table 3 previously identified the fund condition of the penalty surcharge under current law (the SJAG program is deleted from the bill, the youth diversion grant program is retained, and all other modifications to the penalty surcharge fund under the bill are also deleted) [Alternative B3]. Under this alternative, the fund would be projected to end 2015-16 with a deficit of \$5,650,500, and end 2016-17 with a deficit of \$7,639,900. Further, the fund would be projected to operate under a structural deficit in both 2015-16 and 2016-17. In 2015-16, obligations would exceed projected revenues by \$1,818,900. In 2016-17, obligations would exceed projected revenues by \$1,989,400.

24. Under the bill, the following two modifications are made to the penalty surcharge fund: (a) crime laboratory equipment and supplies would supported by the CLDLE surcharge and the DNA surcharge, rather than the penalty surcharge; and (b) expenses related to court interpreters would be, in part, supported by the penalty surcharge rather than the JIS surcharge. These additional modifications provided under the bill would decrease annual penalty surcharge obligations by \$325,400 PR annually. Since the bill's modifications would reduce overall penalty surcharge obligations, the Committee could approve of the Governor's recommendations to modify the funding sources for crime laboratory equipment and supplies and court interpreters [Alternative B1].

25. Table 9 identifies the condition of the penalty surcharge funder under Alternative B1. As the table indicates, if the state justice assistance grant proposal is deleted, the youth diversion grant program is retained, and the other modifications to the fund recommended under the bill are approved, the penalty surcharge fund is projected to end 2015-16 with a balance of -\$5,325,100, and end 2016-17 with a balance of -\$6,989,100. Further, the fund is projected to operate under a structural deficit in both 2015-16 and 2016-17. In 2015-16, penalty surcharge obligations are projected to exceed revenues by \$1,493,500. In 2016-17, penalty surcharge obligations are projected to exceed revenues by \$1,664,000.

**TABLE 9**

**Penalty Surcharge Fund Condition if the State Justice Assistance Grant Program is Not Established, the Youth Diversion Grant Program is Retained, and Other Modifications to the Fund under AB 21/SB 21 are Approved (Alternative B1)**

|  |   | <u>2014-15</u>                                | <u>2015-16</u> | <u>2016-17</u> |
|--|---|---|----------------|----------------|
|  | Beginning Balance   | -\$2,048,000                                  | -\$3,831,600   | -\$5,325,100   |
|  | Revenues  | \$15,480,000                                  | \$15,583,100   | \$15,431,700   |
|  | <i>Obligations*</i>   |   |                |                |
| Justice  | Law enforcement training fund -- local assistance               | \$4,364,800                                   | \$4,364,800    | \$4,364,800    |
|  | Law enforcement training fund -- state operations               | 3,015,200                                     | 3,063,600      | 3,067,000      |
|  | Drug enforcement intelligence operations                        | 1,680,500                                     | 1,652,700      | 1,667,500      |
|  | Reimbursement to counties for victim-witness services           | 748,900                                       | 748,900        | 748,900        |
|  | Drug crimes enforcement local grants                            | 717,900                                       | 717,900        | 717,900        |
|  | Transaction information management of enforcement (TIME) system | 724,300                                       | 713,700        | 714,300        |
|  | Youth diversion grant program                                   | 672,400                                       | 672,400        | 672,400        |
|  | Crime laboratory equipment and supplies                         | 558,100                                       | 0              | 0              |
|  | Law enforcement programs administration                         | 161,100                                       | 175,100        | 175,300        |
|  | Public Instruction  | Aid for alcohol and other drug abuse programs | 1,284,700      | 1,284,700      |
| Alcohol and other drug abuse programs administration |   | 591,800                                       | 609,500        | 609,500        |
| Corrections  | Correctional officer training                                   | 2,322,600                                     | 2,416,600      | 2,416,600      |
|  | Victim services and programs                                    | 276,500                                       | 272,200        | 272,200        |
| Circuit Courts                                       | Court Interpreters  | 0   | 232,700        | 232,700        |
|  | Conferences and training  | 144,800                                       | 151,800        | 151,900        |
|  | Total Obligations   | \$17,263,600                                  | \$17,076,600   | \$17,095,700   |
|  | Ending Balance  | -\$3,831,600                                  | -\$5,325,100   | -\$6,989,100   |

\*Under Alternative B1, as recommended under AB/SB 21, crime laboratory equipment and supplies would no longer be supported by the penalty surcharge, but court interpreters would, in part, be supported by the penalty surcharge.

26. If the Committee decides to delete the Governor's recommendation relating to the state justice assistance grant proposal, and approves of the other modifications to the penalty surcharge fund recommended under the bill, obligations are still projected to exceed revenues in both 2015-16 and 2016-17. In order to address the projected structural deficit, the Committee could consider reducing penalty surcharge obligations through across-the-board expenditure reductions to appropriations supported by the penalty surcharge. Discussion point #18 of this paper provides a brief description of the state programs supported by the appropriations funded through the penalty surcharge.

27. Table 10 identifies projected penalty surcharge revenues and expenditures during the 2015-17 biennium if various across-the-board expenditure reductions are applied to appropriations supported by the penalty surcharge. As Table 10 indicates, projected revenues would exceed obligations if the expenditure authority of each appropriation supported by the penalty surcharge was reduced by 10%. [Note that expenditure levels identified in Table 10 assume that the SJAG program is deleted from the bill, the youth diversion grant program is retained, penalty surcharge

revenues would not be utilized to support crime laboratory equipment and supplies, and penalty surcharge revenues would be utilized to support court interpreters.] As a result, if the Committee decided to approve of the Governor's modifications to the penalty surcharge and deleted the Governor's recommendations related to SJAG and the youth diversion program, the Committee could apply a 10% reduction to all of the appropriations supported by the penalty surcharge [Alternative B2]. This alternative would result in overall penalty surcharge expenditure reductions totaling \$1,707,800 PR in 2015-16 and \$1,709,500 PR in 2016-17.

**TABLE 10**

**Revenues and Expenditures of the Penalty Surcharge Fund  
With Across-The-Board Reductions**

| Expenditure<br>Reduction<br>Percentage | 2015-16      |               |            | 2016-17      |               |            |
|--|--------------|---------------|------------|--------------|---------------|------------|
|  | Revenues     | Expenditures* | Difference | Revenues     | Expenditures* | Difference |
| 5%                                     | \$15,583,100 | \$16,222,900  | -\$639,800 | \$15,431,700 | \$16,241,100  | -\$809,400 |
| 6                                      | 15,583,100   | 16,052,000    | -468,900   | 15,431,700   | 16,070,000    | -638,300   |
| 7                                      | 15,583,100   | 15,881,000    | -297,900   | 15,431,700   | 15,898,900    | -467,200   |
| 8                                      | 15,583,100   | 15,710,500    | -127,400   | 15,431,700   | 15,728,000    | -296,300   |
| 9                                      | 15,583,100   | 15,539,800    | 43,300     | 15,431,700   | 15,557,100    | -125,400   |
| 10                                     | 15,583,100   | 15,368,800    | 214,300    | 15,431,700   | 15,386,200    | 45,500     |

\*Expenditure totals assume: (a) the state justice assistance grant proposal has been deleted; (b) the youth diversion grant program has been retained; (c) crime laboratory equipment and supplies are not supported by the penalty surcharge, as recommended under AB 21/SB 21; and (d) the penalty surcharge would provide partial support for court interpreters, as recommended under AB 21/SB 21.

28. Table 11 identifies the condition of the penalty surcharge fund if a 10% across-the-board reduction is applied. As Table 11 indicates, with a 10% across-the-board reduction, projected revenues would exceed obligations by \$214,300 in 2015-16 and \$45,500 in 2016-17. While estimated revenues would exceed expenditures under Alternative B2, the penalty surcharge fund would be anticipated to end the 2015-17 with a balance of -\$3,571,800. In order to eliminate the penalty surcharge deficit during the 2015-17 biennium, it is estimated that a 20.5% reduction (-\$7,005,000 PR over the 2015-17 biennium) would have to be applied to each appropriation supported by the penalty surcharge.

**TABLE 11**

**Penalty Surcharge Fund Condition if the State Justice Assistance Grant Program is Not Established, the Youth Diversion Grant Program is Retained, and Other Modifications to the Fund under AB 21/SB 21 are Approved, and a 10% Across-the-Board Expenditure Reduction is Applied During 2015-17 (Alternative B2)**

|                    |   | <u>2014-15</u> | <u>2015-16</u> | <u>2016-17</u> |
|--------------------|---|----------------|----------------|----------------|
| Agency             | Beginning Balance   | -\$2,048,000   | -\$3,831,600   | -\$3,617,300   |
|                    | Revenues  | \$15,480,000   | \$15,583,100   | \$15,431,700   |
|                    | Obligations*  |                |                |                |
| Justice            | Law enforcement training fund -- local assistance               | \$4,364,800    | \$3,928,300    | \$3,928,300    |
|                    | Law enforcement training fund -- state operations               | 3,015,200      | 2,757,200      | 2,760,300      |
|                    | Drug enforcement intelligence operations                        | 1,680,500      | 1,487,400      | 1,500,800      |
|                    | Reimbursement to counties for victim-witness services           | 748,900        | 674,000        | 674,000        |
|                    | Drug crimes enforcement local grants                            | 717,900        | 646,100        | 646,100        |
|                    | Transaction information management of enforcement (TIME) system | 724,300        | 642,300        | 642,900        |
|                    | Youth diversion grant program                                   | 672,400        | 605,200        | 605,200        |
|                    | Crime laboratory equipment and supplies                         | 558,100        | 0              | 0              |
|                    | Law enforcement programs administration                         | 161,100        | 157,600        | 157,800        |
| Public Instruction | Aid for alcohol and other drug abuse programs                   | 1,284,700      | 1,156,200      | 1,156,200      |
|                    | Alcohol and other drug abuse programs administration            | 591,800        | 548,600        | 548,600        |
| Corrections        | Correctional officer training                                   | 2,322,600      | 2,174,900      | 2,174,900      |
|                    | Victim services and programs                                    | 276,500        | 245,000        | 245,000        |
| Circuit Courts     | Court Interpreters  | 0              | 209,400        | 209,400        |
|                    | Conferences and training  | <u>144,800</u> | <u>136,600</u> | <u>136,700</u> |
|                    | Total Obligations   | \$17,263,600   | \$15,368,800   | \$15,386,200   |
|                    | Ending Balance  | -\$3,831,600   | -\$3,617,300   | -\$3,571,800   |

\*Under Alternative B2, as recommended under AB/SB 21, crime laboratory equipment and supplies would no longer be supported by the penalty surcharge, but court interpreters would, in part, be supported by the penalty surcharge. Obligations reflect a 10% reduction to all appropriations supported by the penalty surcharge.

## SUMMARY

As this paper points out, regardless of options selected by the Committee, it is likely that the penalty surcharge fund will continue to realize deficits in 2015-17 and subsequent years. The fund has a history of unsupported overdrafts which are annually reported to the Joint Committee on Finance. The ultimate goal should be, at some point, to bring the fund into balance. The alternatives that are presented represent options that might begin to help in achieving that goal.

## ALTERNATIVES

Similar to the discussion points above, the alternatives enumerated below are categorized into two distinct sections, Section A and Section B. Alternatives enumerated in Section A would apply if the Committee has decided to approve the Governor's recommendation to establish a state justice assistance grant program and eliminate the youth diversion grant program. Alternatives enumerated

in Section B would apply if the Committee has decided to delete the Governor's recommendation related to those grant programs.

**A. State Justice Assistance Grant Program is Approved**

1. Approve the Governor's recommendation and make the following modifications to the penalty surcharge fund: (a) provide that crime laboratory equipment and supplies would be supported by revenues from the crime laboratory and drug law enforcement surcharge and the DNA surcharge, as opposed to the penalty surcharge; and (b) provide that court interpreters would be supported, in part, by revenues from the penalty surcharge, rather than the justice information system surcharge.

2. Provide a 9% across-the-board reduction to all appropriations supported by the penalty surcharge. As a result, overall penalty surcharge obligations under the bill would be reduced by \$1,523,600 PR in 2015-16 and \$1,525,400 PR in 2016-17. *This alternative may be chosen in addition to Alternative A1.*

| ALT A2 | Change to Bill |
|--------|----------------|
| PR     | - \$3,049,000  |

3. Delete the Governor's recommendations relating to funding for crime laboratory equipment and supplies and court interpreters.

**B. State Justice Assistance Grant Program is Not Approved**

1. Approve the Governor's recommendation and make the following modifications to the penalty surcharge fund: (a) provide that crime laboratory equipment and supplies would be supported by revenues from the crime laboratory and drug law enforcement surcharge and the DNA surcharge, as opposed to the penalty surcharge; and (b) provide that court interpreters would be supported, in part, by revenues from the penalty surcharge, rather than the justice information system surcharge.

2. Provide a 10% across-the-board reduction to all appropriations supported by the penalty surcharge. As a result, overall penalty surcharge obligations would be reduced by \$1,707,800 PR in 2015-16 and \$1,709,500 PR in 2016-17. *This alternative may be chosen in addition to Alternative B1.*

| ALT B2 | Change to Bill |
|--------|----------------|
| PR     | - \$3,417,300  |

3. Delete the Governor's recommendations relating to funding for crime laboratory equipment and supplies and court interpreters.

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