

## **Report on fines, forfeitures and surcharges in Wisconsin**

### **An overview**

The following report contains information on the imposition and collection of fees and surcharges that are added on to the basic cost of fines (criminal cases) and forfeitures (civil cases) in Wisconsin. It does not advocate any particular change to the fee and surcharge structure, but rather attempts to provide background on the topic, and explain the somewhat complex system.

The report is presented by the Director of State Courts Office, and is the product of research conducted by a subcommittee of the Wisconsin Supreme Court's Planning and Policy Advisory Committee (PPAC). The subcommittee's mission was to gather and present facts about the origin of fees and surcharges in Wisconsin, as well as how the system has changed over the years and evolved into its present state. PPAC discussed and officially endorsed the report in November 2001.

Finally, this report is intended as a factual document for review by any individual or group with an interest in the topic, and will be made available upon request. It also serves as an informational companion to legislation being drafted that seeks to clarify and simplify the current manner in which fees and surcharges are defined, imposed and collected in Wisconsin.

# **Fines, Forfeitures & Surcharges**

## **≡ Facts and findings ≡**

**Presented by:**  
**Wisconsin Director of State Courts Office**  
**On behalf of:**  
**The WI Supreme Court's Planning and Policy Advisory Committee**  
**(PPAC)**

**November 2001**  
(Updated Dec. 2002)

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(3-year terms)

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## EXECUTIVE SUMMARY

This report presents factual and historical information about the structure used to impose and collect fines (criminal cases), forfeitures (civil cases) and court filing fees, as well as the surcharges imposed upon fines and forfeitures. It is an attempt to explain that structure in the simplest terms possible.

The Supreme Court's Planning and Policy Advisory Committee (PPAC) requested this report, due to a concern among PPAC members about the rapid growth in surcharges and the time and effort required to collect them. Since 1987, the number of surcharges in Wisconsin has nearly tripled, while **surcharge revenue has increased more than 500%**. Surcharge revenue now exceeds the amount generated by the base fines and forfeitures. In addition, county clerks of court bear the responsibility for collecting surcharges, despite the fact that many offenders simply cannot afford to pay. These non-paying offenders may end up in already-overcrowded county jails; or they may have their driver licenses suspended or revoked, but continue to drive and risk yet another citation. PPAC staff also discovered strong sentiment among law enforcement that surcharge levels have reached the point of being unfair, especially to people with low-to-average incomes who commit non-serious offenses such as exceeding the posted speed limit.

The following report is factual in nature and makes no recommendations for change. It is designed as an informational companion to legislation being drafted by the Director of State Courts Office. The draft legislation would create a subchapter on surcharges in Chapter 814 of the statutes that would contain a comprehensive list of all surcharges and what case types they should be applied to. The draft would also clarify how surcharges are applied to minors under Chapters 48 and 938, and the DNR statutes. Finally, it would require the State Treasurer to annually report to the Legislature the revenue collected from all surcharges. Many of the items contained in the draft legislation were originally part of a 1989 proposal that was an outgrowth of the Legislative Council's Special Committee on Surcharges on Fines and Forfeitures.

## **Background and mission**

At its May 1999 meeting, the Planning and Policy Advisory Committee (PPAC) discussed the issue of surcharges that are assessed on fines and forfeitures. Fines are levied upon conviction in criminal cases, while forfeitures are imposed for civil violations, such as speeding. In this document, the term “surcharges” is defined to include add-on fees, assessments and surcharges. It does not include base fine and forfeiture amounts, or filing fees.

Several PPAC members expressed concern about the growing number of surcharges and the effort and expense required to collect them. At this meeting, PPAC approved the creation of a subcommittee to study the issue. The group’s mission was limited to gathering facts and data, then reporting that information back to PPAC for consideration.

The subcommittee met four times, usually just prior to the full PPAC meeting, to review information collected by its members and staff.

## **Facts and findings**

### 1. Historical and background information

The subcommittee first examined the history of surcharges in Wisconsin, using a 1989 Legislative Council report to the Legislature (Report No. 7) as its main reference source. This report explained that:

- the “clear proceeds” of all fines and forfeitures collected by counties for any breach in state penal laws must be deposited in the state’s common school fund and used for the operation of Wisconsin’s public schools
- due partially to the limitation on the use of fines and forfeitures, fees and surcharges have been created to generate revenue for various state and local programs. The first such surcharge – the Penalty Assessment – was enacted in 1977

Since 1977, the Legislature has continued to create new surcharges. TABLE 1 on the next page illustrates this growth, and compares that to the growth in revenue from base fine and forfeiture amounts and filing fees.

TABLE 1

	1987	1993	2001
<b>SURCHARGES</b>			
No. of surcharges	9	20	25
Amount collected	<b>\$10.8 million</b>	<b>\$27.5 million</b>	<b>\$67.9 million</b>
Percent increase in amt. collected	--	<b>155%</b>	<b>147%</b>
<b>FINES/FORFEITURES &amp; FILING FEES</b>			
Amount collected	<b>\$43.6 million</b>	<b>\$47.6 million</b>	<b>\$57.7 million</b>
Percent increase in amt. collected	--	<b>9%</b>	<b>21%</b>

*SOURCE: Office of Court Operations 2001 Revenue Summary Report*

**NOTE:** Fines/forfeitures & filing fees include lines 1 (except for CCAP's share), 7a, 7b, 8, 9, 11, 12, 27 and 29 of the 2001 Revenue Summary Report (Appendix A).

Some surcharges are added on as a percentage of the base fine or forfeiture, while others are set at a fixed amount. Over the years, the Legislature has periodically raised these percentages and fixed amounts to generate additional revenue. TABLE 2 below shows how the surcharges that apply to most traffic-related offenses affect a forfeiture returnable to circuit court for basic speeding (1-10 MPH over limit). It also offers a comparison between the years 1987 and 2002:

TABLE 2

	1987	2002
Base forfeiture amount	<b>30</b>	<b>30</b>
Penalty assessment	5.70	7.20
Jail assessment	10	10
Court costs	10	25
Automation fee	1	n.a.
Justice info. fee	n.a.	9
Crime lab/drug assessment	n.a.	5
Court support services fee	n.a.	52
<b>TOTAL</b>	<b>\$56.70</b>	<b>\$138.20</b>

*SOURCE: Civil Forfeiture Table – Effective July 30, 2002*

TABLE 3 on the next page takes the Year 2002 circuit court data above and compares it to what a basic speeding citation would cost in municipal court in 2002:

TABLE 3

	<b>Municipal court</b>	<b>Circuit court</b>
Base forfeiture amount	<b>30</b>	<b>30</b>
Penalty assessment	7.20	7.20
Jail assessment	10	10
Court costs	23 (ranges from \$15-\$23)	25
Automation fee	n.a.	n.a.
Justice info. fee	n.a.	9
Crime lab/drug assessment	5	5
Court support services fee	n.a.	52
<b>TOTAL</b>	<b>\$75.20</b>	<b>\$138.20</b>

*SOURCE: Civil Forfeiture Table – Effective July 30, 2002 and 2002 State of Wisconsin Revised Uniform State Traffic Deposit Schedule*

*Where does the money go?*

Surcharges sometimes apply only to fines and forfeitures issued for a very narrow group of offenses, while others apply to a much broader base of criminal or civil violations. The majority of the revenue generated by base fines and forfeitures goes to the state and is deposited in the Common School Fund in accordance with the Wisconsin Constitution. However, the Legislature has authorized counties to retain a share of state fines and forfeitures, as well as a percentage of certain surcharges. See **APPENDIX A** for a summary of revenue generated by all fines, forfeitures, filing fees, and surcharges. See **APPENDIX B** for a complete list of court costs, assessments and surcharges and an explanation of where the money goes after collection.

2. Fee and surcharge collection and “uncollectables”

The county Clerk of Courts is responsible for collecting and depositing all surcharges levied on fines and forfeitures. However, in some cases, the defendant may be indigent or otherwise unable to pay. This creates an additional cost to the Clerk to maintain an accounts receivable file and follow-up with the individual to try to collect. In some counties, the clerk has chosen to contract with a private collection agency to assume these duties.

An individual who does not pay a traffic-related fine or forfeiture, and the corresponding surcharges, faces suspension or revocation of his/her driver’s license. If that individual continues driving despite the suspension or revocation, he/she risks yet another citation and therefore a larger bill to pay, if stopped by law enforcement.

This inability to pay, and the sanctions that may result, could be a contributing factor to the recent, significant increase in the number of convictions statewide for driving with a suspended or revoked driver’s license. This is illustrated in TABLE 4 on the next page.

TABLE 4

	1992	2001	Percent increase
No. of convictions – driving w/ suspended or revoked DL	<b>38,679</b>	<b>82,237</b>	<b>113%</b>

*SOURCE: DMV Records & Licensing Section, Traffic Convictions report*

Uncollected citation amounts eventually impact county jail staff as well when individuals are incarcerated for failure to pay. Although it is impossible to quantify this impact statewide, the subcommittee did take a “snapshot” of the Rock County jail population to determine the reasons for incarceration. TABLE 5 below contains the findings of an examination of the county jail population on January 10, 2000.

TABLE 5

	No. of inmates	Percent of total
Probation hold or revocation OR held on various charges	190	39.3%
Sentenced for crime	206	42.6%
Non-payment of fine/forfeiture	24	5.0%
Criminal sentence AND non-payment of fine/forfeiture	64	13.2%
<b>TOTAL</b>	<b>484</b>	<b>100%</b>

*SOURCE: Rock Co. Sheriff, Jail Population Breakdown by Charges*

As TABLE 5 illustrates, eighty-eight (88) inmates, or 18.2% of the total jail population, were incarcerated solely, or in part, as a sanction for non-payment of fines or forfeitures.

3. Law enforcement attitudes

Subcommittee members were also curious about the attitude of law enforcement in Wisconsin toward surcharges. Police officers are on the “front lines” and have frequent face-to-face contact with individuals who must pay, and who may be unpleasantly surprised by the total citation amount.

The subcommittee contacted five statewide groups representing various law enforcement officers: Wisc. Sheriffs and Deputy Sheriffs Assoc., Badger State Sheriffs Assoc., Wisc. Chiefs of Police, Wisc. Professional Police Assoc., and the Wisc. State Patrol. With the exception of the State Patrol, which does not take official positions on public policy matters, spokespersons for all of these organizations oppose the proliferation of surcharges. Some were vehement in their opposition, stating that citations (e.g., speeding tickets) carry a high price tag and are often issued to generally law-abiding citizens with families to support.

Each spokesperson also indicated that officers at times use their discretion and issue a warning, or a citation with a lower base forfeiture amount, in lieu of a speeding ticket. In addition, at least two of the organizations have made preliminary inquiries and contacts in the past to explore the potential of legislative action to reduce the number of surcharges. However, neither organization has moved beyond this stage.

4. Past study and legislative action

In 1988, the Legislative Council established the Special Committee on Surcharges on Fines and Forfeitures. The Committee's mission was to review the appropriateness of surcharges as penalties and as revenue sources, as well as the system of collecting and accounting for these monies. The end result was a 1989 Legislative Council report to the Legislature (Report No. 7), referenced at the beginning of this document.

During its deliberations, the Legislative Council special committee reviewed a large amount of background material and considered many options. For example, special committee members expressed a desire to simplify and streamline the surcharge collection system. At one point members voted to repeal the jail assessment, only to reverse course later in their deliberations. Members also adopted a policy statement declaring that surcharges: are an administrative burden on law enforcement and courts; are an artificial means of circumventing the constitutional requirement that the state's portion of fine and forfeiture proceeds go to the Common School Fund; and create a harsh effect on low income people who must serve jail time if unable to pay. The policy statement also supported: an end to new surcharges and the use of general purpose revenue (GPR), not surcharge proceeds, to fund worthwhile programs.

However, the most controversial decision of the special committee was approving a senate joint resolution that proposed to amend the state constitution and repeal the requirement that the state's share of fine and forfeiture revenue go into the Common School Fund. Instead, members wanted to permit the Legislature to use this revenue for programs related to drug abuse, law enforcement, and victims, witnesses and offenders. Local school officials (especially librarians) and their lobbyists turned out in great numbers to fight this proposal, fearing that if fine and forfeiture revenue was taken away from them, it would not be replaced by local government. There was also public sentiment opposing the use of public tax money (GPR) to help "fill in the funding gap" for schools. Finally, during the public hearing process, surcharges proved to be politically popular as a way to make criminals pay more for their offenses. As a result the senate joint resolution was not approved by the Legislature.

The special committee also recommended approval of legislation that would have created a number of other changes to state law relating to the imposition and administration of surcharges. For example, the bill proposed to: consolidate in a single statutory provision the cross-references to each of the surcharges; establish a uniform effective date of January 1 for all new and amended surcharges; and require an additional fiscal estimate for bills that impose surcharges. Although this bill also failed to win legislative approval, many of its provisions are contained in the new, accompanying legislation being proposed by the Director of State Courts Office.

# APPENDIX A

## REVENUE SUMMARY Report

January, 2001 thru December, 2001

Line	Description	Amount Collected	County	State Share	CCAP Share
01	Circuit Court Fees (Ch. 814, Subchapter II)	\$21,137,446.79	\$7,788,077.42	\$8,264,084.33	\$5,085,285.04
02	Natural Resources Restitution Payments (s.29.998)	\$37,697.24	\$0.00	\$37,697.24	
03	Natural Resources Assessments (s.29.997)	\$328,490.94	\$0.00	\$328,490.94	
04	Domestic Abuse Assessments (s.973.055)	\$372,914.40	\$0.00	\$372,914.40	
05	Driver Improvement Surcharges (s.346.655)	\$6,987,812.22	\$4,284,251.98	\$2,703,560.24	
06a	Crime Victim/Witness Surcharge - PART A	\$1,457,077.19	\$0.00	\$1,457,077.19	
06b	Crime Victim/Witness Surcharge - PART B	\$904,822.99	\$0.00	\$904,822.99	
07a	State Fines, Forfeitures, And Penalties (Ch.348)	\$987,583.79	\$98,758.71	\$888,825.08	
07b	Violations Of Conforming County Ordinances	\$378,832.49	\$330,107.59	\$48,724.90	
08	State Fines And Forfeitures (Ch. 341-347, 349 & 351)	\$16,275,484.98	\$8,137,734.35	\$8,137,750.63	
09	All Other State Fines And Forfeitures	\$8,163,077.40	\$816,345.98	\$7,346,731.42	
10	Penalty Assessments (s.165.87)	\$10,387,790.86	\$0.00	\$10,387,790.86	
11	Forfeitures For Ordinance Violations	\$12,435,613.72	\$12,435,613.72	\$0.00	
12	Occupational Drivers License Fees (s.351.07(1g))	\$26,129.00	\$13,064.50	\$13,064.50	
13	Justice Information Fee (814.635)	\$6,111,520.09	\$0.00	\$6,111,520.09	
14	County Jail Assessment (s.302.46(1)(a))	\$4,779,363.96	\$4,779,363.96	\$0.00	
15	Court Support Services Fee (s.814.634)	\$27,537,643.71	\$0.00	\$27,537,643.71	
20	Uninsured Employer Assessment (s.102.85(4))	\$18,614.57	\$0.00	\$18,614.57	
21	Environmental Assessment (s. 299.93)	\$46,530.94	\$0.00	\$46,530.94	
22	Fishing Shelter Removal Assessment (s.29.9967)	\$26.25	\$0.00	\$26.25	
23	Snowmobile Registration Restitution (s.350.115)	\$3,860.10	\$0.00	\$3,860.10	
24	Wild Animal Protection Assessment (s.29.9965)	\$8,346.15	\$0.00	\$8,346.15	
25	Drug Abuse Surcharge (s.961.41(5))	\$994,800.05	\$0.00	\$994,800.05	
26	DNA Analysis Surcharge (s.973.046)	\$291,994.80	\$0.00	\$291,994.80	
27	Reimbursement Of Legal Fees JV Actions (48.275(2))	\$477,193.28	\$119,298.54	\$357,894.74	
28	Weapons Assessment (s.167.31(5))	\$27,778.81	\$0.00	\$27,778.81	
29	PROBATE	\$2,942,674.47	\$1,497,511.93	\$1,445,162.54	
30	Milwaukee Fee (s.814.635(1m))	\$149,646.98	\$0.00	\$149,646.98	
31	Crime Lab and Drug Assessment (s. 165.755(1)(a))	\$2,286,227.52	\$0.00	\$2,286,227.52	
32	WIC Enforcement Assessment (s. 253.06(4))	\$30.00	\$0.00	\$30.00	
33	Delinquency Victim/Witness Assistance Surcharge	\$62,939.39	\$0.00	\$62,939.39	
34	Railroad Crossing Improvement Assessment	\$6,003.81	\$0.00	\$6,003.81	
35	Consumer Information Assessment	\$14,185.42	\$0.00	\$14,185.42	

**Report Total**

\$125,640,154.31 \$40,300,128.68 \$80,254,740.59 \$5,085,285.04

Line 19 Municipal Pass-Through Money Total

\$6,699,279.18