

Justice

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May 7, 2015

Joint Committee on Finance

Paper #415

Eliminate Long-Term Vacancies and Federal Funding Reduction (Justice)

[LFB 2015-17 Budget Summary: Page 266, #4 and Page 267, #5]

CURRENT LAW

The Department of Justice (DOJ) provides legal, criminal investigatory, and other law enforcement services for the state, as well as services to the victims of crimes. The agency's base budget totals \$48,431,300 GPR and 392.58 GPR positions, \$50,314,500 PR and 238.08 PR positions, \$24,995,100 FED and 42.33 FED positions, and \$394,600 SEG and 2.75 SEG positions.

GOVERNOR

Reduce position authority by 0.45 PR position and 4.55 FED positions annually associated with positions that have been vacant for twelve months or more, as of November, 2014. Expenditure authority associated with the eliminated PR and FED positions is not deleted.

In a separate provision of the bill, reduce funding and position authority by \$78,100 FED and 1.0 FED position annually.

DISCUSSION POINTS

1. The Governor recommends deleting 0.45 PR position and 4.55 FED positions annually since these positions have been vacant for 12 months or more. Expenditure authority associated with these positions is not deleted under the bill. In a separate provision, the bill reduces DOJ funding and position authority by \$78,100 FED and 1.0 FED position annually. The 1.0 FED position intended to be eliminated under this separate provision has been vacant for over 12 months, and is proposed for elimination under the provision to eliminate long-term vacancies. As a result of both of

these provisions, the bill reduces DOJ's funding and position authority by a total of \$78,100 FED, 5.55 FED positions, and 0.45 PR position annually.

2. The table below identifies: (a) the positions the bill intended to be eliminated; and (b) the salary and fringe benefit costs associated with these positions. As footnote to the table indicates, two separate provisions of the bill intend to eliminate the same 1.0 program and policy analyst-advanced FED position.

Positions Intended for Elimination Under the Bill

<u>Fund</u>	<u>Program</u>	<u>Appropriation</u>	<u>Classification</u>	<u>Full-Time Equivalent</u>	<u>Salary and Fringe Benefit Costs</u>
PR	Law Enforcement Services	Law enforcement programs - administration	Program and policy analyst	0.45	\$29,300
			Total	0.45	\$29,300
FED		Federal aid, state operations	Policy initiatives advisor	1.00	\$76,100
			Program and policy analyst*	1.00	65,100
			Criminal analyst	1.00	50,000
			Operations program associate	1.00	44,600
			Program and policy analyst	0.55	35,800
			Total	4.55	\$271,600

*Two separate provisions of the bill intend to eliminate this position.

3. As of April, 2015, all of the positions identified in the table above remain vacant. According to the Department, these positions have remained vacant because either: (a) federal funding is no longer available to support the position; or (b) the functions and duties that would be performed by the position have been combined with the functions and duties of a filled position.

4. While the bill identifies the number of positions eliminated, it does not specify the positions that must be eliminated. Rather, the bill identifies the appropriation from which appropriations must be eliminated. Given that two provisions of the bill intend to eliminate the same 1.0 FED position, the administration indicates that it would work with the Department to identify another vacant position that could be eliminated and cause the least amount of harm to the Department's operations. As of April, 2015, 9.88 positions in the FED appropriation are vacant (not including the 4.55 positions proposed for elimination under the bill). Of these 9.88 vacant FED positions, 3.55 positions have been vacant for 12 months or more, as of April, 2015.

5. Given that DOJ has been able to perform its various functions with a reduced number of positions for twelve months or more, the Committee could approve the Governor's recommendation [Alternative 1]. As a result, DOJ's base budget would incur annual reductions totaling \$78,100 FED, 5.55 FED positions, and 0.45 PR position.

6. Generally, when an agency's position authority is reduced, funding appropriated to support the eliminated positions is also eliminated. To this point, the bill reduces DOJ's FED funding

authority by \$78,100 FED annually associated with the elimination of 1.0 program and policy analyst. Therefore, should the Committee decide to eliminate FED and PR positions as proposed under the bill, the Committee could also reduce the Department's FED and PR expenditure authority associated with the eliminated positions [Alternative 4].

7. As previously indicated, two separate provisions of the bill intend to eliminate the same program and policy analyst FED position. As a result, if both provisions of the bill are enacted, DOJ would have to eliminate 1.0 FED position that was not initially identified as a long-term vacancy. In order to address the fact that the two provisions of the bill intend to eliminate the same position, the Committee could restore 1.0 FED position to DOJ's budget [Alternative 2a].

8. As a part of the provision to eliminate long-term vacancies, the bill eliminates 0.45 program and policy analyst position from the law enforcement programs PR appropriation. This appropriation is utilized to support DOJ's administration of several justice-related grant programs, including the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program. Base funding and position authority for the appropriation is \$162,900 PR and 1.4 PR positions. Program revenue for the appropriation is supported by the penalty surcharge.

9. In a separate provision, the bill eliminates the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program, and creates a new state justice assistance grant (SJAG) program. [A separate paper has been prepared on this issue.] Under current law, the youth diversion grant program, law enforcement officer grant program, and child advocacy center grant program generally specify the purposes for which grant funding is to be awarded, the entities that should receive the grant award, and the amount that should be awarded. In contrast, under the state justice assistance grant program of the bill, the Department could award competitive grants for a variety of unspecified justice-related purposes. Further, under the SJAG program, the Department would: (a) develop and periodically update a strategic plan for state justice assistance grants; (b) develop criteria and procedures to use in selecting grant recipients; (c) develop program- or initiative- specific grant announcements; (d) review grant applications; and (e) evaluate the effectiveness of grant awards under the program. Under the bill, the law enforcement programs PR appropriation would be utilized to support the administration of the state justice assistance grant program.

10. As a result of the duties enumerated above, it could be argued that administering the competitive state justice assistance grant program would require an additional amount of staff time from the Department. While the Department has been able to administer existing grant programs, DOJ indicates that it would fill the vacant 0.45 PR position in order to address the increased workload associated with the SJAG program. Therefore, if the Committee decides to approve of the Governor's recommendation to create a new state justice assistance grant program, the Committee could restore the 0.45 PR program and policy analyst position in order to provide DOJ with additional resources to administer the SJAG program [Alternative 2b].

11. On the other hand, while the bill eliminates positions that have been vacant for twelve months or longer, it could be argued that the ability of an agency to carry out its functions without certain vacant positions does not mean that there is not an impact to the agency and the public from

not filling these positions. Further, while federal funding may not currently exist to support the federal positions that are eliminated under the bill, funding may be made available in future years.

12. For the reasons discussed above, the Committee could deny the Governor's recommendation [Alternative 4]. As a result, annual funding and position authority totaling \$78,100 FED, 5.55 FED positions, and 0.45 PR position would be restored in the agency's budget.

ALTERNATIVES

1. Approve Governor's recommendation to delete \$78,100 FED, 5.55 FED positions, and 0.45 PR position annually. [Under this alternative, the salary and fringe benefit costs associated with 1.0 of the eliminated FED positions would be deleted. The salary and fringe benefit costs associated with the remaining 4.55 FED positions and 0.45 PR position totals \$271,600 FED and \$29,300 PR annually.]

2. Provide either or both of the following modifications to the bill:

a. Restore 1.0 FED program and policy analyst position to account for the fact that two separate provisions of the bill intend to eliminate the same position. [Under this alternative, the salary and fringe benefit costs associated with 1.0 of the eliminated FED positions would be deleted. The salary and fringe benefit costs associated with the remaining 3.55 FED positions and 0.45 PR position totals \$206,500 FED and \$29,300 PR annually.]

ALT 2a	Change to Bill Positions
FED	1.00

b. Restore 0.45 PR program and policy analyst position to provide DOJ additional resources to support the administration of the state justice assistance grant program. [Under this alternative, the salary and fringe benefit costs associated with 1.0 of the eliminated FED positions would be deleted. The salary and fringe benefit costs associated with the remaining 4.55 FED positions totals \$271,600 FED annually.]

ALT 2b	Change to Bill Positions
PR	0.45

3. Delete the Governor's recommendation and restore all funding and position authority eliminated under the bill.

ALT 3	Change to Bill	
	Funding	Positions
PR	\$0	0.45
FED	<u>156,200</u>	<u>5.55</u>
Total	\$156,200	6.00

4. In addition to Alternatives 1, 2a, 2b, or 2a and 2b, eliminate funding authority associated with the salary and fringe benefit costs of FED and PR positions eliminated under the bill. Note that the bill currently eliminates the salary and fringe benefit costs of 1.0 FED position eliminated under the bill. The funding that would be eliminated under this alternative is identified in the bracketed statement included with Alternatives 1, 2a, and 2b.

ALT 4	Change to Bill
<u>With Alternative 1</u>	
PR	- \$58,600
FED	- <u>543,200</u>
Total	- \$601,800
<u>With Alternative 2a</u>	
PR	- \$58,600
FED	- <u>413,000</u>
Total	- \$471,600
<u>With Alternative 2b</u>	
FED	- \$543,200
<u>With Alternative 2a and 2b</u>	
FED	- \$413,000

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May 7, 2015

Joint Committee on Finance

Paper #416

State Justice Assistance Grants (Justice)

[LFB 2015-17 Budget Summary: Page 273, #11]

CURRENT LAW

As part of its responsibility to provide legal, criminal investigatory, and other law enforcement services to the state, as well as services to victims of crimes, the Department of Justice (DOJ) administers the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program. Funding for these grant programs is supported from a combination of general purpose revenue and program revenue. Program revenue for the grant programs is predominately supported by the penalty surcharge and the justice information system surcharge.

Generally, whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of municipal or county ordinance, the court must impose a penalty surcharge totaling 26% of the total fine or forfeiture. Subject to certain exceptions, the \$21.50 justice information system (JIS) surcharge is imposed with a court fee for the commencement or filing of certain court proceedings, including: civil, small claims, forfeiture, wage earner, or garnishment actions; an appeal from municipal court; a third party complaint in a civil action; or counterclaim or cross complaints in a small claims action.

Under 2013 Act 20, and beginning January 15, 2015, the Department is required to submit an annual report to the Legislature on its administration of the youth diversion grant program, the law enforcement officer grant program, the child advocacy center grant program, the treatment alternatives and diversion (TAD) grant program, and the drug court grant program. The Department must include the following information in the report: (a) the amount of each grant awarded by DOJ for the prior fiscal year; (b) the grantee to whom each grant was awarded; (c) the agency's methodology for awarding grants and determining the level of grant funding to each grant recipient; (d) performance measures created by DOJ; and (e) reported results from each grant recipient in each fiscal year as to the attainment of the Department's performance measures.

The Department's law enforcement programs appropriation is utilized to support the administration of grants for law enforcement assistance and the youth diversion program. Base funding and position authority for the appropriation is \$162,900 PR and 1.4 PR positions annually. Program revenue funding for the appropriation is derived from the penalty surcharge.

GOVERNOR

Eliminate the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program.

Provide DOJ \$1,750,000 PR annually and create a state justice assistance grant program. In administering the state justice assistance grant (SJAG) program, DOJ must provide justice assistance grants to state agencies, local units of government, and private organizations to support the following: (a) the investigation, prosecution, or prevention of crime; (b) the enhancement of public safety; (c) the facilitation of multijurisdictional or interagency information sharing; (d) crime victims; and (e) the reduction of recidivism or crime.

Direct DOJ to develop and periodically update a strategic plan for state justice assistance grants in consultation with local law enforcement, district attorneys, the Secretary of the Department of Corrections, the Director of State Courts, and the State Public Defender. In providing state justice assistance grants, direct DOJ to give preference to programs that have at least one of the following characteristics: (a) the program has a primarily statewide or regional impact on the investigation, prosecution, or prevention of crime and is consistent with the Department's strategic plan; (b) the program has a primarily local impact on the investigation, prosecution, or prevention of crime and can be measured for effectiveness and is consistent with the Department's strategic plan; (c) the program supports the investigation, prosecution, or prevention of crimes against children, domestic violence, or sexual assault; (d) the program is designed to facilitate multijurisdictional or interagency information sharing that will assist in the investigation, prosecution, or prevention of crime; and (e) the program is designed to reduce recidivism or otherwise reduce crime and can be measured for effectiveness.

Direct DOJ to develop criteria and procedures to use in selecting recipients of grants and in administering the program. These criteria and procedures do not need to be promulgated as administrative rules. Further, require recipients of state justice assistant grants to comply with state audits and any other criteria specified by DOJ.

Direct DOJ to include information regarding the Department's administration of SJAG in its annual report to the Legislature on certain justice-related grant programs.

Create an annual PR appropriation that would receive funding for state justice assistance grants. Annual funding for state justice assistance grants would be comprised of \$1,224,900 from the justice information system (JIS) surcharge and \$525,100 from the penalty surcharge (for a total of \$1,750,000 PR annually). Provide that, at the end of each fiscal year, 70% of the unencumbered funds in the appropriation would revert to the JIS surcharge fund and 30% of the unencumbered funds would revert to the penalty surcharge fund.

Modify the statutory language of the law enforcement programs administration appropriation such that funding in the appropriation supports the administration of grants for law enforcement assistance as well as the state justice assistance grant program. Delete references to the youth diversion grant program.

DISCUSSION POINTS

1. The bill would eliminate the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program. The bill then establishes a state justice assistance grant program under which DOJ would have broad authority to administer grants related to areas of criminal justice. Table 1 summarizes the fiscal impact of the Governor's recommendation on an annual basis. As Table 1 indicates, the bill reduces overall expenditures for justice-related grant programs by \$321,000 GPR and \$667,000 PR annually. Further, the bill reduces expenditures from the justice information system surcharge fund by \$238,100 PR annually and reduces expenditures from the penalty surcharge fund by \$147,300 PR annually.

TABLE 1

Summary of State Justice Assistance Grant Proposal Under AB/SB 21

	<u>GPR</u>	<u>PR</u>	<u>PR Funding Source</u>
State Justice Assistance Grant Program			
Local Grants		\$1,750,000	Justice information system surcharge (\$1,224,900); penalty surcharge (\$525,100)
Total		\$1,750,000	
Eliminated Grant Programs			
Youth Diversion	-\$321,000	-\$954,000	Penalty surcharge (-\$672,400); interagency and intra-agency assistance (-\$281,600)
Law enforcement officer		-1,224,900	Justice information system surcharge
Child advocacy center		<u>-238,100</u>	Justice information system surcharge
Total	<u>-\$321,000</u>	<u>-\$2,417,000</u>	
Annual Total	-\$321,000	-\$667,000	Justice information system surcharge (-\$238,100); penalty surcharge (-\$147,300); interagency and intra-agency assistance (-\$281,600)

2. While evaluating the merits of the Governor's recommendation, the Committee may wish to consider the following: (a) the existing justice grant programs eliminated under the bill; (b) the structure of the proposed state justice assistance grant program; and (c) surcharge revenue available to support justice-related grant programs. The following sections of this paper address these topics.

Existing Grant Programs Eliminated Under the Bill

3. *Youth diversion grant program.* Initially created under 1985 Act 29 under the Department of Health and Social Services, the youth diversion grant program requires DOJ to enter

into contracts with organizations for the diversion of youths from gang activities into productive activities, including placement in educational, recreational, and employment programs. Current law directs DOJ to enter into the following contracts: (a) \$500,000 to an organization that provides services in a county having a population of 500,000 or more (which DOJ has awarded to Milwaukee County); (b) \$150,000 to an organization that provides services to Racine County; (c) \$150,000 to an organization that provides services to Kenosha County; (d) \$150,000 to an organization located in Ward 2 of the City of Racine to provide services to Racine County; (e) \$150,000 to an organization that provides services to Brown County; and (f) \$100,000 to an unspecified organization (which DOJ has awarded to an organization in Racine County). Base funding for youth diversion contracts is \$321,000 GPR and \$672,400 PR. Program revenue for youth diversion contracts is generated from the penalty surcharge.

4. In addition to youth diversion contracts, the statutes specify that DOJ may not distribute more than \$300,000 annually to the organization it has contracted with that provides services to a county with a population of 500,000 or more for alcohol and other drug abuse education and treatment services for the participants in that organization's youth diversion program. Base funding for this contact is \$281,600 PR. Program revenue for this grant is generated from a federal substance abuse and mental health services administration (SAMSHA) grant that is transferred to DOJ from the Department of Health Services (DHS). [Note that if the youth diversion grant is eliminated, DHS would review the state's substance abuse prevention priority needs and reallocate funding from the SAMSHA grant for a purpose authorized under the federal grant program.]

5. The attached appendix provides the following information about the seven grants that were awarded under the youth diversion program in 2013-14: (a) the county in which the grantee operates; (b) the grant funding awarded; and (c) a brief description of the youth diversion project. As indicated in the appendix, a total of \$1,275,000 was awarded to organizations through the youth diversion program in 2013-14. Full grants were not awarded in 2013-14 due to budget reductions in recent fiscal years. Annually, DOJ is required to report to the Legislature on its administration of the grant program.

6. *Law enforcement officer grant program.* Under 1993 Act 193, the Legislature created the law enforcement officer grant program (also known as the beat patrol grant program). Under the program, the Department provides grants to cities on a calendar year basis to employ additional uniformed law enforcement officers whose primary duty is beat patrolling. To be eligible for a grant, a city must have a population of at least 25,000. The Department must make grant awards to the 10 eligible cities submitting applications that have the highest rates of violent crime index offenses in the most recent full calendar year for which data is available in the FBI's uniform crime reporting system. Grants awarded under the program may not exceed \$150,000, and local grant recipients are required to provide a 25% match. Grant funding awarded under the program may only be utilized to support salary and fringe benefit costs. Finally, grant funding provided under this program must result in a net increase in the number of uniformed law enforcement officers assigned to beat patrol duties, when compared to the number of uniformed law enforcement officers the city assigned to beat patrol on April 21, 1994.

7. Table 2 identifies: (a) the grant recipients for calendar year 2014; (b) the grant

amount awarded and the local match; and (c) a description of how the funding was utilized. As Table 2 indicates, the grant program awards a total of \$1,224,900 in grants to cities across Wisconsin. Program revenue funding for this grant program is generated from the justice information system surcharge. Annually, DOJ is required to report to the Legislature on its administration of the grant program.

TABLE 2

Law Enforcement Officer Grant Awards in 2014

<u>Grantee</u>	<u>Award</u>	<u>Local Match</u>	<u>Project Description</u>
Beloit	\$121,434	\$40,478	Beloit funded a portion of two beat patrol officers.
Fond du Lac	121,434	40,478	Fond du Lac Police Department funded two street crimes officers.
Green Bay	121,434	40,478	Green Bay maintained five officers to perform beat patrol duties.
Kenosha	121,434	40,478	Kenosha utilized funding to support four beat patrol officer positions.
La Crosse	121,434	40,478	La Crosse Police Department funded one and a half beat patrol officers.
Madison	126,714	42,238	Madison Police Department utilized funding to support four officers.
Milwaukee	126,714	42,238	City of Milwaukee funded a portion of the salary and fringe benefit costs of three officers assigned to beat patrol.
Racine	121,434	40,478	City of Racine Police Department funded two beat patrol officers.
Wausau	121,434	40,478	Wausau Police Department supported the salaries and fringe benefits of three officers.
West Allis	<u>121,434</u>	<u>40,478</u>	West Allis funded a portion of the salary and fringe benefits costs of three officers assigned to daily patrol duties.
Total	\$1,224,900	\$408,300	

8. While beat patrol grants are awarded on an annual basis, a city may receive a grant for three consecutive years without submitting a new application each year. If the beat patrol grant program is not eliminated under the budget, grant award eligibility for calendar years 2016, 2017, and 2018 will be established in 2015 based on the average of uniform crime reporting data from 2012-2014.

9. *Child advocacy center grant program.* Created under 2007 Act 20, the child advocacy center grant program requires DOJ to provide 14 annual grants of \$17,000 each to child advocacy centers in the 14 counties listed in Table 3. The statutes identify the grant recipients in 11 counties, while in Brown, Racine, and Walworth Counties the statutes do not specify the child advocacy center that must receive the annual grant. Grants are awarded on a fiscal year basis. Annually, DOJ is required to report to the Legislature on its administration of the child advocacy center grant program.

TABLE 3

Child Advocacy Center Grants 2013-14

<u>County</u>	<u>Child Advocacy Center</u>	<u>Grant Award</u>
Brown	Sexual Assault Center of Family Services of Northeast Wi.*	\$17,000
Chippewa	Chippewa Valley Child Advocacy Center*	17,000
Dane	Safe Harbor Child Advocacy Center	17,000
Green	Green County Human Services on behalf of the CHAT Room	17,000
Kenosha	Children's Hospital of Wisconsin	17,000
La Crosse	Family and Children's Care Center - Stepping Stones	17,000
Marathon	Child Advocacy Center of Northeastern WI*	17,000
Milwaukee	Children's Hospital of Wisconsin	17,000
Racine	Children's Service Society of Wisconsin - Racine*	17,000
Rock	YMCA on behalf of Care House	17,000
Walworth	Children's Service Society of Wisconsin*	17,000
Waukesha	Family Service of Waukesha on behalf of C.A.R.E Center	17,000
Winnebago	Children's Hospital of Wisconsin - Fox Valley Child Advocacy Center	17,000
Wood	Marshfield Clinic - Child Advocacy Center	<u>17,000</u>
Total		\$238,000

*The Children's Service Society of Wisconsin-Milwaukee, which is affiliated with the Children's Hospital of Wisconsin-Milwaukee, has been awarded the grant funds on behalf of the identified recipient.

10. Child advocacy centers are intended to provide comprehensive services for child victims and their families by coordinating services from law enforcement and criminal justice agencies, child protective services, victim advocacy agencies, and health care providers. Grants awarded under the program are typically utilized to support multi-disciplinary teams for law enforcement, nurses and victim advocates to record victim interviews and collect evidence in child sexual assault and child abuse cases. Base funding for the child advocacy center grant program is \$238,100 PR. Program revenue for this grant program is generated from the JIS surcharge.

Structure of the Proposed State Justice Assistance Grant Program

11. The bill deletes the three grant programs identified above, and creates a new state justice assistance grant program. While the purposes for which the current grants are made would be eligible for funding under the new state justice assistance grant program, funding would not be specifically allocated to these activities. Under the state justice assistance grant program, the Department of Justice would be provided \$1,750,000 PR annually in order to make grant awards state agencies, local units of government, and private organizations. The bill provides DOJ broad discretion with regards to the purpose for which grants are made under the program. Specifically, the bill requires that grants are made to support any of the following purposes: (a) the investigation, prosecution, or prevention of crime; (b) the enhancement of public safety; (c) the facilitation of multijurisdictional or interagency information sharing; (d) crime victims; or (e) the reduction of recidivism or crime.

12. Further, the bill requires that DOJ develop criteria and procedures to use in selecting grant recipients and administer the program, though these criteria and procedures do not need to be promulgated as administrative rules. The Department would be required to include the new grant program in its annual report to the Legislature.

13. The Department would also be required to develop and periodically update a strategic plan for awarding state justice assistance grants in consultation with local law enforcement, district attorneys, the Secretary of Corrections, the Director of State Courts, and the Public Defender. In making grant awards, DOJ would be required to give preference to grant-funded programs that have at least one of the following characteristics: (a) the program has a primarily statewide or regional impact on the investigation, prosecution, or prevention of crime and is consistent with the Department's strategic plan; (b) the program has a primarily local impact on the investigation, prosecution, or prevention of crime and can be measured for effectiveness and is consistent with the Department's strategic plan; (c) the program supports the investigation, prosecution, or prevention of crimes against children, domestic violence, or sexual assault; (d) the program is designed to facilitate multijurisdictional or interagency information sharing that will assist in the investigation, prosecution, or prevention of crime; and (e) the program is designed to reduce recidivism or otherwise reduce crime and can be measured for effectiveness.

14. The Department anticipates that the strategic plan for state justice assistance grants would identify a number of priority areas for funding across the criminal justice system. In order to identify these priority areas, DOJ, in consultation with the individuals noted above, would analyze crime data and trends and gather input from local criminal justice agencies. After DOJ identified areas of funding that would be a priority, DOJ anticipates that it would develop program- or initiative- specific grant announcements for which organizations could apply. Through this structure, DOJ would develop application review criteria for each program area or initiative, and an organization's application would be competitively reviewed against other applications under the same program area.

15. Further, the Department indicates the following:

"Based on the fact that funds will be made available through the biennial budget, and consistent with the federal JAG [justice assistance grant] program, DOJ would develop a 4-year strategic plan. The plan would include a mix of programs funded over multiple years and one-time funding. This would include a number of programs that are awarded competitively in the first year, with continuation funding awarded through a non-competitive application process during years 2-4, contingent upon continued performance. This structure is consistent with the TAD [treatment, alternatives, and diversion] and federal JAG programs, as multiple years of data are necessary to accurately measure program outcomes and effectiveness. Other grants may be awarded annually as one-time projects, such as information sharing projects. It should also be noted that similar to the federal JAG and state TAD programs, funds should be awarded on a calendar year basis in order to coincide with local agency budget cycles."

Surcharge Revenue Available to Support Justice-Related Grant Programs

16. Under current law, revenues from the penalty surcharge and the justice information system surcharge provide at least partial support to the three programs that the bill would eliminate. Under the bill, \$525,100 PR annually from the penalty surcharge would be utilized to support the

TABLE 5

Justice Information System Surcharge Fund during 2015-17 Biennium under AB/SB 21

		<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
	Beginning Balance	-\$1,227,200	-\$2,680,100	-\$966,800
	Revenues*	\$8,481,900	\$11,390,100	\$9,685,500
	Obligations**			
	Lapse requirement***	\$700,000	\$700,000	\$700,000
Administration Justice	Justice information systems	4,097,000	4,232,100	4,234,000
	State justice assistance grants	0	1,224,900	1,224,900
	Law enforcement officer grants	1,224,900	0	0
	Treatment, alternatives, and diversion (TAD) grants	1,078,400	1,078,400	1,078,400
	Interoperable system of communications (WISCOM)	1,019,700	1,045,000	1,045,000
	Wisconsin justice information sharing program (WiJIS)	661,700	714,100	714,800
	Child advocacy center grants	238,100	0	0
Corrections	Victim notification	682,300	682,300	682,300
	Court interpreters	<u>232,700</u>	<u>0</u>	<u>0</u>
Circuit Courts	Total obligations	\$9,934,800	\$9,676,800	\$9,679,400
	Ending balance	-\$2,680,100	-\$966,800	-\$960,700

*Revenues in 2015-16 are comprised of: (a) \$9,685,500 from the JIS surcharge; and (b) \$1,704,600 from reversions from appropriations that are funded from transfers from the JIS surcharge fund. Revenues are expected to decrease in 2016-17 because no money is expected to revert from appropriations that are funded from transfers from the JIS surcharge fund.

**The annual JIS surcharge obligations identified in Table 5 do not include the \$6.00 from every \$21.50 assessed that is allocated to the Court System for the operation of the Consolidated Court Automation Program (CCAP).

***Current law requires the JIS surcharge fund to lapse \$700,000 to the general fund on an annual basis.

19. The bill would obligate \$525,100 PR annually from the penalty surcharge fund and \$1,224,900 PR annually from the JIS surcharge fund. In contrast, the youth diversion grant program, law enforcement officer grant program, and the child advocacy center grant program collectively obligate \$672,400 PR from the penalty surcharge fund (\$672,400 PR from the youth diversion grant program) and \$1,463,000 PR from the JIS surcharge fund (\$1,224,900 PR from the law enforcement officer grant program and \$238,100 PR from the child advocacy center grant program). As a result, the SJAG program reduces penalty surcharge obligations by \$147,300 PR annually and reduces JIS surcharge obligations by \$238,100 PR annually.

Analysis of State Justice Assistance Grant Program

20. Current law establishes the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program. For all three of these existing grant programs, the statutes dictate the purpose for which grants are awarded as well as the amount of funding that is to be awarded. Further, for both the youth diversion grant program and the child advocacy center grant program, current law specifies the counties, and in some cases the organizations, that must receive grant funding. [The law enforcement officer grant program requires that funding be provided to the cities with the 10 highest rates of violent crime.] Rather than

specifying the purposes for which grant funds are allocated, it could be argued that the criminal justice system would benefit from a flexible grant program that would allocate funding based upon evaluated needs and program results.

21. To this end, the bill establishes the state justice assistance grant program, under which DOJ could award grants to state agencies, local units of government, or private organizations for a variety of purposes. The Department would award grants based upon a strategic plan that would seek to identify the priorities of the criminal justice system as a whole. Further, the Department anticipates that the strategic plan would be developed from analysis of criminal justice data and crime trends, and input from local criminal justice agencies. Under SJAG, DOJ could either continue or cease grant awards to certain grantees depending on measured performance, program outcomes, or evaluated needs of the state. As a result, it could be argued that the state justice assistance grant program would allow DOJ to utilize grant funding in a manner that would maximize the benefits to the state's criminal justice system.

22. Moreover, the Governor's recommendation would reduce general purpose revenue expenditures by \$321,000 GPR annually. The recommendation would also reduce expenditures from the penalty surcharge fund by \$147,300 PR annually, and reduce expenditures from the JIS surcharge by \$238,100 PR annually. As Tables 4 and 5 indicate, both the penalty surcharge fund and the JIS surcharge fund are projected to end the 2015-17 biennium in deficit. Further, the penalty surcharge is projected to operate under a structural deficit during the 2015-17 biennium. Therefore, it could be argued that it would be prudent to reduce expenditures from both of these funds.

23. For the reasons noted above, the Committee could approve the Governor's recommendation and establish the state justice assistance grant program and eliminate the existing youth diversion grant program, law enforcement officer grant program, and child advocacy center grant program [Alternative 1]. Under this alternative, base funding for the eliminated grant programs would be deleted (totaling \$321,000 GPR annually and \$2,417,000 PR annually), and DOJ would be provided \$1,750,000 PR annually for grants under the state justice assistance grant program. Further, this alternative would require DOJ to report to the Legislature on an annual basis as to its administration of the state justice assistance grant program.

24. Alternatively, the Committee could decide to create the state justice assistance grant program but retain one of the following eliminated grant programs, as follows. It should be noted that the Committee could retain two or more of the eliminated grant programs and establish the SJAG program, however limited program revenue resources would be available for the SJAG program as a result.

- *Retain youth diversion grant program.* Reduce funding for SJAG by \$525,100 PR annually associated with the penalty surcharge, and retain the youth diversion grant program [Alternative 2a]. Further, restore funding for the youth diversion grant program (\$321,000 GPR and \$954,000 PR annually). Annual program revenue for the youth diversion program is comprised of \$672,400 PR from the penalty surcharge and \$281,600 PR from federal SAMSHA grant funding received by DHS. Under this alternative, overall obligations from the penalty surcharge would increase by \$147,300 PR annually. Further, total funding for SJAG would be \$1,224,900 PR

annually from the justice information system surcharge.

- *Retain law enforcement officer grant program.* Reduce funding for SJAG by \$1,224,900 PR annually associated with the justice information system surcharge, and retain the law enforcement officer grant program [Alternative 2b]. Further, restore funding for the law enforcement officer grant program (\$1,244,900 PR annually). Under this alternative, total funding for SJAG would be \$525,100 PR annually from the penalty surcharge.

- *Retain child advocacy center grant program.* Reduce funding for SJAG by \$238,100 PR annually from justice information system surcharge revenues, and retain the child advocacy center grant program [Alternative 2c]. Further, restore funding for the child advocacy center grant program (\$238,100 PR annually). Under this alternative, total funding for SJAG would be \$1,511,900 PR annually, comprised of: (a) \$525,100 PR from the penalty surcharge; and (b) \$986,800 PR from the justice information system surcharge.

25. In its biennial budget request, the Department of Justice initially proposed establishing the state justice assistance grant program. In its request, however, the Department indicated that it would require a total of 2.5 full-time equivalent positions in order to effectively administer the grant program, including 1.5 program and policy analysts and 1.0 grants specialist. Currently, the Department administers the existing grant programs with 1.4 PR positions supported from revenues from the penalty surcharge. [It should be noted that 0.45 full-time equivalent positions in the appropriation would be eliminated under the bill because the position represents a long-term vacancy.]

26. If the state justice assistance grant program is established, the Department requests an additional 1.1 positions. Given that current law earmarks how funding should be awarded under the youth diversion, law enforcement officer, and child advocacy center grant programs, it could be argued that administering the competitive state justice assistance grant program would require an additional amount of staff time. To this point, in testimony provided to the Committee at DOJ's March 2 agency budget briefing, the Attorney General indicated that, "Without the grant administrator position, the DOJ will not be able to effectively oversee the competitive grants. Therefore, I am asking the provisions modifying these grants be removed from the Budget." In further correspondence, the Department states, "It is expected that as proposed in AB 21/SB 21, the program would be very skeletal with little support available. There are limited base resources to reallocate to SJAG..."

27. As a result of the statements from the Department, if the Committee decides to establish the state justice assistance grant program, the Committee could also decide to provide DOJ additional resources to administer the grant program. Further, since the penalty surcharge fund and the JIS surcharge fund are in deficit, resources could be provided from general purpose revenue. Therefore, if the Committee decides to establish the state justice assistance grant program, the Committee could also decide to provide DOJ \$41,200 GPR in 2015-16 and \$54,900 GPR in 2016-17 to support the salary and fringe benefits of 1.1 GPR positions (1.0 grants specialist and 0.1 program and policy analyst) for the administration of the program [Alternative 3].

28. On the other hand, the Committee could decide to maintain current law. Under the

proposed grant program, the Legislature would relinquish a significant amount of authority over how grant funding is allocated. Rather than the statutes specifying the purposes for which funding should be allocated as well as the amount that should be awarded, the state justice assistance grant program would provide DOJ broad discretion with regards to the manner and purposes for which grant funding is awarded. [It should be noted, however, that DOJ would be required to report the Legislature on an annual basis as its administration of the SJAG program.]

29. Further, since the youth diversion, law enforcement officer, and child advocacy center would be eliminated, it is possible that some or many of the organizations that currently receive funding through these programs would no longer receive funding under the SJAG program. The Department indicates that it currently does not know what organizations would receive funding under the justice assistance grant program since the Department would first need to develop a strategic plan for the program. The Department also states that:

"At this time, we do not know if youth diversion or law enforcement beat officer programs would be identified as high priorities and included in a subsequent funding plan. Attorney General Schimel has identified child advocacy center grants as a priority. In any event, the change from programs directed to specific communities, based on historical funding levels, to a competitive grant program would require performance standards and evaluation protocols not including in the current program. Communities currently supported with targeted funds under these budget areas could compete under the newly created program areas but the program requirements would be significantly different from the current funding structure."

30. In addition, organizations that currently receive grant funding may not wish to enter into a competitive grant process because it would cause the organization to reallocate resources from providing services to the public to preparing grant applications. This specific concern was raised by several child advocacy centers in a letter to the Committee dated March 23, 2015, in which the child advocacy centers stated, "It would certainly be a resource burden to require CACs [child advocacy centers] to enter grant writing processes to have access to this relatively small amount of funding which the Legislature deemed appropriate for our services." It should be noted, however, that while the child advocacy center grant program awards CACs \$17,000 annually, these same organizations individually could receive a greater amount of funding under the state justice assistance grant program.

31. Finally, as identified above, the Department has indicated that it would be difficult for it to effectively administer the state justice assistance grant program as proposed under the bill. As a result, the Attorney General has requested that the recommendation be removed from the bill unless additional administrative resources are provided.

32. For the reasons discussed above, the Committee could delete the Governor's recommendation and maintain current law [Alternative 4]. Under this alternative, the state justice assistance grant program would not be established. Further, the youth diversion grant program, law enforcement officer grant program, and child advocacy center grant program would not be eliminated.

33. If the SJAG program is deleted from the bill, and the three current law grant programs are retained, total obligations for the penalty surcharge fund would increase by \$147,300 PR annually, and total obligations for the JIS surcharge fund would increase by \$238,100 PR annually.

In order to address this issue, if the Committee decides to delete the SJAG program from the bill, the Committee could also decide to eliminate any of the three current grant programs [Alternatives 5a-5c]. Table 1 provided a summary of the funding that is allocated to the three grant programs under current law. To the extent that any of the current law grant programs are eliminated in addition to the elimination of SJAG, obligations of the penalty surcharge fund and the JIS surcharge fund would be affected, as identified below.

- *Eliminate youth diversion grant program* [Alternative 5a]. In addition, eliminate funding associated with the grant program totaling \$321,000 GPR and \$954,000 PR annually (\$672,400 PR from the penalty surcharge and \$281,600 PR from inter-agency and intra-agency assistance).
- *Eliminate law enforcement officer grant program* [Alternative 5b]. In addition, eliminate funding associated with the grant program totaling \$1,224,900 PR annually from the JIS surcharge.
- *Eliminate the child advocacy center grant program* [Alternative 5c]. In addition, eliminate funding associated with the grant program totaling \$238,100 PR annually from the JIS surcharge.

ALTERNATIVES

1. Approve the Governor's recommendation and provide the Department of Justice \$1,750,000 PR annually and establish the state justice assistance grant program. In addition, eliminate the youth diversion grant program, the law enforcement officer grant program, and the child advocacy center grant program. Delete base funding associated with the eliminated grant programs totaling \$321,000 GPR annually and \$2,417,000 PR annually.

2. Establish the state justice assistance grant program but retain one of the following grant programs:

a. *Retain the youth diversion grant program.* This alternative would restore funding for the youth diversion grant program (\$321,000 GPR and \$954,000 PR annually) and reduce funding for state justice assistance grants by \$525,100 PR annually associated with the penalty surcharge. Annual program revenue for the youth diversion grant program would be comprised of \$672,400 PR from the penalty surcharge and \$281,600 PR from interagency and interagency assistance.

ALT 2a	Change to Bill
GPR	\$642,000
PR	857,800
Total	\$1,499,800

b. *Retain the law enforcement officer grant program.* This alternative would restore funding for the law enforcement officer grant program (\$1,244,900 PR annually) and reduce funding for state justice assistance grants by \$1,244,900 PR annually from the justice information system surcharge.

c. *Retain the child advocacy center grant program.* This alternative would restore funding for the child advocacy center grant program (\$238,100 PR annually) and reduce funding for state justice assistance grants by \$238,100 PR annually from the justice information system surcharge.

3. Provide DOJ \$41,200 GPR in 2015-16, \$54,900 GPR in 2016-17, and 1.1 GPR positions annually for the administration of the state justice assistance grant program. *This alternative may be chosen in addition to Alternative 1 or Alternative 2.*

ALT 3	Change to Bill	
	Funding	Positions
GPR	\$96,100	1.10

4. Delete provision.

ALT 4	Change to Bill	
GPR	\$642,000	
PR	<u>1,334,000</u>	
Total	\$1,976,000	

5. In addition to Alternative 4, eliminate any of the following existing grant programs.

a. *Eliminate the youth diversion grant program.* In addition, eliminate funding associated with the youth diversion grant program totaling \$321,000 GPR and \$954,000 PR annually (\$672,400 PR from the penalty surcharge and \$281,600 PR from inter-agency and intra-agency assistance).

ALT 5a	Change to Bill	
GPR	- \$642,000	
PR	<u>- 1,908,000</u>	
Total	- \$2,550,000	

b. *Eliminate the law enforcement officer grant program.* In addition, eliminate funding associated with the law enforcement office grant program totaling \$1,224,900 PR annually from the JIS surcharge.

ALT 5b	Change to Bill	
PR	- \$2,449,800	

c. *Eliminate the child advocacy center grant program.* In addition, eliminate funding associated with the child advocacy center grant program totaling \$238,100 PR annually from the JIS surcharge.

ALT 5c	Change to Bill
PR	\$476,200

Prepared by: Michael Steinschneider
Attachment

APPENDIX

Youth Diversion Grants Awarded in 2013-14

<u>County</u>	<u>Award</u>	<u>Project Description</u>
Brown	\$124,350	The grant was awarded to the Brown County Boys and Girls Club. The Club utilized funding to support its Brown County Ties project. The project is a gang diversion initiative for Brown County youth involving collaboration between local youth service agencies and law enforcement. Project activities include educational, recreational, and employment readiness programs. During 2013-14, a total of 1,920 youth participated in project activities. Specifically, 437 youth received educational support services and 137 youth were identified as high-risk and were provided after school programming for homework assistance.
Kenosha	124,350	The grant was awarded to the City of Kenosha. The City utilized funding to support a Gang Prevention Committee that oversees programs provided by several local organizations including the Kenosha Boys and Girls Club, the Spanish Centers of Kenosha, Racine, and Walworth Counties, and the Racine and Kenosha Urban Leagues. During 2013-14, educational services were provided to all 144 who participated in the program, recreational services were provided to 133 youth, and employment services were provided to 89 youth.
Milwaukee	414,100	The grant was awarded to the Community Relations-Social Development Commission to continue programs that target at-risk youth. Specifically, the Commission provides services to juvenile law offenders, substance users/abusers, gang members, or any youth considered at-risk for any of these behaviors. Project elements include peer training, education opportunities, targeting of youth with prior records, and aggressive family-based services including family prevention. During 2013-2014, educational services were provided to 564 youth, recreational services were provided to 1087 youth and employment services were provided to 406 youth.
Milwaukee	281,600	The grant was also awarded to the Community Relations-Social Development Commission. The Commission utilized the grant award to reduce the incidence of drug use among youth and reduce the number of juvenile arrests for narcotics, drugs and alcohol use. During 2013-14, 2,122 youth attended prevention and educational programming, 610 were referred for pre-assessments of suspected alcohol and other drug abuse (AODA) needs, 205 youth were referred for more intensive assessment regarding a possible dual diagnosis of mental health and alcohol and other drug abuse concerns, and 198 individuals were actively engaged in receiving treatment services. In addition, intensive case management services were provided to 148 youth.
Racine	124,350	The grant was awarded to the George Bray Neighborhood Center. The Center utilized the grant for the Center's "Operation Survival" program to divert young people from joining or staying involved in gang activity and other violent behavior. The target population is at least 100 youth between ages 12-18, plus parent involvement. The Bray Center is located in the heart of the target community.
Racine	81,900	The grant was awarded to the City of Racine. The City utilized the grant to support Racine's Youth Gang Diversion Collaborative that provides a community-wide model to prevent and reduce youth gang involvement. In 2013-14, services were provided to 430 youth, of which 154 were identified as gang members by law enforcement, the juvenile court, and the school district.
Racine	124,350	The grant was awarded to the City of Racine's Youth Leader Academy. The City of Racine utilizes the Youth Leaders Academy to increase academic achievement and improve the behavior of at-risk, inner city minority youth. In 2013-14, the project served 285 youth.
Total	<u>\$1,275,000</u>	



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May 7, 2015

Joint Committee on Finance

Paper #417

Penalty Surcharge Fund (Justice)

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

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	\$17,263,600	\$17,402,000	\$17,421,100
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 Reduction 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	144,800	138,100	138,200
	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 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 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 fund 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	<u>144,800</u>	<u>151,800</u>	<u>151,900</u>
	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 Reduction 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	144,800	136,600	136,700
	Total Obligations	<u>\$17,263,600</u>	<u>\$15,368,800</u>	<u>\$15,386,200</u>
	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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May 7, 2015

Joint Committee on Finance

Paper #418

Justice Information System Surcharge Fund (Justice)

[LFB 2015-17 Budget Summary: Page 271, #9, Page 272, #10, and Page 116, #4]

CURRENT LAW

Subject to certain exceptions, the \$21.50 justice information system (JIS) surcharge is imposed with a court fee for the commencement or filing of certain court proceedings, including: civil, small claims, forfeiture, wage earner or garnishment actions; an appeal from municipal court; a third party complaint in a civil action; or counterclaim or cross complaints in a small claims action. [Note that in forfeiture actions, the \$21.50 JIS surcharge is assessed if judgment is entered against the defendant.] Under current law, the JIS surcharge is not imposed if judgement is entered against the defendant for the following violations: (a) lack of proof of motor vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use.

Currently, \$6 from every assessed JIS surcharge is received by the Court System for the operation of the Consolidated Court Automation Programs (CCAP), while the remaining surcharge receipts (\$15.50) are deposited in the Department of Administration's (DOA) justice information fee appropriation (the JIS surcharge fund). The JIS surcharge fund is statutorily required to annually transfer the first \$700,000 it receives to the general fund. Subsequent JIS surcharge revenues received by the fund are transferred to PR appropriations in DOA, the Department of Justice, the Department of Corrections, and the Court System to support the following state programs: (a) justice information systems, otherwise known as the district attorney information technology (DA IT) program; (b) the Wisconsin interoperable system for communications (WISCOM); (c) the Wisconsin justice information sharing program (WiJIS); (d) treatment alternatives and diversion (TAD) grants; (e) law enforcement officer grants; (f) child advocacy center grants; (g) victim notification; and (h) court interpreters.

At the end of each fiscal year, unencumbered balances in annual appropriations that are

supported through a transfer of funds from the JIS surcharge fund remain with the appropriations.

GOVERNOR

Repeal current exceptions to the JIS surcharge. As a result, the JIS surcharge would be imposed if judgement is entered against a defendant for a violation relating to: (a) lack of proof of vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use. The administration estimates that repealing the exceptions to the JIS surcharge would generate additional revenues totaling \$1,499,000 annually (\$1,080,700 to the JIS surcharge fund and \$418,300 to CCAP).

Provide that, at the end of each fiscal year, unencumbered balances in appropriations supported through a transfer of funds from the JIS surcharge fund would revert to the fund. Further, provide that, if any of the appropriations currently supported through a transfer of funds from the JIS surcharge fund (other than the Circuit Courts' court interpreters PR appropriation) has an unencumbered balance at the end of 2014-15, an amount equal to that unencumbered balance must be transferred from the appropriation to the JIS surcharge fund in 2015-16.

Utilize penalty surcharge revenues, rather than JIS surcharge revenues, to support the Circuit Courts' court interpreters PR appropriation. [The bill would also eliminate law enforcement officer grants, child advocacy center grants, and youth diversion grants, and create a new state justice assistance grant program that would be partially supported by the JIS surcharge. A separate paper has been prepared on this issue.]

DISCUSSION POINTS

1. Under 2009 Act 28, the JIS surcharge was increased from \$12 to its current amount, \$21.50. Act 28 provided that JIS surcharge revenue would be allocated as follows: (a) \$7.50 to DOA for justice information systems, otherwise known as the district attorney information technology (DA IT) program; (b) \$6 to the Court System for CCAP; (c) \$4 for grants for indigent civil legal services (for which funding was eliminated under 2011 Act 32); (d) \$1.50 to DOA's Office of Justice Assistance (which was dissolved under 2013 Act 20) for TAD grants; (e) \$1.50 to OJA to fund the gathering and analyzing of statistics of the justice system, including racial disparity, uniform crime reporting, and incident-based reporting; and (f) \$1 to the general fund. Under 2011 Act 32, this method of revenue allocation was abolished. In its place, a PR continuing justice information fee receipts appropriation (the JIS surcharge fund) was created under DOA to receive revenues from the JIS surcharge, except that \$6 from every JIS surcharge assessed would still be allocated to the Court System for CCAP. As a first draw, the JIS surcharge fund transfers \$700,000 annually to the general fund. Subsequently, the fund transfers funding to eight other appropriations.

2. Table 1 identifies the amounts received by the JIS surcharge fund from 2011-12 through 2014-15 (revenue collections for 2014-15 are estimated based on actual collections through March, 2015). As shown, JIS surcharge revenues have decreased in recent years.

TABLE 1

**JIS Surcharge Revenues Collected by the JIS Surcharge Fund
2011-12 Thru 2014-15**

<u>Fiscal Year</u>	<u>Amount*</u>	<u>Percent Change</u>
2011-12	\$9,971,400	
2012-13	9,470,300	-5.0%
2013-14	8,617,600	-9.0
2014-15 (Est.)	8,481,900	-1.6

*Excludes \$6 of every \$21.50 provided to the Court System for CCAP

3. Table 2 identifies the projected condition of the JIS surcharge fund during 2014-15. Since expenditures from the JIS surcharge fund have exceeded revenues collected since 2011-12, the fund is projected to end 2014-15 with a deficit totaling \$2,680,100.

TABLE 2

Projected Condition of JIS Surcharge Fund During 2014-15

	<u>2014-15</u>
Beginning Balance	-\$1,227,200
Revenues	8,481,900
Obligations	<u>9,934,800</u>
Ending Balance	-\$2,680,100

4. Based on the data shown in Table 1 and the downward trend of collections, it is estimated that revenues to the surcharge fund will total \$8,604,800 in each of 2015-16 and 2016-17. This amount is before any of the revenue modifications provided under the bill.

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 JIS surcharge fund. As part of the s. 16.513 plan, the administration recommended a "review of the fund balances within the department 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. In order to address the fund's anticipated deficit during the 2015-17 biennium, the bill provides the following modifications: (a) exceptions to when the JIS surcharge is assessed would be repealed; (b) unencumbered balances in appropriations supported through a transfer of funds from the JIS surcharge fund would revert to the fund; (c) the law enforcement officer grant program and the child advocacy center grant program would be eliminated and a new state justice assistance

grant program would be created (the youth diversion grant program would also be eliminated, but youth diversion grants are supported, in part, by penalty surcharge revenues); and (d) PR funding for court interpreters would be supported, in part, by penalty surcharge revenues rather than JIS surcharge revenues. Table 3 identifies the fund condition of the JIS surcharge during 2014-15 as well as during the 2015-17 biennium, under AB 21/SB 21. As shown, the JIS surcharge fund under AB 21/SB 21 is projected to end 2015-16 with a balance of -\$966,800 and end 2016-17 with a balance of -\$960,700. It should be noted that revenues would be projected to exceed expenditures by \$1,713,300 in 2015-16. For 2016-17, estimated revenues and expenditures are in balance.

TABLE 3

JIS Surcharge Fund Condition Under AB 21/SB 21

<u>Agency</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Beginning Balance	-\$1,227,200	-\$2,680,100	-\$966,800
<i>Revenues</i>			
Base JIS surcharge revenues	\$8,481,900	\$8,604,800	\$8,604,800
Revenue from repealing exceptions	0	1,080,700	1,080,700
Revenue from reversions*	0	1,704,600	0
Total Revenue	\$8,481,900	\$11,390,100	\$9,685,500
<i>Obligations**</i>			
Lapse requirement	\$700,000	\$700,000	\$700,000
Administration Justice			
Justice information systems	4,097,000	4,232,100	4,234,000
State justice assistance grants	0	1,224,900	1,224,900
Law enforcement officer grant program	1,224,900	0	0
Treatment, alternatives, and diversion (TAD) grants	1,078,400	1,078,400	1,078,400
Interoperable system of communications (WISCOM)	1,019,700	1,045,000	1,045,000
Wisconsin justice information sharing program (WiJIS)	661,700	714,100	714,800
Child advocacy center grant program	238,100	0	0
Corrections			
Victim notification	682,300	682,300	682,300
Circuit Courts			
Court interpreters	232,700	0	0
Total obligations	\$9,934,800	\$9,676,800	\$9,679,400
Ending Balance	-\$2,680,100	-\$966,800	-\$960,700

*All monies received as a result of reversions are anticipated to be collected in 2015-16.

**Under AB 21/SB 21, the law enforcement officer grant program and the child advocacy center grant program would be eliminated, and the state justice assistance grant program would be created. Further, the JIS surcharge would no longer provide support for court interpreters.

7. In contrast, Table 4 identifies the fund condition of the JIS surcharge if current law is maintained and none of the Governor's recommendations are approved. As Table 4 indicates, if all of the modifications to the JIS surcharge fund are deleted from the bill, based on current expenditure levels, the JIS surcharge fund is projected to conclude the 2015-17 biennium with a balance of -\$5,768,300. Further, the fund would be projected to operate under a structural deficit. In 2015-

16, expenditures would exceed estimated revenues by \$1,542,800, and in 2016-17, expenditures would exceed estimated revenues by \$1,545,400.

TABLE 4

JIS Surcharge Fund Condition Under Current Law

<u>Agency</u>		<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
	Beginning Balance	-\$1,227,200	-\$2,680,100	-\$4,222,900
	<i>Revenues</i>	\$8,481,900	\$8,604,800	\$8,604,800
	<i>Obligations</i>			
	Lapse requirement	\$700,000	\$700,000	\$700,000
Administration	Justice information systems	4,097,000	4,232,100	4,234,000
Justice	State justice assistance grants	0	0	0
	Law enforcement officer grants	1,224,900	1,224,900	1,224,900
	Treatment, alternatives, and diversion (TAD) grants	1,078,400	1,078,400	1,078,400
	Interoperable system of communications (WISCOM)	1,019,700	1,045,000	1,045,000
	Wisconsin justice information sharing program (WiJIS)	661,700	714,100	714,800
	Child advocacy center grants	238,100	238,100	238,100
Corrections	Victim notification	682,300	682,300	682,300
Circuit Courts	Court interpreters	<u>232,700</u>	<u>232,700</u>	<u>232,700</u>
	Total obligations	\$9,934,800	\$10,147,600	\$10,150,200
	Ending Balance	-\$2,680,100	-\$4,222,900	-\$5,768,300

8. In considering the modifications to the JIS surcharge fund recommended under AB 21/SB 21, it may be beneficial to first consider modifications that would affect amounts received by the fund, including: (a) the repeal of exceptions to the surcharge; and (b) the reversion of funding from appropriations supported by the JIS surcharge fund to the fund. After factors affecting amounts collected by the fund have been considered, modifications to JIS surcharge fund obligations could be considered. Finally, this paper will identify the projected fund condition of the JIS surcharge during the 2015-17 biennium if the modifications under the bill are approved or deleted.

Repealing Exceptions to the JIS surcharge

9. Currently, a \$10 fine is imposed on individuals for violations relating to: (a) lack of proof of vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use. The JIS surcharge does not apply to these violations. Under the bill, a surcharge of \$21.50 would be assessed in addition to the \$10 fine. This is shown in Table 5.

TABLE 5
JIS Surcharge and Forfeiture Fee Increases
Under AB 21/SB 21

<u>Offense</u>	<u>Statutory Reference</u>	<u>AB 21/SB 21</u>		
		<u>Current Total Cost</u>	<u>JIS Surcharge</u>	<u>Total Cost</u>
Mandatory seatbelts required for drivers, passengers, and persons at least eight years of age	347.48(2m)	\$10.00	\$21.50	\$31.50
Operating a motor vehicle without proof of insurance	344.62(2)	10.00	21.50	31.50
Special identification for the physically disabled	343.51(1m)(b)	10.00	21.50	31.50

10. The additional revenue generated from the \$21.50 surcharge on these violations would be allocated similarly to other assessed JIS surcharges: (a) \$15.50 to the JIS surcharge fund; and (b) \$6 to CCAP. Based on a two-year average of violations occurring from 2012-13 and 2013-14, it is assumed that the surcharge on the three violations would provide \$1,499,000 annually. Table 6 identifies the amount of revenue that would be generated and allocated to the JIS surcharge fund and to the Court System for CCAP.

TABLE 6
Estimated Annual Revenue Generated from
Repealing JIS Surcharge Exceptions

<u>Exception</u>	<u>Resource Allocation</u>		
	<u>JIS Surcharge Fund</u>	<u>CCAP</u>	<u>Total</u>
Safety belt use	\$598,800	\$231,800	\$830,600
Failure to carry proof of motor vehicle insurance	481,900	186,500	668,400
Lack of possession of special ID card for the physically disabled	<u>0</u>	<u>0</u>	<u>0</u>
Total	\$1,080,700	\$418,300	\$1,499,000

11. It should be noted that under a separate provision, the bill proposed eliminating current exceptions for the \$25 forfeiture fee, which is assessed when judgment is entered against a defendant. Similar to the JIS surcharge, under current law, the forfeiture fee is not assessed with a violation relating to: (a) lack of proof of vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use. On April 15, 2015, the Committee, by unanimous vote, deleted this provision from the bill and retained the exceptions to the \$25 forfeiture fee.

12. Given that repealing the exceptions to the JIS surcharge could generate additional

revenue for the state, and that it could be argued that applying the JIS surcharge to these violations may increase compliance with the law, the Committee could approve the Governor's recommendation [Alternative A1]. Under this alternative, the \$21.50 JIS surcharge would be applied to violations relating to: (a) lack of proof of vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use.

13. On the other hand, increasing the relatively small forfeiture amount for violating seatbelt use, proof of motor vehicle insurance, and special ID card rules from \$10 to \$31.50 could be considered excessive, and it is unclear if such increases would have any impact on compliance with the law. Further, while it is estimated that repealing these exceptions would generate \$1,499,000 annually, actual revenues generated from repealing these exceptions could differ based on the actual number of violations in a given year. Moreover, some have argued that law enforcement officers may become increasingly unwilling to issue minor violation citations, concerned that the assessed amounts are too punitive. As a result, the number of citations, and thus revenue, may decline. Also, as indicated previously, the Committee has already taken action to delete the proposed forfeiture fee of \$25 for each of the three violations. For the reasons discussed above, the Committee could deny the Governor's recommendation [Alternative A2].

Reversions to the JIS Surcharge Fund

14. Under current law, at the end of the fiscal year, unencumbered revenue balances in annual appropriations that are supported through a transfer of funds from the JIS surcharge fund remain with the appropriations. Under the bill, at the end of each fiscal year, these unencumbered balances would revert to the fund. Further, if any of the appropriations currently supported through a transfer of funds from the JIS surcharge fund (other than the Circuit Courts' court interpreters PR appropriation) has an unencumbered balance at the end of 2014-15, an amount equal to that unencumbered balance would be transferred from the appropriation to the JIS surcharge fund in 2015-16.

15. Over several fiscal years, appropriations that have been supported by the JIS surcharge fund have accumulated unencumbered revenue balances as a result of spending less than that appropriated. These balances could have accumulated for a variety of reasons, including, but not limited to: (a) unanticipated savings in salary and fringe benefit costs as a result of staff turnover; (b) an unexpected decrease in supplies and services costs; or (c) grant recipients not requiring full grant allotments to recoup annual costs.

16. Based on accumulated balances through 2013-14 and anticipated expenditures during 2014-15, it is estimated that appropriations supported by the JIS surcharge fund could revert \$1,704,600 to the fund during 2015-16. Table 7 identifies the estimated amount each appropriation would revert to the JIS surcharge fund in 2015-16. While it is possible these appropriations would have unencumbered balances after 2015-16, any amounts would not be anticipated. Appropriations are generally budgeted an amount equal to anticipated actual expenditures during a fiscal year. As a result, any amounts not spent or encumbered by an appropriation supported by the fund in a fiscal year would be unexpected.

TABLE 7

**Estimated Reversions from 2014-15 to the JIS Surcharge
Fund in 2015-16 Under AB 21/SB 21**

<u>Appropriation</u>	<u>Reversion</u>
Wisconsin justice information sharing program (WiJIS)	\$591,800
Treatment, alternatives, and diversion (TAD) grants	490,200
Victim notification	313,800
Justice information systems (DA IT)	269,000
Interoperable communications (WISCOM)	37,500
Child advocacy center grants	2,300
Law enforcement officer grants	<u>0</u>
 Total	 \$1,704,600

17. Requiring all unexpended and unencumbered surcharge revenue to revert to one appropriation (the JIS surcharge fund) at the end of each fiscal year could make it easier for the state to track available JIS surcharge revenue. Likewise, any reverted revenue balances would lessen any deficit in the fund.

18. Given that it is estimated that appropriations supported by the JIS surcharge fund could revert \$1,704,600 to the fund at the beginning of 2015-16, and that reverting unencumbered balances could provide greater insight into available JIS surcharge revenues, the Committee could approve the Governor's recommendation [Alternative B1].

19. On the other hand, the Committee could deny the Governor's recommendation [Alternative B2]. It could be argued that unexpended funding previously allocated to an appropriation for a specified purpose should remain with that appropriation. It should be noted, however, that the PR appropriations supported by the JIS surcharge fund are annual appropriations, and as a result, agencies may not spend more than that appropriated. Therefore, even if these appropriations accrue unencumbered revenue balances, the agency could not spend the accrued amounts unless the Committee grants an increase in expenditure authority under s. 16.515 of the statutes.

Funding for Court Interpreters

20. Funding provided by the state for court interpreters is utilized to reimburse counties for the actual expenses paid for interpreters required by circuit courts to assist persons with limited English proficiency. To receive reimbursement, counties must submit forms to the Director of State Courts accounting for interpreter expenses for the preceding three-month period. Reimbursements for interpreter expenses are: (a) \$40 for the first hour and \$20 for each additional 0.5 hour for qualified interpreters certified under the requirements and procedures approved by the Supreme Court; (b) \$30 for the first hour and \$15 for each additional 0.5 hour for qualified interpreters; and (c) for mileage, 51 cents per mile. Table 8 identifies the all funds amount reimbursed to counties from 2009-10 through 2013-14.

TABLE 8

Court Interpreter Expenses 2009-10 Thru 2013-14

<u>Fiscal Year</u>	<u>Expenditures</u>
2009-10	\$1,284,900
2010-11	1,289,500
2011-12	1,110,200
2012-13	1,136,900
2013-14	1,139,400

21. State funding for court interpreters is supported through a combination of GPR and PR. Program revenue for the interpreters is currently supported by the justice information system surcharge. Base funding for court interpreters totals \$1,433,500 GPR and \$232,700 PR annually. [It should be noted that on April 15, 2015, the Committee approved the consolidation of three Circuit Courts GPR appropriations (court interpreters, circuit court support payments and guardian ad litem costs) into one GPR appropriation. Under the provision approved by the Committee, the Courts would determine how aid to Circuit Courts would be distributed beginning in 2016-17. No action was taken regarding the court interpreters PR appropriation.]

22. Under the bill, program revenue funding for court interpreters would be supported by the penalty surcharge, rather than the JIS surcharge. As a result, overall JIS surcharge obligations would be reduced by \$232,700 annually during the 2015-17 biennium. Given that the reduction in annual JIS surcharge obligations would reduce the fund's overall deficit, the Committee could approve the Governor's recommendation [Alternative C1].

23. Under AB 21/SB 21, the penalty surcharge fund is projected to end 2015-16 with a balance of -\$5,177,800 and end 2016-17 with a balance of -\$6,694,500. Further, that fund is projected to operate under a structural deficit during the 2015-17 biennium if expenditure levels under the bill are maintained. In 2015-16, expenditures are projected to exceed revenues by \$1,346,200, and in 2016-17, expenditures are projected to exceed revenues by \$1,516,700. [A separate paper has been prepared on this issue.] Given that the penalty surcharge fund, as modified by AB 21/SB 21, is projected to operate under a structural deficit during the 2015-17 biennium, the Committee could delete the Governor's recommendation in order to reduce penalty surcharge obligations [Alternative C2]. As a result, court interpreters would continue to be funded, in part, by the JIS surcharge.

24. Alternatively, given that both the JIS surcharge and the penalty surcharge funds are in deficit, and that court interpreters are predominately supported by GPR, the Committee could convert all funding for court interpreters to GPR. In order to do so, the Committee could delete \$232,700 PR annually from the Circuit Court's base budget for court interpreters and instead provide the Courts an additional \$232,700 GPR for court interpreter payments [Alternative C3]. Under this alternative, the PR appropriation supporting court interpreter payments would be eliminated and funding under the Circuit Courts new consolidated appropriation would increase by \$232,700 GPR annually. [It should be noted that, if the Committee approves of this alternative, the

structural deficit of the penalty surcharge fund under AB 21/SB 21, identified in the separate paper prepared on that fund, would be lessened.]

25. On the other hand, as indicated in Table 8, court interpreter expenses have not exceeded \$1,300,000 in any of the past five fiscal years. The Circuit Court's current GPR funding for court interpreter payments during the 2015-17 biennium totals \$1,433,500 GPR annually. As a result, it could be argued that the Circuit Courts do not require the \$232,700 PR that is currently appropriated to support court interpreter payments.

26. Therefore, the Committee could delete \$232,700 PR annually from the Circuit Court's base budget [Alternative C4]. Under this alternative, GPR funding for court interpreter payments during the 2015-17 biennium would remain unchanged. Further, the PR appropriation supporting court interpreter payments would be eliminated. [It should be noted that, if the Committee approves of this alternative, the structural deficit of the penalty surcharge fund under AB 21/SB 21, identified in the separate paper prepared on that fund, would be lessened.]

Across-the-Board Reductions to Address Potential Structural Deficits

27. As identified in Table 3, under the bill, the JIS surcharge fund would provide funding for a wide variety of state functions.

- Administration - justice information systems supports the state's DA IT program, which provides funding and staff to support computer automation in district attorney offices statewide, including the development of a DA case management system and justice information system interfaces to share information between DAs and the courts, law enforcement, and other justice agencies.

- Justice - WISCOM is a shared system that first responders in communities across the state utilize to communicate during a major disaster or large scale incident.

- Justice - TAD grants support counties' efforts to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, which provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol and other drugs. These grants are also supported by GPR.

- Justice - WiJIS supports the Department's initiative to promote and coordinate automated justice information systems between counties and state criminal justice 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.

- Corrections - Victim notification supports Correction's efforts to provide information to victims about offenders under the custody or supervision of Corrections, the Department of Health Services, and Wisconsin county jails.

28. The bill modifies JIS surcharge fund obligations through the creation of a new state

justice assistance grant (SJAG) program and the elimination of the law enforcement officer grant program and the child advocacy center grant program. [Note that the bill would also eliminate the youth diversion grant program, which is supported, in part, by the penalty surcharge rather than the JIS surcharge. A separate paper has been prepared on the issue.] Under the bill, DOJ would receive \$1,224,900 PR annually from the JIS surcharge to partially support state justice assistance grants. Under current law, DOJ receives \$1,463,000 PR annually from the JIS surcharge to support law enforcement officer and child advocacy center grants. As a result, the proposal would reduce overall expenditures from the JIS surcharge fund by \$238,100 PR annually during the 2015-17 biennium.

29. Table 9 identifies the condition of the JIS surcharge fund if: (a) all of the modifications to the fund under AB 21/SB 21 are approved or deleted; (b) the modifications to the fund under AB 21/SB 21, except for the repeal of the exceptions to the JIS surcharge, are approved; and (c) the state justice assistance grant program, as introduced under AB 21/ SB 21, is approved or deleted. As indicated in Table 9, based on current revenue projections and expenditure levels during the 2015-17 biennium, the fund is projected to conclude the 2015-17 biennium with a balance ranging from -\$960,700 to -\$5,768,300, depending on whether or not the modifications to the fund under AB 21/SB 21 are approved or deleted and the state justice assistance grant program, as introduced under AB 21/ SB 21, is approved or deleted.

TABLE 9

Summary of JIS Surcharge Fund Revenues and Expenditures if the Modifications to the Fund are Approved or Deleted and if the State Justice Assistance Program is Approved or Deleted

JIS Surcharge Fund Modifications*	State Justice Assistance Grant**	Beginning 2015-16 Balance	Revenues		Expenditures		Ending Balance	
			2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
			Yes	Yes	-\$2,680,100	\$11,390,100	\$9,685,500	\$9,676,800
Yes	No	-2,680,100	11,390,100	9,685,500	9,914,900	9,917,500	-1,204,900	-1,436,900
Yes but retain exceptions	Yes	-2,680,100	10,309,400	8,604,800	9,676,800	9,679,400	-2,047,500	-3,122,100
Yes but retain exceptions	No	-2,680,100	10,309,400	8,604,800	9,914,900	9,917,500	-2,285,600	-3,598,300
No	Yes	-2,680,100	8,604,800	8,604,800	9,909,500	9,912,100	-3,984,800	-5,292,100
No	No	-2,680,100	8,604,800	8,604,800	10,147,600	10,150,200	-4,222,900	-5,768,300

**"Yes" to the JIS surcharge fund modifications means that the following modifications under AB 21/SB 21 would be approved: (a) exceptions to the JIS surcharge would be repealed; (b) unencumbered balances in appropriations supported by the fund would revert to the fund; and (c) court interpreters would no longer be supported by the JIS surcharge. "Yes but retain exceptions" means that the exceptions to the JIS surcharge would be retained, however, as recommended under the bill, unencumbered balances would revert to the fund and the fund would no longer support court interpreters. "No" to these modifications means that all of the modifications under AB 21/SB 21 would be deleted from the bill.

***"Yes" to the state justice assistance grant means that following modifications under AB 21/SB 21 have been approved, as introduced: (a) the new state justice assistance grant program would be created; and (b) the law enforcement officer grant program and the child advocacy center grant program would be eliminated. "No" to these modifications means that: (a) the state justice assistance grant program would be deleted from AB 21/SB 21; and (b) the law enforcement officer grant program and the child advocacy center grant program would be retained.

30. For each scenario identified in Table 9, Table 10 compares the estimated revenues and expenditures during the 2015-17 biennium. As shown in Table 10, under the bill, the JIS surcharge fund is projected operate in structural balance in both fiscal years of the 2015-17 biennium. In contrast, if any of the Governor's recommendations to modify the fund are not approved, the fund is projected to operate under a structural imbalance in 2016-17.

TABLE 10

**Justice Information System Surcharge Fund
Differences Between Estimated Revenues and Expenditures
During the 2015-17 Biennium**

JIS Surcharge Fund Modifications*	State Justice Assistance Grant**	Revenues		Expenditures		Differences	
		2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
		Yes	Yes	\$11,390,100	\$9,685,500	\$9,676,800	\$9,679,400
Yes	No	11,390,100	9,685,500	9,914,900	9,917,500	1,475,200	-232,000
Yes but retain exceptions	Yes	10,309,400	8,604,800	9,676,800	9,679,400	632,600	-1,074,600
Yes but retain exceptions	No	10,309,400	8,604,800	9,914,900	9,917,500	394,500	-1,312,700
No	Yes	8,604,800	8,604,800	9,909,500	9,912,100	-1,304,700	-1,307,300
No	No	8,604,800	8,604,800	10,147,600	10,150,200	-1,542,800	-1,545,400

*"Yes" to the JIS surcharge fund modifications means that the following modifications under AB 21/SB 21 would be approved: (a) exceptions to the JIS surcharge would be repealed; (b) unencumbered balances in appropriations supported by the fund would revert to the fund; and (c) court interpreters would no longer be supported by the JIS surcharge. "Yes but retain exceptions" means that the exceptions to the JIS surcharge would be retained, however, as recommended under the bill, unencumbered balances would revert to the fund and the fund would no longer support court interpreters. "No" to these modifications means that all of the modifications under AB 21/SB 21 would be deleted from the bill.

**"Yes" to the state justice assistance grant means that following modifications under AB 21/SB 21 have been approved, as introduced: (a) the new state justice assistance grant program would be created; and (b) the law enforcement officer grant program and the child advocacy center grant program would be eliminated. "No" to these modifications means that: (a) the state justice assistance grant program would be deleted from AB 21/SB 21; and (b) the law enforcement officer grant program and the child advocacy center grant program would be retained.

31. Despite the structural deficit that could occur in 2016-17 if the fund, as introduced under AB 21/SB 21, is modified, the Committee could still decide that it would be prudent to make any of the modifications discussed above. In order to address a potential structural deficit in the fund, across-the-board reductions could be applied to each obligation of the fund, not including the fund's statutory lapse requirement to benefit the general fund [Alternatives D1 through D5]. Table 11 identifies the annual across-the-board reduction that could be applied to the fund's obligations to address a potential structural deficit, depending on whether: (a) all of the modifications to the fund under AB 21/SB 21 are approved or deleted; (b) the modifications to the fund under AB 21/SB 21, except for the repeal of the exceptions to the JIS surcharge, are approved; and (c) the state justice assistance grant program proposal, as introduced under AB 21/ SB 21, is approved or deleted. As Table 11, indicates, across-the-board reductions ranging from 3% to 17% could be considered.

32. Table 12 identifies the reductions that each appropriation would incur if any of the following percent reductions are applied: (a) 3%; (b) 12%; (c) 15%; and (d) 17%. Note that all of the appropriation obligations identified in Table 12 may not exist during the 2015-17 biennium depending on the Committee's actions related to: (a) the state justice assistance grant program, the law enforcement officer grant program, and the child advocacy center grant program; and (b) court interpreters.

TABLE 11

**Justice Information System Surcharge Fund
Across-the-Board Reductions to Achieve Structural Balances**

JIS Surcharge*	State Justice Assistance Grant**	Percent Reduction	Revenue		Expenditures		Difference		
			Alternative	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Yes	Yes	---	---	\$11,390,100	\$9,685,500	\$9,676,800	\$9,679,400	\$1,713,300	\$6,100
Yes	No	3%	D1	11,390,100	9,685,500	9,638,500	9,641,100	1,751,600	44,400
Yes but retain exceptions	Yes	12	D2	10,309,400	8,604,800	8,599,500	8,601,800	1,709,900	3,000
Yes but retain exceptions	No	15	D3	10,309,400	8,604,800	8,532,800	8,535,000	1,776,600	69,800
No	Yes	15	D4	8,604,800	8,604,800	8,528,200	8,530,400	76,600	74,400
No	No	17	D5	8,604,800	8,604,800	8,541,500	8,543,700	63,300	61,100

**"Yes" to the JIS surcharge fund modifications means that the following modifications under AB 21/SB 21 would be approved: (a) exceptions to the JIS surcharge would be repealed; (b) unencumbered balances in appropriations supported by the fund would revert to the fund; and (c) court interpreters would no longer be supported by the JIS surcharge. "Yes but retain exceptions" means that the exceptions to the JIS surcharge would be retained, however, as recommended under the bill, unencumbered balances would revert to the fund and the fund would no longer support court interpreters. "No" to these modifications means that all of the modifications under AB 21/SB 21 would be deleted from the bill.

**"Yes" to the state justice assistance grant means that following modifications under AB 21/SB 21 have been approved, as introduced: (a) the new state justice assistance grant program would be created; and (b) the law enforcement officer grant program and the child advocacy center grant program would be eliminated. "No" to these modifications means that: (a) the state justice assistance grant program would be deleted from AB 21/SB 21; and (b) the law enforcement officer grant program and the child advocacy center grant program would be retained.

TABLE 12

**Justice Information System Surcharge Fund
Potential Reductions to Appropriations Supported by the JIS Surcharge Fund**

Appropriation	Current Level of Funding 2015-16	3% Reduction (Alternative D1)		12% Reduction (Alternative D2)		15% Reduction (Alternative D3)		15% Reduction (Alternative D4)		17% Reduction (Alternative D5)	
		2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Justice information systems	\$4,234,000	-\$127,000	-\$127,000	-\$508,100	-\$508,100	-\$634,800	-\$635,100	-\$634,800	-\$635,100	-\$719,500	-\$719,800
State justice assistance grants*	1,224,900	---	---	-147,000	-147,000	---	---	-183,700	-183,700	---	---
Law enforcement officer grants*	1,224,900	-36,700	-36,700	---	---	-183,700	-183,700	---	---	-208,200	-208,200
TAD grants	1,078,400	-32,400	-32,400	-129,400	-129,400	-161,800	-161,800	-161,800	-161,800	-183,300	-183,300
Interoperable communications system (WISCOM)	1,045,000	-31,300	-31,300	-125,400	-125,400	-156,700	-156,700	-156,700	-156,700	-177,600	-177,600
Wisconsin justice information sharing program (WIJIS)	714,100	-21,400	-21,400	-85,800	-85,800	-107,100	-107,200	-107,100	-107,200	-121,400	-121,500
Victim notification	682,300	-20,500	-20,500	-81,900	-81,900	-102,300	-102,300	-102,300	-102,300	-116,000	-116,000
Child advocacy center grants*	238,100	-7,100	-7,100	---	---	-35,700	-35,700	---	---	-40,500	-40,500
Court interpreters*	232,700	---	---	---	---	---	---	-34,900	-34,900	-39,600	-39,600
Total		-\$276,400	-\$1,077,300	-\$1,077,600	-\$1,382,100	-\$1,382,500	-\$1,381,300	-\$1,381,300	-\$1,381,700	-\$1,606,100	-\$1,606,500

*Note that program revenue appropriations supporting state justice assistance grants, law enforcement officer grants, child advocacy center grants, and court interpreters may not exist during the 2015-17 biennium, depending on other actions taken by the Committee.

33. Table 13 identifies the projected ending balance of the JIS surcharge fund under the possible scenarios discussed in Tables 11 and 12. As shown in Table 13, the JIS surcharge fund is expected to conclude the 2015-17 biennium in deficit even if either: (a) all of the Governor's recommendations are adopted; or (b) modifications are made to the Governor's recommendations and across-the-board reductions are applied.

TABLE 13

Ending Balance of JIS Surcharge Fund During the 2015-17 Biennium

<u>JIS Surcharge*</u>	<u>State Justice Assistance Grant**</u>	<u>Alternative</u>	<u>Ending Balance</u>	
			<u>2015-16</u>	<u>2016-17</u>
Yes	Yes	---	-\$966,800	-\$960,700
Yes	No	D1	-928,500	-884,100
Yes but retain exceptions	Yes	D2	-970,200	-967,200
Yes but retain exceptions	No	D3	-903,500	-833,700
No	Yes	D4	-2,603,500	-2,529,100
No	No	D5	-2,616,800	-2,555,700

*"Yes" to the JIS surcharge fund modifications means that the following modifications under AB 21/SB 21 would be approved: (a) exceptions to the JIS surcharge would be repealed; (b) unencumbered balances in appropriations supported by the fund would revert to the fund; and (c) court interpreters would no longer be supported by the JIS surcharge. "Yes but retain exceptions" means that the exceptions to the JIS surcharge would be retained, however, as recommended under the bill, unencumbered balances would revert to the fund and the fund would no longer support court interpreters. "No" to these modifications means that all of the modifications under AB 21/SB 21 would be deleted from the bill.

**"Yes" to the state justice assistance grant means that following modifications under AB 21/SB 21 have been approved, as introduced: (a) the new state justice assistance grant program would be created; and (b) the law enforcement officer grant program and the child advocacy center grant program would be eliminated. "No" to these modifications means that: (a) the state justice assistance grant program would be deleted from AB 21/SB 21; and (b) the law enforcement officer grant program and the child advocacy center grant program would be retained.

SUMMARY

As this paper points out, regardless of options selected by the Committee, it is likely that the JIS surcharge fund will continue to realize deficits in 2015-17 and subsequent years. 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

A. Exceptions to the JIS Surcharge

1. Approve the Governor's recommendation and eliminate the exceptions to the JIS surcharge. As a result, the JIS surcharge of \$21.50 would be assessed if judgement is entered against a defendant for a violation relating to: (a) lack of proof of vehicle insurance; (b) lack of possession of a special identification card for the physically disabled; and (c) safety belt use.

2. Delete provision.

ALT 2a	Change to Bill
PR-REV	- \$2,998,000

B. Reversions to the JIS Surcharge Fund

1. Approve the Governor's recommendation and provide that, at the end of each fiscal year, unencumbered balances in appropriations supported through a transfer of funds from the JIS surcharge fund would revert to the fund. Further, provide that, if any of the appropriations currently supported through a transfer of funds from the JIS surcharge fund (other than the Circuit Courts' court interpreters PR appropriation) has an unencumbered balance at the end of 2014-15, an amount equal to that unencumbered balance must be transferred from the appropriation to the JIS surcharge fund in 2015-16.

2. Delete provision.

C. Funding for Court Interpreters

1. Approve the Governor's recommendation and provide that program revenue funding for court interpreters would be supported by the penalty surcharge rather than the JIS surcharge.

2. Delete the provision. Under this alternative, program revenue funding for court interpreters would continue to be supported by the JIS surcharge.

3. Provide \$232,700 GPR annually for court interpreter payments and delete an equivalent \$232,700 PR annually from the Circuit Court's budget for court interpreters. Further, eliminate the PR appropriation that supports court interpreter payments.

ALT C3	Change to Bill
GPR	\$465,400
PR	- 465,400
Total	\$0

4. Reduce funding provided to the Circuit Courts for court interpreters by \$232,700 PR annually. Further, eliminate the PR appropriation that supports court interpreter payments.

ALT C4	Change to Bill
PR	- \$465,400

D. Across-the-Board Reductions

1. Reduce obligations of the JIS surcharge fund by \$276,400 PR annually through the application of a 3% across-the-board reduction in JIS surcharge fund obligations, not including the fund's lapse requirement. *This alternative may be chosen if the Committee has decided to: (a) approve the Governor's recommendation to repeal the exceptions to the JIS surcharge; (b) provide that the JIS surcharge fund would no longer support court interpreter payments; and (c) delete the creation of the state justice assistance grant program from the bill, and instead retain the law enforcement officer grant program and the child advocacy center grant program.*

ALT D1	Change to Bill
PR	-\$552,800

2. Reduce obligations to the JIS surcharge fund by \$1,077,300 PR in 2015-16 and \$1,077,600 PR in 2016-17 through the application of a 12% across-the-board reduction in JIS surcharge fund obligations, not including the fund's lapse requirement. *This alternative may be chosen if the Committee has decided to: (a) delete the Governor's recommendation to repeal the exceptions to the JIS surcharge; (b) provide that the JIS surcharge fund would no longer support court interpreter payments; and (c) approve the creation of the state justice assistance grant program from the bill, and the elimination of the law enforcement officer grant program and the child advocacy center grant program.*

ALT D2	Change to Bill
PR	-\$2,154,900

3. Reduce obligations to the JIS surcharge fund by \$1,382,100 PR in 2015-16 and \$1,382,500 PR in 2016-17 through the application of a 15% across-the-board reduction in JIS surcharge fund obligations, not including the fund's lapse requirement. *This alternative may be chosen if the Committee has decided to: (a) delete the Governor's recommendation to repeal the exceptions to the JIS surcharge; (b) provide that the JIS surcharge fund would no longer support court interpreter payments; and (c) delete the creation of the state justice assistance grant program from the bill, and instead retain the law enforcement officer grant program and the child advocacy center grant program.*

ALT D3	Change to Bill
PR	-\$2,764,600

4. Reduce obligations to the JIS surcharge fund by \$1,381,300 PR in 2015-16 and \$1,381,700 PR in 2016-17 through the application of a 15% across-the-board reduction in JIS surcharge fund obligations, not including the fund's lapse requirement. *This alternative may be chosen if the Committee has decided to: (a) delete the Governor's recommendation to repeal the*

exceptions to the JIS surcharge; (b) provide that the JIS surcharge fund would continue to support court interpreter payments; and (c) approve the creation of the state justice assistance grant program from the bill, and the elimination of the law enforcement officer grant program and the child advocacy center grant program.

ALT D4	Change to Bill
PR	- \$2,763,000

5. Reduce obligations to the JIS surcharge fund by \$1,606,100 PR in 2015-16 and \$1,606,500 PR in 2016-17 through the application of a 17% across-the board reduction in the JIS surcharge fund obligations, not including the fund's lapse requirement. *This alternative may be chosen if the Committee has decided to: (a) delete the Governor's recommendation to repeal the exceptions to the JIS surcharge; (b) provide that the JIS surcharge fund would continue to support court interpreter payments; and (c) delete the creation of the state justice assistance grant program from the bill, and instead retain the law enforcement officer grant program and the child advocacy center grant program.*

ALT D5	Change to Bill
PR	- \$3,212,600

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May 7, 2015

Joint Committee on Finance

Paper #419

Office of the Solicitor General (Justice)

[LFB 2015-17 Budget Summary: Page 276, #12]

CURRENT LAW

The base budget for legal services in the Department of Justice (DOJ) totals \$17,337,500 and 158.40 positions annually, including \$13,679,000 GPR and 127.75 GPR positions, \$2,453,200 PR and 20.90 PR positions, and \$1,205,300 FED and 9.75 FED positions. The staffing for legal services consists of: (a) 91.9 assistant attorneys general (AAG) and AAG supervisors; (b) 21.25 legal secretaries; (c) 19.5 paralegals; and (d) 25.75 other supervisory and support personnel. Major responsibilities of DOJ's Division of Legal Services include representing the legal interests of the state in and out of court, advising state officers and agencies regarding their rights and responsibilities, representing the state in felony appeals, and participating in the preparation of legal opinions requested of the Attorney General.

The Governor may appoint a private attorney as special counsel if, in the Governor's opinion, the public interest requires such action. The Governor may appoint special counsel: (a) to assist the Attorney General in any action or proceeding; (b) to act instead of the Attorney General in any action or proceeding, if the Attorney General is interested adversely to the state; (c) to defend any action instituted by the Attorney General against any officer of the state; and (d) to institute and prosecute an action or proceeding which the Attorney General, by reason of the Attorney General's opinion as to the validity of any law, or for any other reason, deems it the duty of the Attorney General to defend rather than prosecute. In addition, the Governor, upon the request of the Adjutant General, may appoint special counsel to defend a member of the National Guard or State Defense Force who is prosecuted for any action taken in the performance of military duty. Finally, the Government Accountability Board may appoint special counsel to prosecute actions brought by the Board.

GOVERNOR

Provide \$443,200 PR in 2015-16, \$584,500 PR in 2016-17, and 4.0 PR positions annually, to establish a Solicitor General's office. Provide the Attorney General authority to appoint, in the unclassified service, a Solicitor General and no more than three deputy solicitors general, each of whom must be an attorney at law licensed in Wisconsin. Further, provide the Attorney General authority to assign assistant attorneys general to assist the Solicitor General.

Create a continuing, program revenue appropriation to support the Office of the Solicitor General. Program revenue for the appropriation would be generated from funds transferred from other DOJ appropriations for expenses related to the Office.

DISCUSSION POINTS

1. Under the bill, the Attorney General is granted the authority to establish a Solicitor General's office, and appoint one Solicitor General and three deputy solicitors general in the unclassified service. According to the Executive Budget Bill, "The creation of the office will allow the department to provide a more in-depth level of representation for the state at both the state and federal appellate levels for increasingly complicated legal issues."

2. Positions appointed in the unclassified service serve at the pleasure of the appointing authority. In the case of the Solicitor General and the deputy solicitors general created under the bill, the appointing authority would be the Attorney General.

3. According to the Department, the Solicitor General's office would focus on appellate litigation. While the specific duties of the Office have yet to be established, the Department indicates that the office may perform the following: (a) supervise criminal and civil appellate litigation before the United States and Wisconsin Supreme Courts; (b) act as appellate counsel of record; (c) draft briefs; (d) appear at oral arguments, (e) assist and supervise trial level litigation in cases involving a significant question of law; (f) draft Attorney General opinions; (g) evaluate requests for the state to participate as an amicus participant in state or federal courts; and (h) any other duties the Attorney General assigns the office.

4. The state currently employs attorneys within the Department of Justice to perform the duties identified above. Notably, DOJ's Special Litigation and Appeals Unit litigates cases for the state in a wide variety of complex areas, including constitutional law and governmental authority. The Unit also litigates the State's civil appeal cases and drafts the majority of the Attorney General opinions and amicus curiae briefs. Currently, staffing assigned to the Unit include: (a) 12.5 assistant attorneys general (AAG); (b) 1.0 AAG supervisor; (c) 1.0 AAG manager; (d) 1.0 paralegal; (e) 1.0 legal associate; and (f) 2.75 legal secretaries. In addition, the Department's Criminal Appeals Unit represents the state in felony appeals before the Wisconsin Court of Appeals, the Wisconsin Supreme Court, and the United States Supreme Court. Current staffing assigned to the Criminal Appeals Unit include: (a) 21.25 AAGs; (b) 2.0 AAG supervisors; (c) 1.0 AAG manager; (d) 1.0 legal associate; and (e) 7.0 legal secretaries.

5. With regards to the difficulty the Department currently has in providing quality representation to the state at the appellate level, DOJ indicates the following:

"Present staff allocation and caseloads requires the Department to staff its cases thinly and typically with a single attorney handling all aspects of a case. Out of necessity, supervisors often carry their own caseload in addition to their supervisory duties. While the current staffing situation allows us to handle a high volume of cases, the Solicitor General's Office would improve our ability to ensure the state's legal arguments are expertly developed and uniform. Furthermore, it will improve the Department's overall ability to use existing staff resources and create savings from not having to hire outside counsel in some complex legal cases."

6. Under current law, special counsel may be appointed for a variety of reasons, one of which is to assist the Attorney General in any action or proceeding if, in the Governor's opinion, the public interest requires such action. Special counsel appointments are supported by a sum sufficient GPR appropriation. Table 1 provides information on special counsel expenditures incurred by the state over the last five fiscal years.

TABLE 1

Special Counsel Expenditures

<u>Fiscal Year</u>	<u>Expenditures</u>
2009-10	\$240,000
2010-11	316,300
2011-12	1,945,800
2012-13	931,400
2013-14	1,150,300

7. To the extent that special counsel appointments would be reduced as a result of the creation of a Solicitor General's office, the state could experience savings from reduced special counsel costs. It is unclear however, what, if any, savings in special counsel costs would be generated from establishing the Office. Special counsel may be appointed in a variety of instances that would not occur less frequently as a result of the creation of the Solicitor General's office, including: (a) to act instead of the Attorney General in any action or proceeding, if the Attorney General is interested adversely to the state; (b) to defend any action instituted by the Attorney General against any officer of the state; (c) to institute or prosecute an action or proceeding which the Attorney General, by reason of the Attorney General's opinion as to the validity of any law, or for any other reason, deems it the duty of the Attorney General to defend rather than prosecute; and (d) to prosecute actions brought by the Government Accountability Board. Further, even with a Solicitor General's office, special counsel may need to be appointed to assist DOJ with an overflow of cases or with cases requiring specialized expertise. To this point, notwithstanding the creation of the Office, the bill does not: (a) reduce expenditure authority for the special counsel appropriation; or (b) modify the instances in which special counsel may be appointed.

8. According to the National Association of Attorneys General, in March, 2014, attorney general offices in 42 states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands, had a person appointed to oversee their offices' civil appellate practice, and in some cases criminal appellate practice. Typically, this individual has the title of Solicitor General, State Solicitor, or Appellate Chief; however, there are states that have appointed an individual to oversee appellate litigation without such a title. Table 2 provides a list of states and territories that have appointed an individual to oversee appellate litigation.

TABLE 2

**States and Territories With a Solicitor General,
State Solicitor, Appellate Chief, or Similar Position**

Alabama	Indiana	Nebraska	Puerto Rico
Alaska	Iowa	Nevada	South Carolina
Arizona	Kansas	New Hampshire	South Dakota
California	Louisiana	New Jersey	Tennessee
Colorado	Maine	New York	Texas
Connecticut	Maryland	North Carolina	Utah
Delaware	Massachusetts	North Dakota	Vermont
District of Columbia	Michigan	Ohio	Virginia
Florida	Minnesota	Oklahoma	Virgin Islands
Georgia	Missouri	Oregon	Washington
Hawaii	Montana	Pennsylvania	West Virginia
Illinois			

9. The bill provides DOJ 4.0 unclassified PR positions (1.0 Solicitor General and 3.0 deputy solicitors general) for the state's Solicitor General's office. Table 3 provides the annual cost of these 4.0 positions during the 2015-17 biennium. The bill authorizes DOJ to appoint the Solicitor General in the unclassified service in executive salary group (ESG)-5, while the deputy solicitors general may be appointed in the unclassified service in ESG-4. Employees appointed in an executive salary group may receive compensation within a given range depending on their salary group, at the discretion of the appointing authority. The ESG-5 range is \$82,453 to \$127,802. The ESG-4 range is \$76,344 to \$118,333.

TABLE 3

Cost of 4.0 Positions for Solicitor General's Office, As Identified Under AB 21/ SB 21

	<u>2015-16</u>	<u>2016-17</u>
1.0 Solicitor General (ESG-5)		
Salary	\$83,500	\$111,300
Fringe	33,600	44,800
Supplies and Services	<u>4,800</u>	<u>4,800</u>
Total	\$121,900	\$160,900
1.0 Deputy Solicitor General (ESG-4)		
Salary	\$73,000	\$97,300
Fringe	29,300	39,100
Supplies and Services	<u>4,800</u>	<u>4,800</u>
Total	\$107,100	\$141,200
3.0 Deputy Solicitors General	\$321,300	\$423,600
Total	\$443,200	\$584,500

10. In order to support the positions, the bill creates a solicitor general continuing appropriation. While the bill provides the appropriation expenditure authority totaling \$443,200 PR in 2015-16 and \$584,500 PR in 2016-17, since the appropriation is continuing, the Department would be authorized to expend amounts beyond that appropriated without legislative approval, based on available cash balances. Under the bill, the new continuing appropriation would receive monies from funds transferred from other DOJ appropriations for expenses related to the Office. The Department indicates that, "If the provision creating a Solicitor General's Office is enacted into law, the department will evaluate the full range of funding alternatives to support the new office, including moneys received for the expenses of investigation and prosecution of violations, including attorney fees."

11. Generally, the statutes permit DOJ to recover expenses, including attorney fees, associated with the investigation and prosecution of violations relating to: (a) the Medical Assistance (MA) program; (b) marketing and trade practices; (c) trusts and monopolies; and (d) various environmental violations enforced by the Department of Natural Resources. Amounts collected by DOJ as a result of its litigation of these cases are received by the agency's legal services investigation and prosecution continuing appropriation. This appropriation may expend monies for the purpose of supporting expenses related to the investigation and prosecution of violations, including attorney fees. Table 4 identifies the revenues and expenditures from the Department's investigation and prosecution appropriation from 2010-11 through 2014-15 (through March, 2015). According to the Department, generally, DOJ did not expend monies from the investigation and prosecution continuing appropriation from 2010-11 through 2013-14 so that the appropriation could accrue revenue balances that could be utilized if necessary. In 2014-15, the Department has utilized the appropriation to provide partial support for a new DOJ Data Center, as well as a new case management system.

TABLE 4

Investigation and Prosecution Revenues and Expenditures 2010-11 Thru 2014-15

<u>Fiscal Year</u>	<u>Revenues</u>	<u>Expenditures</u>
2010-11	\$529,100	\$0
2011-12	340,400	0
2012-13	577,000	0
2013-14*	3,300,600	4,500
2014-15	774,400	969,300

*Revenue in 2013-14 includes an amount totaling \$1,524,600 received as a result of DOJ's litigation against Pharmacia for Medicaid fraud and deceptive trade practices.

12. Another potential funding source for the Solicitor General's office would be discretionary settlement funds. Discretionary settlement funds are amounts that may be expended for purposes permitted by state law, at the sole discretion of the Attorney General. These discretionary awards are deposited in the Department's administrative services gifts, grants and proceeds continuing appropriation. Table 5 identifies discretionary settlement funds deposited in the appropriation from 2010-11 through 2014-15 (through March, 2015).

TABLE 5

Discretionary Settlement Funds Received 2010-11 Thru 2014-15

<u>Fiscal Year</u>	<u>Amounts Received</u>
2010-11	\$2,992,800
2011-12	2,457,300
2012-13	11,483,400
2013-14	639,100
2014-15	3,300,100

13. Given that the administration indicates that the creation of a Solicitor General's office would allow the Department to provide a "more in-depth level of representative for the state," and that 45 other states and territories have a position similar to a Solicitor General, the Committee could approve the Governor's recommendation [Alternative 1].

14. In order to support the Solicitor General's office, the bill creates a continuing appropriation that would be funded from funds transferred from other DOJ appropriations for expenses related to the Office. Given that the appropriation does not identify a specific program revenue source for the Office, it is unclear how DOJ would continually support the Office. Typically, permanent positions are not created unless a consistent funding stream for the employees is identified. Further, given that the solicitor general appropriation could receive funding from

transfers from any other DOJ appropriation, it is conceivable that funding appropriated for purposes unassociated with the Solicitor General's office would be utilized to provide partial support for the Office.

15. According to the Department, one potential funding source for the Solicitor General's office is monies recovered by the Department's investigation and prosecution continuing appropriation. Table 4 indicates that the appropriation has collected an average of \$1,104,300 annually from 2010-11 through 2014-15. It should be noted, however, that this appropriation is authorized to support expenses related to the investigation and prosecution of violations. The Solicitor General's office would perform a variety of tasks that may not be directly related to the investigation and prosecution of violations. As such, it could be argued that this appropriation may not be an acceptable source of funding for the Office, under current law.

16. In order to address the issues noted above, if the Committee decided to establish the Solicitor General's office, the appropriation created under the bill could be eliminated. Instead, to support the Solicitor General's office, the Committee could modify the statutory language associated with the investigation and prosecution appropriation to explicitly authorize the appropriation to support the Solicitor General's office [Alternative 2]. Further, the Committee could provide the investigation and prosecution continuing PR appropriation \$443,200 PR in 2015-16, \$584,500 PR in 2016-17, and 4.0 unclassified PR positions annually in order to support the Office. Under this alternative, in addition to monies recovered by the Department for investigating and prosecuting violations, DOJ could utilize discretionary settlement funds to support the Office.

17. Alternatively, in order for the Legislature to retain more oversight over the Department's expenditures related to the Solicitor General's office, the solicitor general appropriation could be converted from a continuing appropriation to an annual appropriation. As an annual appropriation, DOJ could not spend amounts beyond what is appropriated in a fiscal year by the Legislature [Alternative 3].

18. General purpose revenue could also be provided to the Department to support the Office. Amounts recovered by DOJ can vary widely from year to year, and as a result, it is conceivable that funding may not be available to support the Office in future years. Given that the Solicitor General's office would be staffed by permanent employees, it could be argued that funding for the positions should be provided from a more consistent funding stream, such as GPR. Therefore, if the Committee decided to establish the Solicitor General's office, the Committee could also provide DOJ \$443,200 GPR in 2015-16, \$584,500 GPR in 2016-17, and 4.0 GPR unclassified positions annually in order to support the Office [Alternative 4]. Under this alternative, the Committee could delete the program revenue funding and position authority provided under the bill to support the Office. The Committee could also delete the solicitor general continuing PR appropriation created under the bill.

19. A reduced staffing level for the Office, as compared to the bill, could also be considered. For example, instead of providing DOJ 4.0 unclassified positions (1.0 Solicitor General and 3.0 deputy solicitors general), the Committee could provide funding and position authority for 2.0 unclassified positions (1.0 Solicitor General and 1.0 deputy solicitor general).

20. As a result, if the Committee decides to create the Office through the use of program revenue, the Committee could provide the Department with \$229,000 PR in 2015-16, \$302,100 PR in 2016-17, and 2.0 PR unclassified positions annually to support 1.0 Solicitor General and 1.0 deputy solicitor general [Alternative 5a]. Alternatively, if the Committee decides to create the Office through the use of GPR, the Committee could provide the Department with \$229,000 GPR in 2015-16, \$302,100 GPR in 2016-17, and 2.0 GPR unclassified positions annually to support the two positions [Alternative 5b].

21. On the other hand, some might question the need for a Solicitor General's office. It would appear as though positions currently allocated to the Department perform the duties that would be performed by the Solicitor General's office. The Department's budget for legal services includes 91.9 attorney positions that represent the legal interests of the state in and out of court. The Division of Legal Services' Special Litigation and Appeals Unit litigates complex legal cases for the state, handles the majority of the state's civil appeals, and drafts the majority of Attorney General opinions and amicus curiae briefs. Further, the Division's Criminal Appeals Unit litigates felony appeals before the Wisconsin Court of Appeals, the Wisconsin Supreme Court, and the United States Supreme Court. In addition, while the administration has argued that the Solicitor General's office would allow the Department to provide a "more in-depth level of representation," the Governor currently has broad authority to appoint special counsel to assist the Attorney General in any action or proceeding, if necessary. As a result, it could be argued that current law has effectively provided for the state's legal needs.

22. Further, under the bill as introduced, it is unclear how the Solicitor General's office would be funded. Generally, permanent positions are not created unless a consistent funding stream is identified to support the positions. In addition, while it is possible that the creation of Office would reduce special counsel expenditures, it is unclear if any savings would actually be generated. As indicated above, special counsel may be appointed for several purposes that may not occur less frequently if the Solicitor General's office is established.

23. For the reasons discussed above, the Committee could delete the Governor's recommendation to authorize the Attorney General to establish a Solicitor General's office [Alternative 6].

24. Finally, it should be noted that in the 2013-15 budget bill, the Governor recommended authorizing the Attorney General to appoint a Solicitor General and up to 3.0 deputy solicitors general in the unclassified service. Unlike the provision currently before the Committee, the 2013-15 budget bill utilized GPR to support the Solicitor General's office. The 2013-15 budget provision was deleted from the bill during deliberations of the Committee.

ALTERNATIVES

1. Approve the Governor's recommendation.
2. Approve the Governor's recommendation to create a Solicitor General's office but eliminate the solicitor general continuing PR appropriation created under the bill. In addition, delete

\$443,200 PR in 2015-16, \$584,500 PR in 2016-17, and 4.0 unclassified PR positions annually provided to the continuing solicitor general appropriation. Instead, provide statutory language to the bill to authorize the legal services investigation and prosecution continuing PR appropriation to support the Solicitor General's office. Further, increase funding and position authority of the investigation and prosecution continuing appropriation by \$443,200 PR in 2015-16, \$584,500 PR in 2016-17, and 4.0 unclassified PR positions annually.

3. Approve the Governor's recommendation to create a Solicitor General's office but modify the bill to convert the new solicitor general continuing PR appropriation to an annual appropriation.

4. Approve the Governor's recommendation to create a Solicitor General's office but provide \$443,200 GPR in 2015-16, \$584,500 GPR in 2016-17, and 4.0 unclassified GPR positions annually to support the Office. Further, delete \$443,200 PR in 2015-16, \$584,500 PR in 2016-17, and 4.0 unclassified PR positions annually provided under the bill to support the Office. Finally, delete the solicitor general continuing PR appropriation created under the bill.

ALT 4	Change to Bill	
	Funding	Positions
GPR	\$1,027,700	4.00
PR	<u>-1,027,700</u>	<u>-4.00</u>
Total	\$0	0.00

5. Approve the Governor's recommendation to create a Solicitor General's office but provide funding and position authority for a reduced staffing level. Funding could be provided in either of the following manners.

a. Reduce PR funding and position authority provided in Alternatives 1, 2, or 3 by \$214,200 PR in 2015-16, \$282,400 PR in 2016-17, and 2.0 PR unclassified positions annually. *Alternative 5a may be chosen in addition to Alternatives 1, 2, or 3.*

ALT 5a	Change to Bill	
	Funding	Positions
PR	-\$496,600	-2.00

b. Reduce GPR funding and position authority provided in Alternative 4 by \$214,200 GPR in 2015-16, \$282,400 GPR in 2016-17, and 2.0 GPR unclassified positions annually. *Alternative 5b may be chosen in addition to Alternative 4.*

ALT 5b	Change to Bill	
	Funding	Positions
GPR	-\$496,600	-2.00

6. Delete provision.

ALT 6	Change to Bill	
	Funding	Positions
PR	- \$1,027,700	- 4.00

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May 7, 2015

Joint Committee on Finance

Paper #420

Crime Victim Compensation Hearings and Sexual Assault Forensic Exam Hearings (Justice and Administration)

[LFB 2015-17 Budget Summary: Page 277, #15 and Page 42, #3]

CURRENT LAW

The Department of Justice's (DOJ) Office of Crime Victim Services administers the state's crime victim compensation program. Under the program, DOJ compensates victims of certain crimes, as well as dependents of deceased victims, for some of the costs related to: (a) medical treatment; (b) lost wages; (c) crime scene clean-up; (d) replacement of property held for evidentiary purposes; (e) funeral and burial expenses; and (f) if the victim is a homemaker, securing homemaker services. In addition, DOJ may provide compensation to family members of victims, or individuals who live in the same household as the victim, who incur economic losses as a result of their reaction to the victim's death.

The Office also administers the state's sexual assault forensic exam (SAFE) program. Under the SAFE program, medical providers may be reimbursed for the costs of examining victims of sex offenses in order to gather evidence. Examination costs reimbursable under the SAFE program include: (a) an examination that is done to gather evidence regarding a sex offense; (b) any procedure performed during the examination process that tests for or prevents a sexually transmitted disease; and (c) any medication provided or prescribed during the examination process that prevents or treats a sexually transmitted disease that the medical provider performing the examination believes could be a consequence of the sex offense. The SAFE program does not reimburse administrative costs, attorney fees, or other expenses.

Potential recipients under the crime victim compensation program or the SAFE program may file a petition with DOJ to contest the Department's decision relating to the award, or lack thereof. In the event of a contested case hearing under the crime victim compensation program or the SAFE program, the Department of Administration's (DOA) Division of Hearing and Appeals

(DHA) is required to appoint a hearing examiner to conduct the hearing, make findings, and issue orders.

Under current law, if DOA's Division of Hearing and Appeals is not required by statute to assign a hearing examiner to preside over a contested case, an agency may designate an official of the agency or a staff member from another agency to act as a hearing examiner. Subject to the rules of the agency, a hearing examiner may: (a) administer oaths and affirmations; (b) issue and enforce subpoenas authorized by law; (c) rule on offers of proof and receive relevant evidence; (d) take depositions and have depositions taken; (e) regulate the course of the hearing; (f) hold conferences for the settlement or simplification of the issues by consent of the parties; (g) dispose of procedural requests or similar matters; (h) make or recommend findings of fact, conclusions of law, and decisions to the extent permitted by law; and (i) take other action authorized by agency rule consistent with the statutory provisions regarding administrative procedure and review.

The Department of Administration's hearings and appeals fees annual appropriation provides partial support for the operations of the Division of Hearings and Appeals. Program revenue funding is generated from charges to state agencies for services provided by the Division. Base funding for the appropriation is \$3,377,100 PR annually.

GOVERNOR

Repeal the requirement that DOA's Division of Hearings and Appeals appoint a hearing examiner for contested cases relating to crime victim compensation. Further, repeal the requirement that DHA appoint a hearing examiner for contested cases relating to payments made under the SAFE program. In addition, increase the expenditure authority of DOA's hearings and appeals fees by \$50,000 PR annually.

DISCUSSION POINTS

1. The crime victim compensation program reimburses victims of crimes for some of the actual expenses incurred as a result of the crime. Further, the SAFE program reimburses medical providers for the costs of examining victims of sex offenses in order to gather evidence. If a potential awardee of crime victim compensation or a medical provider seeking reimbursement under the SAFE program disputes the amount provided by DOJ under the either program, the individual or medical provider may file a petition with DOJ for a contested case hearing. Since the passage of 1985 Wisconsin Act 242, DHA has been required to appoint a hearing examiner to conduct hearings relating to either crime victim compensation or reimbursements under the SAFE program. Prior to 1985 Act 242, the Attorney General was authorized to appoint a hearing examiner to conduct these hearings.

2. Due to DHA's current statutory requirement to conduct contested case hearings, the Department of Justice does not reimburse DOA for its costs to conduct these hearings. The bill repeals DHA's statutory requirement to conduct these contested case hearings. As a result, in the event of a contested case hearing relating to either program, DOJ could either: (a) contract with

DHA, under which DOJ would pay DHA to appoint a hearing examiner to conduct the hearing; or (b) designate an official within DOJ, or a staff member from another agency, to act as a hearing examiner and conduct the hearing.

3. In calendar year 2013, there were 19 contested case hearings related to crime victim compensation. In calendar year 2014, 25 cases relating to crime victim compensation were referred to DHA, resulting in 14 hearings. Generally, a referral to DHA may not lead to a contested case hearing if: (a) the matter is settled during a prehearing conference; (b) the petitioner affirmatively withdraws the hearing request; or (c) the petitioner fails to appear in person or by attorney at a prehearing conference and, as a result, the petition is dismissed.

4. There have not been any contested case hearings relating to the SAFE program. The Department indicates that the only instance in which a claim under the SAFE program would be denied is if: (a) the claim is not filed within one year after the date of the examination; or (b) the crime that causes the need for an examination did not occur in Wisconsin.

5. The Division of Hearings and Appeals is currently supported by a combination of GPR and PR. Base funding and position authority for the Division is \$2,641,800 GPR, \$3,377,100 PR, 22.10 GPR positions, and 29.85 PR positions (a total of 51.95 full-time equivalent positions). [In a separate provision of the bill, all GPR funding and position authority provided to DHA is converted to program revenue.] Current staff for DHA include: (a) 33.95 attorney and attorney supervisor positions; (b) 15.5 legal associate and legal associate supervisor positions; (c) 0.5 legal secretary position, and (d) 2.0 other supervisory and support personnel positions. Program revenue for DHA is generated from fees charged by the Division to state agencies to which the Division provides services.

6. The Division currently charges a variety of state agencies for its services. The Division does not, however, charge for all of the services it provides. As previously indicated, DHA does not currently charge DOJ for the Division's costs to conduct crime victim compensation hearings. In addition, DHA does not charge for some of the services provided to the following state agencies: the Departments of Corrections; Natural Resources; Transportation; Health Services; and the Historical Society. Funding for the services the Division does not charge for is generally supported by the Division's GPR appropriation.

7. The administration indicates that, for 2013-14, DHA utilized an estimated 0.69% of its total funding and position authority to conduct crime victim compensation hearings. Further, since DHA does not charge DOJ for its services, DHA utilized GPR funding to support its expenses. As a result, it is estimated that DHA utilized \$40,200 GPR and 0.36 full-time equivalent GPR position in 2013-14 to conduct crime victim compensation hearings. Since there have not been any contested case hearings associated with the SAFE program, DHA does not have any associated expenses. [It should be noted that DHA does not track its GPR expenditures by agency or by case type, and as a result, actual expenditures related to crime victim compensation hearings could differ from the estimate identified above.]

8. The bill increases the expenditure authority of DOA's hearings and appeals fees annual PR appropriation by \$50,000 annually. The increase in expenditure authority is associated with an assumption that, if DHA's statutory requirement to conduct crime victim compensation and SAFE

program hearings is repealed, DOJ would enter into a contract with DHA, under which DHA would appoint a hearing examiner to conduct the hearings. The administration indicates that DHA anticipates it would charge DOJ \$50,000 annually during the 2015-17 biennium for its services.

9. Given that repealing DHA's statutory requirement to conduct crime victim compensation and SAFE program hearings would allow DHA to charge DOJ for its services in a manner similar to how DHA charges other state agencies, the Committee could approve the Governor's recommendation [Alternative 1]. Under this alternative, the expenditure authority of the Department of Administration's hearings and appeals fees annual PR appropriation would be increased by \$50,000 PR annually.

10. As previously indicated, the bill increases DHA's PR expenditure authority in anticipation of DHA charging DOJ for its services during the 2015-17 biennium. Currently, it is estimated that DHA utilizes \$40,200 GPR annually to support its expenses related to crime victim compensation hearings. In a separate provision of the bill, DHA's base GPR resources are converted to PR, including the \$40,200 GPR DHA utilized in 2013-14 to conduct crime victim compensation hearings (a separate paper will be prepared on this issue). As a result, the bill increases DHA's PR expenditure authority related to crime victim compensation hearings in two separate provisions. In order to appropriately account for current base resources allocated to crime victim compensation hearings, the Committee could reduce the program revenue provided to DHA under the bill by \$40,200 PR annually [Alternative 2]. This alternative would provide DHA a net \$50,000 PR annually for DOJ-related hearings during the 2015-17 biennium.

11. The Department of Justice indicates that it, "has not yet decided if we [DOJ] would continue to use DHA or designate a DOJ official or another agency to act as hearing examiner" if the requirement that DHA appoint a hearing examiner for crime victim compensation and SAFE program hearings is repealed. The Department is currently authorized 96.40 assistant attorney general positions (including supervisor positions). As a result, the Department may have qualified staff that would be able to act as a hearing examiner in the event of a contested case relating to crime victim compensation or the SAFE program. Since it is unclear at this time whether DOJ would enter into a contract with DHA, DHA may not require the \$50,000 annual increase in PR expenditure authority provided under the bill. Further, DHA's PR expenditure authority could be decreased by an additional \$40,200 annually to account for the base funding DHA currently utilizes to support DOJ-related hearings.

12. Therefore, the Committee could approve the Governor's recommendation to repeal the requirement that DHA appoint a hearing examiner for hearings related to crime victim compensation and the SAFE program, and reduce DHA's PR expenditure authority by \$90,200 PR annually [Alternative 3]. If DOJ decides to contract with DHA in the future, the Department could request that the Committee increase DHA's PR expenditure authority under s. 16.515 of the statutes, if necessary.

13. On the other hand, it might be prudent to retain the requirement that DHA appoint a hearing examiner for these contested case hearings. If the requirement is repealed, rather than contracting with DHA, DOJ could decide to designate an official from within the Department to act as a hearing examiner and conduct the hearings. One could argue that the hearing examiner

conducting hearings related to either the crime victim compensation program or the SAFE program should be independent of DOJ, since DOJ is the administering agency of both of these programs.

14. If DHA were to continue to be required to appoint a hearing examiner to conduct these hearings, it might be reasonable that DOJ should be required to reimburse DHA for its expenses in a manner similar to how other state agencies reimburse DHA for its costs. If DOJ did not reimburse DHA for its costs (and DHA is converted to exclusively PR funding as proposed under the bill), DHA would need to support its expenses related to crime victim compensation and SAFE program hearings through increased charges assessed to other state agencies.

15. For the reasons discussed above, the Committee could decide to retain the requirement that DHA appoint a hearing examiner for hearings relating to crime victim compensation and the SAFE program, but require that DOJ reimburse DHA for its actual costs to conduct the hearings [Alternative 4]. Under this alternative, the Committee could reduce annual program revenue expenditure authority provided under the bill by \$40,200 in order to appropriately account for current base resources in DHA noted in Discussion Point #10.

16. While the bill increases DHA's program revenue expenditure authority by \$50,000 annually in anticipation of DHA charging DOJ, the bill does not provide DOJ additional funding to support the charges. As a result, DOJ would need to utilize base resources to support any charges from DHA. State support for the crime victim compensation program is supported by a combination of GPR and PR. Program revenue for the program is supported by restitution payments received by the state from defendants. [The federal government also provides the state funding under the Victims of Crimes Act (VOCA) to support payments to victims under the program.]

17. Given that the bill does not provide DOJ funding to support potential charges from DHA, the Committee could provide DOJ \$50,000 GPR annually in order to support these charges [Alternative 5]. This alternative could be considered in conjunction with any alternative under which DOJ could enter into a contract with DHA for services related to hearings associated with the crime victim compensation program or the SAFE program (Alternatives 1, 2, or 4). [Note that this alternative should not be considered in conjunction with Alternative 3 since Alternative 3 deletes DHA's PR expenditure authority associated with DOJ-related hearings.]

18. Alternatively, the Committee could delete the Governor's recommendation [Alternative 6]. Under this alternative, the requirement that DHA appoint a hearing examiner for hearings relating to crime victim compensation or the SAFE program would be retained, and DHA would have to continue to absorb the costs of conducting these hearings. As indicated above, the bill does not provide DOJ any additional funding to support the costs of reimbursing DHA for its services. As a result, to the extent that DHA charges DOJ if the requirement is repealed, DOJ would have to utilize base resources to support these charges.

ALTERNATIVES

1. Approve the Governor's recommendation to repeal the requirement that DOA's Division of Hearings and Appeals appoint a hearing examiner to conduct a contested case hearing relating to either crime victim compensation or reimbursements provided to medical providers

under the SAFE program. Further, increase the expenditure authority of the Department of Administration's hearings and appeals fees annual PR appropriation by \$50,000 PR annually.

2. Approve the Governor's recommendation, but reduce the program revenue provided to DOA under the bill by \$40,200 PR annually.

ALT 2	Change to Bill
PR	- \$80,400

3. Approve the Governor's recommendation, but reduce the program revenue provided to DOA under the bill by \$90,200 PR annually.

ALT 3	Change to Bill
PR	- \$180,400

4. Retain the current law requirement that DHA appoint a hearing examiner to conduct a hearing relating to either crime victim compensation or reimbursements under the SAFE program. Further, add statutory language that would require the Department of Justice to reimburse DHA for its actual costs to conduct these hearings. Finally, reduce program revenue provided to DOA under the bill by \$40,200 PR annually.

ALT 4	Change to Bill
PR	- \$80,400

5. In addition to Alternatives 1, 2, or 4, provide DOJ \$50,000 GPR annually.

ALT 5	Change to Bill
GPR	\$100,000

6. Delete provision. As a result, DHA would continue to be required to appoint a hearing examiner to conduct a hearing relating to crime victim compensation and awards under the SAFE program.

ALT 6	Change to Bill
PR	- \$100,000

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May 7, 2015

Joint Committee on Finance

Paper #421

Interagency and Intra-Agency Assistance and Delinquent Obligation Collection (Justice)

[LFB 2015-17 Budget Summary: Page 279, #16 and #17]

CURRENT LAW

Current law requires the Department of Justice to furnish legal services to several state agencies. Revenue generated when DOJ charges a state agency for legal services is received and expended from the Legal Services interagency and intra-agency annual appropriation. Base expenditure authority for the appropriation is \$1,239,100 PR annually.

In addition, current law requires the Department to: (a) monitor cases filed in bankruptcy courts in Wisconsin and other states; (b) notify state agencies that may be affected by those bankruptcy cases; and (c) represent the interest of the state in bankruptcy cases and related adversary proceedings. All delinquent obligations collected by DOJ while performing its duties are paid to the Department of Administration, and then deposited in the appropriate fund. The Department of Administration (DOA) must credit an amount equal to the reasonable and necessary expenses incurred by DOJ in performing its duties related to delinquent obligation collection to DOJ's delinquent obligation collection appropriation. Base expenditure authority for the appropriation is \$7,000 PR annually.

GOVERNOR

Convert the Legal Services interagency and intra-agency annual appropriation to a continuing appropriation. In addition, convert the Legal Services delinquent obligation collection annual appropriation to a continuing appropriation.

DISCUSSION POINTS

Interagency and Intra-Agency Assistance

1. The Department currently enters into agreements with state agencies under which DOJ charges these state agencies for ongoing legal services. Table 1 identifies the Department's current agreements, as well as the amount DOJ charges for its services and a brief description of the services provided by DOJ. As Table 1 indicates, DOJ currently generates \$1,327,700 of revenue from these agreements, and generally utilizes the funding to support the positions that provide the services under the agreement. The amount charged to state agencies is based upon DOJ's actual costs to provide legal services.

TABLE 1

Department of Justice's Agreements with Other State Agencies for Legal Services, 2014-15

<u>Agency</u>	<u>Annual Charge</u>	<u>Description of Service</u>
Transportation	\$683,100	DOT provides DOJ \$683,100 annually to support 6.5 positions that provide legal services in the area of eminent domain and property law.
Transportation	186,000	DOT transfers \$186,000 annually of federal grant funding to DOJ to support a traffic safety resource prosecutor position that promotes awareness and training in the investigation and prosecution of vehicular crimes.
Administration	131,500	DOA's Division of Risk Management provides DOJ \$131,500 annually to support the investigation, litigation, and settlement of environmental liability claims against the state.
Workforce Development	128,300	DWD provides DOJ \$128,300 annually to support 1.0 workers compensation resolution officer and 0.5 limited-term employee workers compensation officer. These officers provide services for Wisconsin's work injury supplementary benefit fund.
University of Wisconsin - Medical School	126,800	UW Medical School provides DOJ \$126,800 annually for risk management-related litigation costs. DOJ indicates that it utilizes the funding to support the rent costs of DOJ's Division of Legal Services.
Safety and Professional Services	65,500	DSPS provides DOJ \$65,500 annually to support 0.5 full-time equivalent attorneys. In exchange, DOJ consults with DSPS staff on legal issues, provides training to DSPS staff, and performs work on DSPS-related cases.
Health Services	6,500	DHS provides DOJ \$6,500 annually for legal services relating to the state's Medicaid Program (MA).
Total	<u>\$1,327,700</u>	

2. Table 2 identifies the amount of revenue that DOJ has generated from its legal service agreements over the last five fiscal years. As Table 2 indicates, DOJ's contractual revenues have steadily increased from 2010-11 through 2014-15.

TABLE 2

**Revenue Generate by DOJ from Agreements for Legal Services
2010-11 thru 2014-15**

<u>Fiscal Year</u>	<u>Revenue</u>
2010-11	\$977,200
2011-12	1,013,700
2012-13	1,077,300
2013-14	1,266,700
2014-15	1,327,700

3. The revenue generated from DOJ's agreements with state agencies is largely received by the Legal Services interagency and intra-agency annual PR appropriation. Base expenditure authority for this annual appropriation is \$1,239,100 PR annually. As Table 1 indicates, however, current contractual revenues total \$1,327,700 annually. The Department indicates that, since annual contractual revenues exceed the appropriation's expenditure authority, the Department has had to receive a portion of its contractual revenues in its Legal Services federal aid appropriation. Specifically, DOJ receives a portion of the federal grant funding transferred from DOT to DOJ for a traffic safety resources prosecutor position in the federal aid appropriation. Since the funding for the traffic safety resource prosecutor is transferred to DOJ from DOT, however, DOJ should receive the funding as program revenue rather than federal revenue.

4. The bill converts the interagency and intra-agency appropriation from an annual appropriation to a continuing appropriation. As a continuing appropriation, DOJ would not require legislative approval to expend amounts beyond what is appropriated. Therefore, DOJ would be able to receive and expend all contractual revenues generated from legal services provided to state agencies in the interagency and intra-agency appropriation.

5. Given that DOJ has generated an increasing amount of revenue to support its actual costs to furnish legal services to other state agencies, and that DOJ is receiving revenues in a federal appropriation because annual contractual revenue exceed the appropriation's expenditure authority, the Committee could convert the Legal Services interagency and intra-agency PR annual appropriation to a continuing appropriation [Alternative A1].

6. On the other hand, the Committee could decide to maintain the appropriation as an annual appropriation in order to retain legislative oversight over the appropriation's expenditures [Alternative A2]. As an annual appropriation, DOJ could not expend amounts beyond that appropriated. However, any necessary increase beyond the appropriated amount could be approved by the Committee acting under s. 16.515 of the statutes.

7. Alternatively, the Committee could decide to maintain the appropriation as an annual appropriation but increase the appropriation's expenditure authority from \$1,239,100 PR to \$1,327,700 PR annually [Alternative A3]. Under this alternative, the Legislature would maintain oversight over the appropriation's expenditure authority. Further, this alternative would provide the

appropriation expenditure authority to receive all of the revenue DOJ currently generates from providing other state agencies legal services in the interagency and intra-agency appropriation. If DOJ's costs to provide contractual legal services to state agencies increases in future years, DOJ could request that the Committee increase the appropriation's expenditure authority as authorized under s. 16.515 of the statutes.

Delinquent Obligation Collection

8. Over the years, a fee has been developed to assess agencies to permit DOJ to recover its costs in bankruptcy proceedings. The fee is applied to the amounts recovered by DOJ and is currently set at 16%. As a result, 16% of all amounts recovered by DOJ in bankruptcy cases are deposited in the Department's delinquent obligation collection PR annual appropriation. The remaining amounts recovered in these bankruptcy proceedings are returned to the relevant agency.

9. The 2001-03 biennial budget reduced the expenditure authority of the delinquent obligation collection appropriation from \$66,300 PR to \$0 PR. Subsequently, under the 2013-15 budget act, the expenditure authority was increased to \$7,000. As a result of its expenditure authority in recent years, the Department has generally absorbed the costs of providing the state delinquent obligation collection services.

10. Table 3 identifies the revenues generated by the appropriation over the last 10 fiscal years, as well as DOJ's expenditures from the appropriation over that same time period. As Table 3 indicates, the Department's appropriation has generated \$650,600 of program revenue since 2005-06. Further, the amount of revenue generated by the appropriation has fluctuated from year to year depending on the cases litigated by DOJ.

TABLE 3

Delinquent Obligation Collections Revenues and Expenditures 2005-06 through 2014-15 (as of March, 2015)

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures*</u>
2005-06	\$150,200	\$0
2006-07	27,900	0
2007-08	3,000	0
2008-09	21,100	0
2009-10	2,300	0
2010-11	3,100	0
2011-12	5,300	0
2012-13	405,000	0
2013-14	12,700	\$7,000
2014-15 (thru March, 2015)	<u>20,000</u>	<u>0**</u>
Total	\$650,600	\$7,000

*Prior to 2013-14, expenditure authority of this appropriation was \$0.

**It is expected that DOJ will expend its full expenditure authority of \$7,000 by the end of the 2014-15.

11. Given that the annual appropriation's current expenditure authority is \$7,000, the Department may not expend more than \$7,000 annually without legislative approval. Unexpended revenue is generally either: (a) retained in the appropriation; or (b) utilized to meet the Department's lapse requirement. The Department indicates that if the appropriation was converted from an annual appropriation to a continuing appropriation, it would utilize revenue received by the appropriation to support its staff and supplies costs related to delinquent obligation collections.

12. Due to the fluctuating revenue streams in the appropriation, and that revenues in the appropriation would be utilized to reimburse DOJ for its expenses related to collecting delinquent obligations, the Committee could approve the Governor's recommendation and convert the appropriation to a continuing appropriation [Alternative B1]. As a continuing appropriation, DOJ would not require legislative approval to expend amounts beyond what are appropriated. Rather, DOJ could spend any available cash balances in the appropriation.

13. On the other hand, the fluctuating amount of revenue received by the appropriation from year to year could lead the Committee to conclude that it should maintain the appropriation as an annual appropriation in order for the Legislature to preserve its oversight over agency spending. As an annual appropriation, the Department could not expend amounts beyond that appropriated. However, any necessary increase beyond the appropriated amount could be approved by the Committee acting under s. 16.515 of the statutes.

14. Further, it could be argued that since the Department has been able to absorb the cost of providing delinquent obligation collection services in recent years, DOJ does not require authority to expend additional amounts received by the delinquent obligation collection appropriation.

15. In the 2013-15 budget bill, the Governor recommended that DOJ's delinquent obligation collection PR annual appropriation be converted to a continuing appropriation. During deliberations of the 2013-15 budget, the Committee removed the Governor's recommendation. Instead, the Committee increased the expenditure authority of the appropriation from \$0 PR to \$7,000 PR annually in order to provide DOJ modest expenditure authority to address some of its expenses incurred in bankruptcy cases, but still permit the Legislature to exercise oversight of the utilization of larger recoveries deposited in the appropriation.

16. Given that the Legislature would maintain oversight over the appropriation's expenditures, and that DOJ has absorbed the costs of providing delinquent obligation collection services in recent years, the Committee could deny the Governor's recommendation and maintain the appropriation as an annual appropriation [Alternative B2].

17. Alternatively, in recognition of the revenue that the appropriation generates and that DOJ does incur costs related to delinquent collection obligations, the Committee could decide to increase the appropriation's expenditure authority from \$7,000 PR annually to \$8,900 PR annually. [Alternative B3]. The increase in expenditure authority would reflect the average amount of revenues generated over the last five completed fiscal years (not including 2012-13). [Note that revenues received in 2012-13 are not included in the five year average due to abnormally large amount generated from one case.]

ALTERNATIVES

A. Interagency and Intra-Agency Assistance Appropriation

1. Adopt the Governor's recommendation and convert the Legal Services interagency and intra-agency PR annual appropriation to a continuing appropriation.
2. Delete provision.
3. Increase the expenditure authority of the Legal Services interagency and intra-agency appropriation by \$88,600 PR annually and maintain the annual appropriation.

ALT A3	Change to Bill
PR	\$177,200

B. Delinquent Obligation Collections Appropriation

1. Adopt the Governor's recommendation and convert the Legal Services delinquent obligations collections PR annual appropriation to a continuing appropriation.
2. Delete provision.
3. Increase the expenditure authority of the delinquent obligations collections appropriation by \$1,900 PR annually and maintain the annual appropriation.

ALT B3	Change to Bill
PR	\$3,800

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May 7, 2015

Joint Committee on Finance

Paper #422

Law Enforcement Officer Involved Death Investigations (Justice)

CURRENT LAW

Effective April 25, 2014, 2013 Wisconsin Act 348 requires each law enforcement agency in the state to have a written policy regarding the investigation of an officer-involved death that involves a law enforcement officer. The written policy must require that an investigation into an officer-involved death (OID) be conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by a law enforcement agency that employs an officer involved in the OID. The law enforcement agency may conduct an internal investigation into the OID as long as the internal investigation does not interfere with the investigation conducted by the two independent investigators. Act 348 defines an OID as the death of an individual that results directly from an action or an omission of a law enforcement officer while the officer is on duty or while the officer is off duty but performing activities that are within the scope of his or her law enforcement duties.

The Department of Justice (DOJ), through its Division of Criminal Investigation (DCI), investigates crime that is statewide in nature, importance, or influence. The Division currently employs 91 special agents (including special agents, special agents-in-charge, and senior special agents) that are generally provided all of the same police powers as are conferred upon peace officers. Upon request, the Division will provide investigative assistance to local law enforcement to help solve serious crimes. The Division does not charge law enforcement agencies for its investigative services.

The Department's Law Enforcement Services drug law enforcement, crime laboratories, and genetic evidence activities PR annual appropriation receives funding from the crime laboratory and drug law enforcement surcharge as well as the DNA surcharge. The appropriation is authorized to expend monies for activities relating to drug law enforcement, drug law violation prosecution assistance, and activities of the state's crime laboratories.

The crime laboratory and drug law enforcement surcharge totals \$13, and is assessed if a

court imposes a sentence, places a person on probation, or imposes a forfeiture for most violations of state law or municipal or county ordinance. The DNA surcharge is imposed whenever a court imposes a sentence or places a person on probation, totaling \$250 for each felony conviction and \$200 for each misdemeanor conviction.

GOVERNOR

No provision.

DISCUSSION POINTS

1. Prior to the passage of Act 348, DOJ would, upon request, assist local law enforcement agencies investigate officer-involved deaths and non-fatal officer-involved incidents. Table 1 identifies the number of officer-involved death investigations and investigations into non-fatal officer-involved incidents initiated by DOJ from calendar year 2010 through calendar year 2013. The Department indicates that prior to Act 348, larger law enforcement agencies often investigated their own such incidents.

TABLE 1

Fatal and Non-Fatal Officer-Involved Incidents Investigated by DOJ from 2010-2013

<u>Calendar Year</u>	<u>Fatal</u>	<u>Non-Fatal</u>	<u>Total</u>
2010	3	1	4
2011	3	0	3
2012	6	2	8
2013	<u>7</u>	<u>4</u>	<u>11</u>
Total	19	7	26

2. With the passage of Act 348, law enforcement agencies must require that an investigation into an OID be conducted by at least two investigators, neither of whom is employed by a law enforcement agency that employs an officer involved in the OID. The Department indicates that, as a result of Act 348, DOJ has become the preferred resource for local law enforcement agencies requiring independent investigators to investigate OIDs. Further, in testimony provided to the Committee at the agency briefing held on March 2, 2015, the Attorney General indicated that, "Act 348 also created an issue for local law enforcement concerning how they would respond to an officer-involved incident involving serious injury, but not death. Chiefs of police and sheriffs have expressed that they will err on the side of caution and request Department assistance when they are uncertain whether the suspect will die or recover from the injury."

3. Table 2 identifies the number of fatal and non-fatal officer-involved incident

investigations, as of April 7, 2015, initiated by DOJ since the passage of Act 348. As Table 2 indicates, the Department has initiated 18 officer-involved incident investigations over the 11½ month period since the passage of Act 348. The 18 investigations represent a 63.6% increase over the 11 investigations initiated by DOJ during calendar year 2013.

TABLE 2

Fatal and Non-Fatal Officer-Involved Incidents Investigated by DOJ Since the Passage of Act 348

<u>Fatal</u>	<u>Non-Fatal</u>	<u>Total</u>
12	6	18

4. In conducting OID investigations, special agents are responsible for officer and witness interviews, crime scene processing, evidence collection, neighborhood canvassing, autopsy reviews, coordination with local law enforcement executives, coordination with interagency partners, investigative follow-up, report writing, law enforcement and prosecutorial briefings, and contacting the victim's family. As of April 7, 2015, DOJ special agents spent 8,131 hours conducting the 18 fatal and non-fatal officer-incident investigations initiated since the passage of Act 348. To the extent that some of these investigations are ongoing, it is expected that DOJ special agents will spend additional hours conducting these investigations.

5. Special agents employed by DOJ are generally assigned to specific investigative specialties including, but not limited to, major crimes (such as homicides or shootings), arson, narcotics, white collar crime, and Internet crimes against children. Typically, special agents assigned to major crimes lead OID investigations. When there is an overflow of OID and other major crime investigations in excess of what can be handled by major crime special agents, DOJ must redirect special agents from other investigative specialties to assist in OID investigations, leading to a delay in other investigations not handled by the major crimes unit.

6. In addition to investigative work, the Department indicates that it typically receives public records requests from victims' family, the public, and the media regarding the Department's investigations into officer-involved incidents. Between 2009 and May, 2014, (the implementation of Act 348) the Department received 50 public record requests relating to fatal and non-fatal officer-involved incident investigations. Since the passage of Act 348, DOJ has received 28 public records requests related to these investigations. According to the Department, the work related to each public records request is very time consuming. Specifically, the Department indicates:

"These requests require the careful review of reports, photographs, crime scene diagrams, audio tapes, video tapes and other multimedia prior to release. Like the investigations themselves, the process is generally labor-intensive and time consuming. Each request the Department receives is carefully considered following a methodical approach of documenting the request, assessing the scope, assigning priority and then scheduling the processing of the records. With the number of personnel at this Department currently assigned to public records request processing, the Department will be unable to take on additional work without impacting other critical operations."

7. In its 2015-17 budget request, the Department asked for \$352,600 PR in 2015-16, \$386,000 PR in 2016-17, and 5.0 PR positions annually to assist the Department with its workload regarding OID investigations and investigations into non-fatal officer-involved incidents. The 5.0 requested positions were comprised of 3.0 special agents for conducting investigations and 2.0 program and policy analysts for processing public records requests. The Department proposed utilizing program revenue from the crime laboratory and drug law enforcement (CLDLE) surcharge and the DNA surcharge to support its request. Further, in order to allow the Department to utilize program revenue from the surcharges, the Department requested that the drug law enforcement, crime laboratories, and genetic evidence activities appropriation be modified to support criminal investigation operations. The Department's request is not included in the Governor's recommendations.

8. Given that, since the passage of Act 348, the Department has been requested to conduct an increased number of fatal and non-fatal officer-involved incident investigations and process an increased number of public records requests, the Committee could approve the Department's request [Alternative 1].

9. Prior to 2013 Act 20, a court was required to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a violation of: (a) sexual assault; (b) first or second degree sexual assault of a child; (c) engaging in repeated acts of sexual assault of the same child; and (d) sexual assault of a child placed in substitute care. Further, courts were authorized, but not required, to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a felony conviction. Under 2013 Act 20, the DNA surcharge is assessed whenever the 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. The \$13 CLDLE surcharge is assessed if a court imposes a sentence, places a person on probation, or imposes a forfeiture for most violations of state law or municipal or county ordinance. Based on revenues collected through March, 2015, it is estimated that the state will collect \$13,189,900 PR from the CLDLE surcharge and DNA surcharge in 2014-15. Given the significant recent change to the scope of the DNA surcharge under 2013 Act 20, it is difficult to estimate future revenues from the surcharges for the 2015-17 biennium. However, given that it is projected that the surcharges will collect \$13,189,900 in 2014-15, it is estimated that similar amounts would be collected during the 2015-17 biennium.

10. The Department's budget request proposed utilizing revenue from the CLDLE surcharge and the DNA surcharge to support the requested five positions. Table 3 identifies the estimated fund condition of the CLDLE surcharge and the DNA surcharge under AB 21/SB 21.

TABLE 3

**Crime Laboratory and Drug Law Enforcement Surcharge and
DNA Surcharge Fund Condition Under AB 21/SB 21**

	<u>2015-16</u>	<u>2016-17</u>
Opening Balance	\$1,669,900	\$1,389,800
Revenue	\$13,189,900	\$13,189,900
<i>Obligations</i>		
Crime laboratories; DNA analysis	\$4,511,200	\$4,511,200
Drug law enforcement, crime laboratories, and genetic evidence activities	8,246,800	8,267,500
Crime laboratory equipment and supplies	558,100	558,100
District Attorney's DNA prosecutor	<u>153,900</u>	<u>153,900</u>
Total Obligations	\$13,470,000	\$13,490,700
Ending Balance	\$1,389,800	\$1,089,000

11. Table 3 would suggest that there is a structural imbalance in the fund for 2015-17. However, given a balance in excess of \$1 million in each fiscal year, the Committee could provide funding for the requested 5.0 positions.

12. Alternatively, the Committee could decide to provide a reduced level of funding and position authority as compared to what is requested by the Department. The 3.0 special agents requested by the Department would support its increased investigative workload, while the 2.0 requested program and policy analysts would support increased workload related to public records requests.

13. Given the nature of the work that would be performed by the special agents, one could argue that providing additional resources to support the requested special agents should be prioritized over providing additional resources to support the requested program and policy analysts. As a result, the Committee could provide DOJ with \$255,000 PR in 2015-16, \$267,700 PR in 2016-17, and 3.0 PR positions annually to support 3.0 special agents [Alternative 2a].

14. On the other hand, given the increased public demand for records relating to officer-involved incidents since the passage of Act 348, the Committee could provide DOJ resources to support 2.0 special agents and 1.0 program and policy analyst [Alternative 2b]. In order to provide the necessary funding to support these three positions, the Committee could provide DOJ \$220,300 PR in 2015-16, \$237,600 PR in 2016-17, and 3.0 PR positions annually.

15. Conversely, it could be argued that DOJ should not be provided any additional resources at this time. Act 348 has only been in effect for approximately one year's time. Therefore, it is difficult to demonstrate with a degree of certainty DOJ's future workload as a result of Act 348. Further, current law does not require DOJ to conduct all OID investigations. Such investigation

may be conducted by any qualified law enforcement agency under Act 348 provisions.

16. Further, DOJ is currently utilizing base resources to support the increase in fatal and non-fatal officer-involved incident investigations. The Department indicates that, "If additional resources are not provided, DCI [Division of Criminal Investigation] will continue to conduct Officer Involved Death / Shooting (OID / OIS) investigations with existing resources." Since DOJ is currently utilizing base resources to support the increase in these investigations, it could be argued that DOJ could continue to utilize base resources to support these investigations. It should be noted, however, that the Department argues that a continued utilization of base resources could lead to a detrimental delay in other criminal investigations conducted by DCI.

17. Given that there may be variability with regards to the number of fatal and non-fatal officer-involved incidents that DOJ will be asked to conduct in future years, and that DOJ is currently utilizing base resources to support the increase in these investigations, the Committee could decide to maintain current law and not provide DOJ additional resources at this time [Alternative 3].

18. Act 348 requires that the investigation of officer-involved deaths be conducted by at least two investigators, neither of whom is employed by a law enforcement agency employing an officer involved in the death. The law does not require, however, that non-fatal officer-involved incidents be investigated by independent investigators who are not employed by a law enforcement agency employing an officer involved in the death. As noted above, the Attorney General has stated that, "Chiefs of police and sheriffs have expressed that they will err on the side of caution and request Department assistance in cases of officer-involved shooting when they are uncertain whether the suspect will die or recover from the injury."

19. Table 1 indicates that, prior to the passage of Act 348, the Department initiated investigations into seven non-fatal officer involved incidents from 2010-2013. Further, as noted in Table 2, the Department has initiated investigations into six non-fatal officer-involved incidents since the passage of Act 348. The Department's special agents have spent 1,816.25 hours investigating these six non-fatal officer-involved incidents as of April 7, 2015. It could be argued that conducting investigations into non-fatal officer-involved incidents consumes time that special agents could utilize investigating other criminal investigations or officer-involved deaths.

20. Since Act 348 does not require that independent investigators conduct investigations into non-fatal officer-involved incidents, and that conducting non-fatal officer-involved incidents takes time away from special agents that could be utilized to conduct other investigations, the Committee could decide to modify current law and add statutory language prohibiting DOJ from investigating non-fatal officer-involved incidents [Alternative 4].

21. A contrary argument may be made however, that adding such statutory language would be counter to the idea that DOJ exists to provide assistance to local law enforcement agencies. Further, current law requires DOJ to investigate crimes that are of statewide nature, importance, or influence. Given the relationship between law enforcement officials and the general public, it could be argued that non-fatal officer-involved incidents are of statewide importance and influence.

22. To this point, DOJ states the following:

"DCI has the authority to refuse to assist in non-fatal encounters and to tell the involved agency to investigate the incident themselves. However, refusing to assist would be completely contrary to the position of DCI that we assist agencies when requested to do so. These incidents are clearly of state-wide importance and nature and clearly fit into the statutory authority of DCI."

23. Finally, adding statutory language that would prohibit DOJ from investigating non-fatal officer involved incidents could create confusion in instances in which an individual is critically injured as a result of an officer-involved incident and it is unclear as to whether the injured individual will survive. Further, requiring DOJ to delay an officer-involved incident investigation until the individual perishes could hamper the effectiveness of the investigation.

ALTERNATIVES

1. Approve the Department of Justice's agency budget request and provide DOJ with \$352,600 PR in 2015-16, \$386,000 PR in 2016-17, and 5.0 PR positions annually to support 3.0 special agents and 2.0 program and policy analysts to support workload related to officer-involved death investigations and investigations into non-fatal officer-involved incidents. Program revenue for the positions would be supported by the crime laboratory and drug law enforcement surcharge and the DNA surcharge. In addition, modify current statutory language associated with the drug law enforcement, crime laboratories, and genetic evidence activities PR appropriation to authorize the appropriation to support criminal investigative operations.

ALT 1	Change to Bill	
	Funding	Positions
PR	\$738,600	5.00

2. Provide a reduced level of funding and position authority to DOJ for officer-involved incident investigations in either of following ways. For either Alternative 2a or 2b, current statutory language associated with DOJ's PR appropriation would be modified to authorize the appropriation to support criminal investigative operations.

a. Provide \$255,000 PR in 2015-16, \$267,700 PR in 2016-17, and 3.0 PR positions annually to support 3.0 special agent positions.

ALT 2a	Change to Bill	
	Funding	Positions
PR	\$522,700	3.00

b. Provide \$220,300 PR in 2015-16, \$237,600 PR in 2016-17, and 3.0 PR positions

annually to support 2.0 special agent positions and 1.0 program and policy analyst position.

ALT 2b	Change to Bill	
	Funding	Positions
PR	\$457,900	3.00

3. Take no action.

4. Modify current law related to officer-involved death investigations to prohibit DOJ from conducting non-fatal officer-involved incident investigations. *This alternative may be chosen in addition to Alternative 3.*

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Joint Committee on Finance

Paper #423

Crime Prevention Funding Board

[LFB 2015-17 Budget Summary: Page 188, #2]

CURRENT LAW

Under current law, a variety of surcharges may be assessed with the conviction of either a misdemeanor or a felony. Current law provides an order for which these surcharges, fines, and other court costs should be paid.

GOVERNOR

Crime Prevention Funding Board Surcharge. Create the crime prevention funding board surcharge. Require a court to impose a crime prevention funding board surcharge whenever the court imposes a sentence or places a person on probation. The surcharge would total \$20 for each misdemeanor or felony count on which conviction occurred.

Provide that prior to paying the crime prevention funding board surcharge, an individual must first pay the following surcharges, in full, if payment of these surcharges is required by the court: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge.

Further, the new surcharge must be paid, in full, ahead of the following surcharges: (a) the crime laboratory and drug law enforcement surcharge; (b) the DNA analysis surcharge; (c) the child pornography surcharge; (d) the drug abuse program improvement surcharge; (e) the drug offender diversion surcharge; (f) the driver improvement surcharge; (g) the truck driver education surcharge; (h) the domestic abuse surcharge; (i) the global positioning system tracking surcharge; (j) the consumer protection surcharge; (k) various Department of Natural Resources and environmental surcharges; (l) the weapons surcharge; (m) the uninsured employer surcharge; (n) the supplemental food enforcement surcharge; (o) the ignition interlock surcharge; and (p)

payment of the fine and other costs and fees imposed.

Provide that, after the clerk of the court determines the amount owed under surcharge, the clerk must collect the surcharge payments and transmit the collected amounts to the county treasurer. Require that the county treasurer: (a) deposit all monies received from the crime prevention funding board surcharge into a crime prevention fund; and (b) make grant payments with the amounts collected from the surcharge, as directed by the Crime Prevention Funding Board.

Crime Prevention Funding Board. Create a crime prevention funding board in each county in which the county treasurer receives money from the crime prevention funding board surcharge. Authorize the Board to solicit applications for grants and vote on how to direct the county treasurer to distribute grants to applicants from monies in the crime prevention fund. Provide that the Board may direct the county treasurer to distribute grants to any of the following entities, in amounts determined by the Board: (a) one or more private nonprofit organization within the county with a primary purpose of preventing crime, providing a funding source for crime prevention programs, encouraging the public to report a crime, or assisting law enforcement agencies in the apprehension of criminal offenders; and (b) a law enforcement agency within the county that has a crime prevention fund, if the contribution is used for crime prevention purposes. Require that the Board direct not less than 50% of the grant payments from the crime prevention fund to one or more organization described under (a).

Require that a county Crime Prevention Funding Board consist of the following members: (a) the presiding judge of the circuit court, or his or her designee; (b) the district attorney, or his or her designee; (c) the sheriff, or his or her designee; (d) one of the following county officials, or his or her designee: (1) a county executive; (2) the county administrator, if the county does not have a county executive; or (3) the chairperson of the county board of supervisors, if the county does not have a county executive or a county administrator; (e) the chief elected official of the largest municipality in the county, as determined by population, or his or her designee; (f) a person chosen by a majority vote of the sheriff and all the chiefs of police departments that are located wholly or partly within the county; and (g) a person chosen by the Public Defender's office that handles cases in the county.

Provide that members of the Board must meet, and its members may receive no compensation other than reimbursement for actual and reasonable expenses incurred in the performance of their duties on the Board. Members must serve for the terms that are determined by the Board. Provide that, upon the creation of a Board, the initial members must declare that they are serving on the Board, or appoint their designees, not later than the first day of the 4th month beginning after the Board is created.

Reporting Requirements of the Crime Prevention Funding Board and Grant Recipients. Require that the Crime Prevention Funding Board annually submit a report on its activities to the following: (a) the clerk of the court for the county that distributed the funds; (b) the county board; and (c) the legislative bodies of each municipality that is located wholly or partly within the county. The report must contain the following information for the year to which the report relates: (a) the name and address of each entity that received a grant, including contact

information for the leadership of the entity; and (b) a full accounting of all funds disbursed by the county treasurer at the direction of the Board, including the amount of the funds disbursed, the dates of the disbursement, and the purpose for which the grant was made.

Require that each recipient of a grant awarded from the crime prevention fund annually submit a report on its activities to the following: (a) the Crime Prevention Funding Board; (b) the clerk of the court for the county that distributed the funds; (c) the county board, and (d) the legislative bodies of each municipality that is located wholly or partly within the county. The report must contain the following information for the year to which the report relates: (a) the name and address of the grant recipient; (b) the name, address, and title of each member of the governing body of the grant recipient; (c) the purposes for which the grant award was spent; (d) a detailed accounting of all receipts and expenditures of the grant recipient that relate to the grant award; and (e) the balance of any remaining funds.

DISCUSSION POINTS

1. On April 13, 2015, the Secretary of the Department of Administration submitted an errata report for AB 21/SB 21. In the report, the administration indicates that the crime prevention funding board (CPFEB) surcharge is listed in the incorrect location in the order of precedence for surcharge payments. Under the bill, the CPFEB surcharge would be paid after an individual pays the following surcharges, if necessary: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge. The CPFEB surcharge would be required to be paid, in full, before all other surcharges, fines, fees, and court costs. The errata indicates that the bill should be modified to require that the CPFEB surcharge would be paid after payment of all other surcharges imposed on an individual, but before payment of the fine, fees, and other court costs assessed on the individual.

2. Under the bill, a court would be required to impose a CPFEB surcharge whenever the court imposes a sentence or places a person on probation. The surcharge would total \$20 for each misdemeanor and felony count on which conviction occurs. None of the revenues generated from the CPFEB surcharge would be collected by the state. Rather, revenues collected from the CPFEB surcharge would remain with the counties. After the clerk of the court determines the amount owed under the surcharge, the clerk would be required to collect the surcharge payments and transmit the collected amounts to the county treasurer.

3. While current law generally requires that surcharges be paid within 60 days, the time limit may be extended if the court orders payments of restitution. If an individual is unable to pay the total amount assessed in 60 days, the courts may authorize a payment plan to allow an individual additional time to pay all of the costs assessed on the individual.

4. Once CPFEB surcharge revenues are received, the county treasurer would be required to either: (a) deposit the revenues into a crime prevention fund; or (b) make grant payments with the amounts collected from the CPFEB surcharge, as directed by the crime prevention funding board. County crime prevention funding boards, as created under AB 21/SB 21, would exist in each county that receives money from the CPFEB surcharge. Boards would have the authority to solicit grant applications and direct the county treasurer to distribute grants supported by monies in the crime

prevention fund. Under the bill, Boards may direct the county treasurer to distribute grants to any of the following entities, in amounts determined by the Board: (a) one or more private nonprofit organization within the county with a primary purpose of preventing crime, providing a funding source for crime prevention programs, encouraging the public to report a crime, or assisting law enforcement agencies in the apprehension of criminal offenders; or (b) a law enforcement agency within the county, if the contribution is used for crime prevention purposes. The Boards would be required to direct at least 50% of the grant payments from the crime prevention fund to one or more organizations described under (a).

5. The bill establishes reporting requirements for both the Crime Prevention Funding Boards and the entities to which the Boards would award grants. Specifically, Boards would be required to annually report on their activities to the clerk of the court, the county board, and the legislative bodies of each municipality that is located wholly or partly within the county. Further, grant recipients must report on the usage of grant awards to the following: (a) the Board that awarded the grant; (b) the clerk of the court; (c) the county board; and (d) the legislative bodies of each municipality that is located wholly or partly within the county.

6. Table 1 identifies overall court collections from calendar years 2010 through 2014. As the table below indicates, overall court collections have decreased in recent years. From 2010 to 2014, the annual amount collected decreased by 17.4%. A 2012 Legislative Audit Bureau report on crime victim and witness surcharge revenue collections identified the following factors that could limit court revenue collections: (a) trends in the number of criminal charges and convictions; (b) the extent to which assessed surcharges are unpaid; and (c) statewide economic trends.

TABLE 1

Overall Court Collections, Calendar Years 2010 Thru 2014

<u>Calendar Year</u>	<u>State Share*</u>	<u>County Share</u>	<u>Total**</u>
2010	\$124,235,900	\$39,792,100	\$164,028,000
2011	114,712,800	36,387,200	151,100,000
2012	114,942,300	36,545,600	151,487,900
2013	114,189,200	34,883,700	149,072,900
2014	104,815,200	30,643,200	135,458,400

*State share includes amounts utilized to support the administration of the Consolidated Court Automation Program (CCAP).

**Total collections include amounts collected from the following: (a) surcharges; (b) fees; (c) assessments; and (d) fines, forfeitures, and penalties for violations of state law and municipal and county ordinances.

7. As indicated above, the CPFBS surcharge would total \$20 for each misdemeanor or felony count on which conviction occurs. The administration did not provide an estimate of revenues that could be generated from the CPFBS surcharge. Appendix I, however, provides the average number of felony and misdemeanor cases disposed of from calendar year 2012 through calendar year 2014, by county, not including cases that were dismissed before trial. With regards to

the data provided in Appendix I, the following should be noted: (a) at this time, aggregate data does not exist quantifying the number of convictions that occurred from 2012 through 2014, however the Courts indicate that the total number of cases disposed less cases that were dismissed before trial provides a close estimate to the number of convictions reached; (b) aggregate data does not exist as to the number of counts on which conviction occur; and (c) potential revenue amounts are based on data from 2012 through 2014. Any variation in the number of offenses or payment patterns in future years would affect revenue.

8. Given that the creation of a new CPFBS surcharge could generate additional revenue for individual counties for crime prevention purposes, the Committee could approve of the Governor's recommendation to create a new CPFBS surcharge and county crime prevention funding boards [Alternative 1]. Under this alternative, the CPFBS surcharge would be paid after the penalty surcharge, the jail surcharge, and the crime victim and witness surcharge. The surcharge would be paid before all other surcharges, fines, fees, and court costs. [This alternative reflects the Governor's recommendation under AB 21/SB 21, as introduced.]

9. Under the bill, the newly created CPFBS surcharge would be paid before several other current law surcharges that support a variety of state programs. Appendix II identifies: (a) the order of surcharges that could be imposed if an individual is sentenced to pay a fine and is placed on probation, as introduced under AB 21/SB 21; (b) the instances in which the surcharge would be assessed; and (c) the amount of the surcharge. Requiring that the CPFBS surcharge be paid, in full, prior to the payment of other surcharges, fines, and other court fees could delay the amounts collected from those other assessments, depending on the individual's ability to pay. Typically, the courts will authorize payment plans for individuals unable to pay all of the assessed costs within 60 days. The Courts indicate that payment plans may differ on a case-by-case basis.

10. Since the introduction of AB 21/SB 21, the administration submitted an errata report that included a recommendation to modify the CPFBS surcharge. In the errata, the administration indicates that, under the bill, the CPFBS surcharge is listed in the incorrect location in the order of precedence for surcharge payments. To correct this issue, the administration recommends that the CPFBS surcharge be moved down in the order of precedence of surcharge payments. Specifically, the administration recommends that the CPFBS surcharge should be paid, in full, after the individual pays all other assessed surcharges. Under the errata, the CPFBS surcharge would be paid before any assessed fines, fees, and other court costs. Table 2 identifies the order of surcharges that could be imposed with the modification recommended in the errata.

TABLE 2

Order of Surcharges, Fines, and Other Court Costs under Errata

Surcharge

Penalty surcharge
Jail surcharge
Crime victim and witness surcharge
Crime laboratory and drug law enforcement surcharge
DNA analysis surcharge
Child pornography surcharge
Drug abuse program improvement surcharge
Drug offender diversion surcharge
Driver improvement surcharge
Truck driver education surcharge
Domestic abuse surcharge
Global positioning system tracking surcharge
Consumer protection surcharge
Various Department of Natural Resources and environmental surcharges
Weapons surcharge
Uninsured employer surcharge
Supplemental food enforcement surcharge
Ignition interlock surcharge
Crime prevention funding board surcharge
Other assessed fines and court costs

11. Given that the administration issued an errata indicating that the CPFEB surcharge should be paid after existing surcharges, and that requiring the CPFEB surcharge to be paid after existing surcharges may reduce delays in amounts collected by those existing surcharges, the Committee could modify the bill as recommended in the administration's errata report [Alternative 2]. Under this alternative, the CPFEB surcharge would be paid after all other assessed surcharges, but before any assessed fines, fees, and other court costs.

12. Under current law, an individual charged with either a felony or a misdemeanor is assessed several fees and surcharges in addition to the fine. For example, Table 3 illustrates the surcharges, fees, and fines that an individual is currently assessed with a conviction of vagrancy, a Class C misdemeanor (the lowest class of misdemeanor). In reviewing Table 3, the following should be noted: (a) the amount an individual is assessed is partially dependent on the initial fine imposed; (b) the amount assessed could be greater than the amounts listed in the table depending on the violation; and (c) depending on the violation, additional fees and surcharges not identified in Table 3 may be assessed. Given the amount that is currently assessed on an individual convicted of a misdemeanor or felony, one might question the need for an additional surcharge.

TABLE 3

Fines, Fees, and Surcharges Assessed with a Charge of Vagrancy

<u>Violation</u>	<u>Statute</u>	<u>Fine</u>	<u>Penalty</u>	<u>Jail</u>	<u>Surcharge*</u>			<u>Clerk Fee</u>	<u>Total</u>
					<u>Victim and Witness**</u>	<u>Crime Laboratory and Drug</u>	<u>DNA Analysis</u>		
Vagrancy	947.02	Up to \$500	Up to \$130	\$10	\$67	\$13	\$200	\$163	Up to \$1,083

*Depending on the violation, additional surcharges may be assessed.

**Total amount subject to the number of counts on which a conviction occurs.

13. In considering revenues that may be generated from the CPFBS surcharge, an individual's ability to pay all of the imposed costs in a timely manner may decrease revenue that the surcharge could be expected to generate. As indicated above, an individual must pay several different fines, fees, and surcharges when convicted of a misdemeanor or felony. Further, as a result of the multiple fines, fees, and surcharges imposed, the courts have indicated difficulty in collecting the amounts owed. In regards to the creation of a new surcharge, the Director of State Courts Office has indicated: "The collection process in most counties is already strained from efforts to collect the statutorily-mandated restitution, fines, forfeitures and surcharges...the continued proliferation of surcharges jeopardizes access to the court system and significantly increases the amount of money a violator must pay."

14. Furthermore, concerns have been raised with regards to the relationship between the crime prevention funding boards and the assessment of the CPFBS surcharge. Under the bill, the district attorney, or his or her designee, and the presiding judge of the circuit court, or his or her designee, would be members of the Crime Board. In her testimony to the Committee on March 2, 2015, the Chief Justice indicated that, "The perception - whether real or not - is that the [CPFBS] surcharge and the board may somehow influence criminal charging decisions or decisions in criminal cases."

15. Finally, even if the CPFBS surcharge is paid after all of the other surcharges that are assessed, the creation of a new surcharge could potentially delay revenue generated from existing surcharges. As indicated above, if an individual is unable to pay the total amount imposed within 60 days, the courts will typically authorize the individual to enter into a payment plan to pay any additional amounts owed. If the total amount owed is increased, it may take the individual a greater amount of time to pay all of their assessments.

16. For the reasons noted above, the Committee could delete the Governor's recommendation to create a CPFBS surcharge and county crime prevention funding boards [Alternative 3].

17. It should be noted that during deliberations of the 2013-15 budget bill, the Committee proposed creating a CPFBS surcharge and county crime prevention funding boards in a similar

manner to what is proposed under AB 21/SB 21. [Under the 2013-15 bill, the CPFBS surcharge would have been paid after the individual paid the global positioning system tracking surcharge, if necessary.] The Governor vetoed the Committee's proposal from the 2013-15 budget bill. In vetoing the provision, the Governor indicated the following:

"I am vetoing these sections because I object to the creation of an additional surcharge and an additional board, which may have no demonstrated effectiveness. There are already numerous surcharges on felony and misdemeanor convictions, and adding an additional surcharge will detract surcharge revenue from many other proven and worthwhile crime victim services and law enforcement programs."

18. With regards to why the Governor recommends the creation of a CPFBS surcharge and the county Crime Prevention Funding Boards in this biennium, the administration indicates the following:

"... Our office believes that this proposal has the potential to enhance efforts to reduce crime. This proposal would be a tool the state can provide to assist local communities in their crime prevention efforts as well as enhance the resources they have at their disposal. Upon review, post-enactment of 2013 Act 20 [the 2013-15 biennial budget act], it was determined that the impact on other state programs would likely be manageable."

19. Lastly, the creation of crime prevention funding boards and a CPFBS surcharge was proposed under 2013 AB 74/SB 100. Assembly bill 74 passed in the Assembly but not the Senate. Senate Bill 100 failed to pass in the Senate pursuant to Senate Joint Resolution 1.

ALTERNATIVES

1. Approve the Governor's recommendation to create a new \$20 crime prevention funding board surcharge and county crime prevention funding boards. This alternative would require that the CPFBS surcharge be paid, in full, after an individual pays the following surcharges, if necessary: (a) the penalty surcharge; (b) the jail surcharge; and (c) the crime victim and witness surcharge. The CPFBS surcharge would be required to be paid before all other surcharges, fines, fees, and court costs.

2. Create a new \$20 CPFBS surcharge and county crime prevention boards. Modify the bill to require that the CPFBS surcharge be paid after all other surcharges imposed on an individual, but before payment of the fine, fees, and other court costs assessed on the individual.

3. Delete provision.

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Appendix

APPENDIX I

Average Felony and Misdemeanor Dispositions by County, Calendar Years 2012-2014

<u>County</u>	<u>Felony Dispositions*</u>	<u>Misdemeanor Dispositions*</u>	<u>Total Dispositions</u>	<u>Potential CPF Surcharge Revenue</u>
Adams	130	366	496	\$9,900
Ashland	137	331	467	9,300
Barron	317	623	941	18,800
Bayfield	78	207	284	5,700
Brown	1,403	2,788	4,191	83,800
Buffalo	66	179	245	4,900
Burnett	100	342	442	8,800
Calumet	148	293	440	8,800
Chippewa	349	686	1,034	20,700
Clark	139	366	506	10,100
Columbia	433	903	1,336	26,700
Crawford	47	70	117	2,300
Dane	1,887	3,482	5,369	107,400
Dodge	318	689	1,008	20,200
Door	142	348	490	9,800
Douglas	364	597	961	19,200
Dunn	236	655	891	17,800
Eau Claire	692	1,572	2,264	45,300
Florence	23	80	103	2,100
Fond du Lac	510	1,337	1,848	37,000
Forest	146	273	419	8,400
Grant	261	549	810	16,200
Green	125	218	342	6,800
Green Lake	99	258	356	7,100
Iowa	111	351	463	9,300
Iron	29	60	89	1,800
Jackson	141	375	516	10,300
Jefferson	394	858	1,252	25,000
Juneau	146	312	458	9,200
Kenosha	1,093	2,091	3,183	63,700
Kewaunee	64	169	233	4,700
La Crosse	614	1,614	2,228	44,600
Lafayette	49	92	140	2,800
Langlade	175	289	465	9,300
Lincoln	195	291	486	9,700

<u>County</u>	<u>Felony Dispositions*</u>	<u>Misdemeanor Dispositions*</u>	<u>Total Dispositions</u>	<u>Potential CPFBSurcharge Revenue</u>
Manitowoc	303	778	1,081	\$21,600
Marathon	802	1,911	2,713	54,300
Marinette	188	350	538	10,800
Marquette	88	274	362	7,200
Menominee	5	27	32	600
Milwaukee	4,733	5,554	10,287	205,700
Monroe	394	765	1,159	23,200
Oconto	149	413	561	11,200
Oneida	196	502	697	13,900
Outagamie	775	2,152	2,928	58,600
Ozaukee	282	706	988	19,800
Pepin	26	61	87	1,700
Pierce	138	240	378	7,600
Polk	267	483	750	15,000
Portage	389	614	1,003	20,100
Price	54	119	173	3,500
Racine	1,253	3,535	4,788	95,800
Richland	71	195	266	5,300
Rock	883	1,819	2,702	54,000
Rusk	76	184	260	5,200
Sauk	340	1,120	1,461	29,200
Sawyer	166	434	600	12,000
Shawano	263	710	973	19,500
Sheboygan	579	1,275	1,854	37,100
St Croix	276	715	991	19,800
Taylor	82	153	235	4,700
Trempealeau	94	234	328	6,600
Vernon	106	173	279	5,600
Vilas	154	447	601	12,000
Walworth	481	888	1,369	27,400
Washburn	90	256	346	6,900
Washington	428	1,132	1,560	31,200
Waukesha	1,175	3,024	4,200	84,000
Waupaca	224	604	828	16,600
Waushara	155	466	621	12,400
Winnebago	722	2,501	3,223	64,500
Wood	452	1,290	1,742	34,800
Total	28,024	59,819	87,843	\$1,756,900

*Note that the number of felony and misdemeanor dispositions excludes cases that were dismissed before trial. Dispositions do include, however, cases which may not have led to a conviction.

APPENDIX II

Order of Surcharges, Fines, and Other Court Costs under AB 21/SB 21

<u>Surcharge, In Order of Precedence*</u>	<u>Instance of Surcharge</u>	<u>Amount</u>
Penalty surcharge	Violation of state law or municipal or county ordinance.	26% of the imposed fine or forfeiture
Jail surcharge	Violation of state law or municipal or county ordinance.	\$10, or 1% of the imposed fine or forfeiture, whichever is greater
Crime victim and witness surcharge	If a court imposes a sentence or places a person on probation.	\$92 for each felony count and \$67 for each misdemeanor count on which conviction occurs
Crime prevention funding board surcharge	If a court imposes a sentence or places a person on probation.	\$20 for each felony count and misdemeanor count on which conviction occurs
Crime laboratory and drug law enforcement surcharge	If a court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law or municipal or county ordinance.	\$13
DNA analysis surcharge	If a court imposes a sentence or places a person on probation.	\$250 for each felony conviction and \$200 for each misdemeanor conviction
Child pornography surcharge	If a court imposes a sentence or places a person on probation for sexual exploitation of a child or possession of child pornography.	\$500 for each image or copy of an image associated with the crime
Drug abuse program improvement surcharge	A violation of the state's Uniform Controlled Substances Act.	75% of the imposed fine and penalty surcharge
Drug offender diversion surcharge	If a court imposes a sentence or places a person on probation for a crime against property.	\$10 for each conviction
Driver improvement surcharge	If a court imposes a fine or forfeiture for violations relating to operating a vehicle under the influence of alcohol or other drugs.	\$435
Truck driver education surcharge	If a court imposes a fine or forfeiture on an individual operating a commercial vehicle for violating the rules of the road (Chapter 346 of the statutes); vehicle size, weight, or load requirements; or equipment for vehicle requirements.	\$8

<u>Surcharge, In Order of Precedence*</u>	<u>Instance of Surcharge</u>	<u>Amount</u>
Domestic abuse surcharge	If a court imposes a sentence or places an adult person on probation for a violation of a domestic abuse related restraining order or injunction; or a conviction of certain offenses that the court finds to involve an act against the following: (a) a current or former spouse; (b) an adult with whom the convict resided; or (c) an adult with whom the convict has created a child.	\$100 for each offense
Global positioning system tracking surcharge	Violation of a restraining order or injunction relating to domestic abuse or harassment.	\$200 for each offense
Consumer protection surcharge	Violations of laws related to marketing and trade practices as well as weights and measures.	25% of the imposed fine or forfeiture
Various Department of Natural Resources, and environmental surcharges	Varies depending on the surcharge.	Varies depending of the surcharge and the offense.
Weapons surcharge	Violation of laws regarding the safe use and transportation of firearms and bows.	75% of the imposed fine or forfeiture
Uninsured employer surcharge	Violations of certain laws regarding worker's compensation.	75% of the imposed fine or forfeiture
Supplemental food enforcement surcharge	Committing a practice prohibited under the state's supplemental food program for women, infants, and children.	50% of the imposed fine, forfeiture, or recoupment
Ignition interlock surcharge	Operating a vehicle under the influence of an intoxicant, or improperly refusing to submit to a test for intoxication when suspected of operating a vehicle under the influence of an intoxicant.	\$50
Other assessed fines, fees, and court costs	Varies depending on the violation.	Varies depending on the violation

*Generally, these surcharges are subject to exceptions.

JUSTICE

LFB Summary Items for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Standard Budget Adjustments
2	Minor Transfers Within Appropriations
3	Position Transfers for the TAD Program
6	Position Realignment
7	Expenditure Authority Reestimates
14	Transfer of Funds to District Attorneys for DNA Evidence Prosecutor
18	Lapse Requirement

LFB Summary Item Addressed in a Previous Paper

<u>Item #</u>	<u>Title</u>
13	Transfer State Prosecutors Office to Justice (Paper #263)

