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August 2012**

# **Crime Victim and Witness Assistance Surcharge Revenue**

STATE OF WISCONSIN



Legislative Audit Bureau ■



# **Crime Victim and Witness Assistance Surcharge Revenue**

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Joe Chrisman  
State Auditor

August 8, 2012

Senator Kathleen Vinehout and  
Representative Samantha Kerkman, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Vinehout and Representative Kerkman:

We have completed our review of crime victim and witness assistance surcharge revenue, as requested by the Joint Legislative Audit Committee. Statutes require circuit courts to assess a \$92 surcharge for each felony conviction and a \$67 surcharge for each misdemeanor conviction. Circuit courts collect most surcharge revenue, which is deposited into two Department of Justice (DOJ) appropriations that fund two crime victim services programs and a sexual assault victim services grant program.

Questions have been raised regarding the reasons surcharge revenue declined from \$5.9 million in fiscal year (FY) 2008-09 to \$5.7 million in FY 2010-11, despite a \$7 increase in the surcharge that began in FY 2009-10. From FY 2008-09 through FY 2010-11, the number of criminal charges filed that could result in assessed surcharges declined by 13.6 percent, and the number of convictions declined by 12.4 percent. Judges have the discretion to reduce the surcharge, but the available data indicate that they seldom did so in recent years. However, individuals have not made any payments on \$12.7 million in surcharges that were assessed from FY 2006-07 through FY 2010-11.

We found some surcharge revenue was not appropriately deposited into the two DOJ appropriations. As a result, the sexual assault victim services grant program received an estimated \$204,000 less than was statutorily required in recent years, and that amount was instead provided to the two crime victim services programs. Other errors in allocating revenue from surcharges assessed in prior years continue to occur, which will result in the sexual assault victim services grant program receiving an undetermined amount of additional funding in the future. Because these errors are related only to the allocation of surcharge revenue, they do not affect the overall amount of surcharge revenue collected or explain the decline in surcharge revenue.

We appreciate the cooperation extended to us by the state agencies involved with this review, as well as by county clerk of court offices and district attorney offices. DOJ's response follows the appendix.

Respectfully submitted,

Joe Chrisman  
State Auditor

JC/DS/ss



## **Crime Victim and Witness Assistance Surcharge Revenue**

When a circuit court imposes a sentence on an individual convicted of a crime, s. 973.045, Wis. Stats., requires it to assess a crime victim and witness assistance surcharge that is currently \$92 for each felony conviction and \$67 for each misdemeanor conviction. The surcharge, which was created in 1983, is also assessed if a felony or misdemeanor charge is subsequently amended to a civil offense that results in a conviction. The assessed amount for each civil offense conviction is either \$92 or \$67, depending on the original charge. The clerk of court office enters each statutory citation under which an individual has been convicted into the Wisconsin court system's Consolidated Court Automation Program (CCAP), which then automatically calculates all surcharge amounts owed by the individual, subsequently records any amounts paid, and indicates the amounts outstanding. Surcharge revenue collected by the circuit court is transmitted to the county treasurer, who submits the revenue to the Department of Administration (DOA).

Statutes require DOA to deposit the surcharge revenue into two appropriations administered by the Department of Justice (DOJ): one appropriation funds two crime victim services programs, while the other appropriation funds the sexual assault victim services grant program. Statutes stipulate how revenue from each assessed surcharge is to be divided among these programs. Currently:

- the first \$65 paid on a surcharge assessed for a felony conviction and the first \$40 paid on a surcharge assessed for a misdemeanor conviction fund the two crime victim services programs;
- the next \$20 paid on either a felony or misdemeanor surcharge funds the sexual assault victim services grant program; and
- the final \$7 paid on either a felony or misdemeanor surcharge funds the two crime victim services programs.

In addition to circuit courts, the departments of Corrections (DOC) and Health Services (DHS) collect surcharge revenue. If an individual has not fully paid an assessed surcharge and is incarcerated or on probation, parole, or extended supervision, DOC collects the amount owed and submits it to DOJ for deposit into the two appropriations. If an individual has not fully paid an assessed surcharge and has been sentenced to the Mendota Mental Health Institute or the Wisconsin Resource Center, DHS collects the amount owed and submits it to DOJ for deposit into the two appropriations.

Questions have been raised regarding the reasons for the recent decline in surcharge revenue, despite a \$7 increase in the surcharge that began in fiscal year (FY) 2009-10. Therefore, at the request of the Joint Legislative Audit Committee, we:

- determined the amount of surcharge revenue collected from FY 2006-07 through FY 2010-11;

- analyzed available information on criminal charges filed, criminal convictions, and surcharge payments from FY 2006-07 through FY 2010-11; and
- contacted 11 clerk of court offices (in Chippewa, Crawford, Dane, Eau Claire, Jefferson, Milwaukee, Oconto, Richland, Sheboygan, Washington, and Waukesha counties), 5 district attorney offices (in Chippewa, Milwaukee, Richland, Sheboygan, and Waukesha counties), and 2 DOC probation departments (in Dane and La Crosse counties) to obtain additional information on the decline in surcharge revenue.

## **Programs Funded by Surcharge Revenue**

The two crime victim services programs funded by surcharge revenue are the crime victim compensation program and the crime victim and witness assistance services program. Under the crime victim compensation program, DOJ reimburses victims and dependents of deceased victims for the costs of crime-related expenses, such as medical and mental health services, lost wages, and burial expenses. The amount of surcharge revenue appropriated to this program, which is determined by the biennial budget, increased from \$488,100 in FY 2006-07 to \$997,900 in FY 2010-11. In addition to surcharge revenue, this program is funded by general purpose revenue (GPR), federal grants, and restitution from individuals convicted of crimes.

Under the crime victim and witness assistance services program, DOJ reimburses counties that provide all of the following services to crime victims and witnesses:

- notification of court appearances and the progress of cases;
- victim compensation and social services referrals;
- transportation services related to investigating and prosecuting cases;
- assistance in providing courts with information on the economic, physical, and psychological effects of felonies upon victims;
- employer intercession, expedited return of property, protection, and family support; and
- access to facilities where victims and witnesses may wait while attending court.

Counties can be reimbursed for the cost of staff salaries and fringe benefits, travel, equipment, and certain other expenses associated with providing crime victim and witness assistance services. In addition to surcharge revenue, this program is funded by GPR and revenue from other surcharges, and occasionally by federal grants. The annual amount of program funding has been less than two-thirds of the total amount that counties have requested since at least FY 2001-02. As a result, DOJ has awarded available revenue to counties proportionally, based on each county's request. Counties' reimbursement requests increased from \$9.8 million in FY 2006-07, when they were reimbursed for 51.5 percent of their costs, to \$11.1 million in FY 2010-11, when they were reimbursed for 60.6 percent of their costs.



Under the sexual assault victim services grant program, which is funded solely by surcharge revenue, DOJ awards grants on a calendar year basis to nonprofit organizations and local public agencies to fund 24-hour crisis response services, personal advocacy services, information and referral services, and support groups for sexual assault victims. DOJ is statutorily authorized to carry over unused surcharge revenue for this program from one year to the next. Although newly collected surcharge revenue for this program declined from FY 2007-08 through FY 2010-11, DOJ used carry-over funds to increase the amount of grants it awarded during this four-year period. However, all carry-over revenue has now been spent, and newly collected surcharge revenue continues to decline. As a result, total grant awards declined from \$2.1 million in 2011 to \$1.5 million in 2012, or by 28.6 percent.

A determination of how DOJ and other organizations spent surcharge revenue was outside the scope of this audit.

## Surcharge Revenue

As shown in Table 1, the statutorily stipulated surcharge amount has increased over time for felony and misdemeanor convictions. In FY 1993-94, the surcharge amount increased by \$20 to fund the newly created sexual assault victim services grant program. The portion of the surcharge amount that is statutorily directed to this program has remained \$20 since that time. To provide more funding for the two crime victim services programs, the surcharge amount increased in FY 2005-06 and, as noted, by \$7 in FY 2009-10.

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Table 1

### Crime Victim and Witness Assistance Surcharge Amount, by Type of Conviction

Fiscal Year	Felony	Misdemeanor
1983-84 through 1992-93	\$50	\$30
1993-94 through 2004-05	70	50
2005-06 through 2008-09	85	60
2009-10 to present	92	67

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As shown in Table 2, circuit courts collected \$20.2 million in surcharge revenue from FY 2006-07 through FY 2010-11, or 71.5 percent of the \$28.2 million in total surcharge revenue collected during that five-year period. DOC collected \$8.0 million (28.4 percent), and DHS collected \$40,700 (0.1 percent). The appendix shows the surcharge revenue that each county submitted to DOA from FY 2006-07 through FY 2010-11.

Table 2

**Crime Victim and Witness Assistance Surcharge Revenue,  
by Collecting Agency**

Fiscal Year	Circuit Courts	DOC	DHS	Total
2006-07	\$ 3,651,700	\$1,551,800	\$ 8,700	\$ 5,212,200
2007-08	3,896,200	1,726,400	9,400	5,632,000
2008-09	4,265,400	1,623,800	9,200	5,898,400
2009-10	4,223,600	1,542,500	6,900	5,773,000
2010-11	4,135,900	1,558,000	6,500	5,700,400
<b>Total</b>	<b>\$20,172,800</b>	<b>\$8,002,500</b>	<b>\$40,700</b>	<b>\$28,216,000</b>

As shown in Table 3, the total amount of surcharge revenue increased annually from FY 2006-07 through FY 2008-09 but then declined from FY 2009-10 through FY 2010-11. All surcharge revenue from felony and misdemeanor charges that are subsequently amended to civil offenses and result in convictions is statutorily required to be used to fund the two crime victim services programs. The surcharge has been assessed on these civil offense convictions since October 2007. Because individuals are often sentenced many months after committing offenses and some individuals do not pay the surcharge immediately upon conviction, DOJ likely did not receive surcharge revenue for civil offense convictions until months after October 2007. However, subsequent to the change in October 2007, surcharge revenue that funded the two crime victim services programs increased in both FY 2008-09 and FY 2009-10.

Table 3

**Crime Victim and Witness Assistance Surcharge Revenue,  
by Program**

Fiscal Year	Crime Victim Services Programs	Sexual Assault Victim Services Grant Program	Total	Percentage Change
2006-07	\$ 3,483,000	\$1,729,200	\$ 5,212,200	
2007-08	3,863,800	1,768,200	5,632,000	8.1%
2008-09	4,251,300	1,647,100	5,898,400	4.7
2009-10	4,433,500	1,339,500	5,773,000	(2.1)
2010-11	4,304,000	1,396,400	5,700,400	(1.3)
<b>Total</b>	<b>\$20,335,600</b>	<b>\$7,880,400</b>	<b>\$28,216,000</b>	

## Potential Explanations for the Decline in Surcharge Revenue

Several reasons may help explain the decline in total surcharge revenue in FY 2009-10 and FY 2010-11, including:

- trends in the number of criminal charges and convictions;
- the extent to which assessed surcharges were unpaid; and
- statewide economic trends.

Other potential explanations we considered did not contribute significantly to the decline in surcharge revenue in recent years, including trends in how often judges reduced the assessed surcharge amount and the extent to which counties submitted all collected surcharge revenue to DOA.

### Criminal Charges and Convictions

Clerk of court offices enter information into CCAP, which contains the best available information on crimes committed in Wisconsin. We used CCAP data to determine the number of criminal charges filed from FY 2006-07 through FY 2010-11 and the number of convictions that resulted from those charges. Criminal charges include felonies, misdemeanors, and criminal traffic charges, all of which could potentially result in surcharges being assessed.

As shown in Table 4, the total number of criminal charges filed declined from 248,500 in FY 2008-09 to 214,600 in FY 2010-11, or by 13.6 percent. Nine of the 11 clerk of court offices and 3 of the 5 district attorney offices that we contacted indicated that the number of criminal charges filed in their counties has declined in recent years and, as a result, the number of assessed surcharges has declined. It is important to note that some charges are subsequently amended or dismissed, and not all individuals charged with crimes are found guilty and assessed the surcharge.

Table 4

#### Number of Criminal Charges Filed, by Type

Fiscal Year	Felony	Misdemeanor	Criminal Traffic	Total
2006-07	86,600	112,900	53,700	253,200
2007-08	84,800	112,700	58,100	255,600
2008-09	80,500	106,700	61,300	248,500
2009-10	80,400	98,800	45,400	224,600
2010-11	80,900	93,900	39,800	214,600
<b>Total</b>	<b>413,200</b>	<b>525,000</b>	<b>258,300</b>	<b>1,196,500</b>

Source: CCAP.

Ten counties accounted for 49.2 percent of all criminal charges filed from FY 2006-07 through FY 2010-11. As shown in Table 5, the number of such charges declined over the five-year period in nine of the ten counties. The number of such charges increased only in Brown County.

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Table 5  
Number of Criminal Charges Filed, by County

County	FY 2006-07	FY 2010-11	Percentage Change
Milwaukee	28,100	23,500	(16.4)%
Dane	20,200	15,200	(24.8)
Racine	12,800	11,900	(7.0)
Waukesha	11,900	9,800	(17.6)
Brown	9,200	10,400	13.0
Kenosha	9,600	8,400	(12.5)
Rock	9,400	7,000	(25.5)
Outagamie	8,300	7,400	(10.8)
Winnebago	8,100	6,600	(18.5)
Marathon	7,700	6,700	(13.0)
Subtotal	125,300	106,900	(14.7)
Other Counties	127,900	107,700	(15.8)
<b>Total</b>	<b>253,200</b>	<b>214,600</b>	<b>(15.2)</b>

Source: CCAP.

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As shown in Table 6, the ten most common criminal charges filed from FY 2006-07 through FY 2010-11 declined by 17.8 percent. The total number of criminal charges filed during this five-year period declined by 15.2 percent.

Table 6

**Number of Criminal Charges Filed, by Type of Charge**

Type of Charge	FY 2006-07	FY 2010-11	Percentage Change
Disorderly Conduct	29,500	27,100	(8.1)%
Operating a Motor Vehicle with a Revoked Driver's License	28,000	17,000	(39.3)
Bail Jumping	16,200	14,000	(13.6)
Driving Under the Influence of an Intoxicant or Other Drug	15,900	13,500	(15.1)
Prohibited Alcohol Concentration While Driving	14,400	11,800	(18.1)
Battery	12,500	11,200	(10.4)
Resisting or Obstructing an Officer	10,900	9,000	(17.4)
Theft of Movable Property	9,200	8,700	(5.4)
Possession of THC	8,700	7,200	(17.2)
Possession of Drug Paraphernalia	8,400	6,900	(17.9)
Subtotal	153,700	126,400	(17.8)
Other <sup>1</sup>	99,500	88,200	(11.4)
<b>Total</b>	<b>253,200</b>	<b>214,600</b>	<b>(15.2)</b>

<sup>1</sup> Includes 2,498 other types of charges.

Source: CCAP.

There are likely many reasons why the number of criminal charges filed declined from FY 2006-07 through FY 2010-11. Four clerk of court offices and three district attorney offices indicated that some district attorney offices are filing fewer criminal charges than they once did in order to focus on the highest-priority cases.

All five district attorney offices indicated that they sometimes use deferred prosecution agreements, under which criminal charges may be reduced or dropped if an individual pleads guilty to a charge and successfully completes certain stipulations specified by the district attorney, such as paying restitution and court fees, participating in therapy, or participating in community programs. Under a deferred prosecution agreement, the surcharge may be assessed or waived. Through May 2012, 6,232 deferred prosecutions resulted from charges filed from FY 2006-07 through FY 2010-11, but the available data did not indicate how often the surcharge was assessed.

Four district attorney offices and three clerk of court offices indicated that some types of offenses that had typically been filed by district attorney offices in prior years are now filed in municipal courts, where no surcharges are assessed. Such offenses include disorderly conduct, minor theft, possession of drug paraphernalia, and possession of marijuana in small quantities. In addition, some offenses are no longer considered to be criminal offenses.

For example, some second and subsequent offenses related to operating a motor vehicle with a revoked driver's license were considered to be criminal offenses only until July 2009. As shown in Table 6, the number of charges for operating a motor vehicle with a revoked driver's license declined 39.3 percent from FY 2006-07 through FY 2010-11.

We also considered the number of convictions that resulted from the 1.2 million criminal charges, including those subsequently amended to civil offense charges, filed from FY 2006-07 through FY 2010-11. As shown in Table 7, the total number of convictions declined from 106,100 in FY 2008-09 to 92,900 in FY 2010-11, or by 12.4 percent. During this three-year period, felony convictions increased by 3.8 percent, misdemeanor convictions declined by 14.8 percent, and civil offense convictions declined by 20.0 percent. The data did not indicate whether surcharges were actually assessed for these convictions.

Table 7

**Number of Convictions for Which a Surcharge Could Have Been Assessed<sup>1</sup>**

Fiscal Year	Felonies	Misdemeanors	Civil Offenses	Total	Percentage Change
2006-07	5,800	40,200	n/a	46,000	
2007-08	12,600	74,500	2,400	89,500	94.6%
2008-09	15,800	81,800	8,500	106,100	18.5
2009-10	15,400	75,800	8,300	99,500	(6.2)
2010-11	16,400	69,700	6,800	92,900	(6.6)

<sup>1</sup> Convictions resulting from 1.2 million felony, misdemeanor, and criminal traffic charges filed from FY 2006-07 through FY 2010-11.

Source: CCAP.

As noted, the surcharge was increased by \$7 beginning in FY 2009-10, but surcharge revenue decreased in that year and the next. This decrease likely occurred, in part, because the number of criminal charges filed and the number of convictions declined in FY 2009-10 and FY 2010-11. If the surcharge had not increased by \$7, it is likely that surcharge revenue would have decreased even more than it did.

### **Surcharge Payments**

Statutes generally require assessed surcharges to be paid within 60 days, although a judge may authorize a payment plan that allows an individual additional time to pay. Questions have been raised about the extent to which individuals have paid assessed surcharges.

Although each conviction results in one surcharge, CCAP separates each assessed surcharge into two parts: one part that is associated with the two crime victim services programs and a second part that is associated with the sexual assault victim services grant program. This allows counties to track the amounts paid to circuit courts toward each part of a surcharge. We found that 77.4 percent of all payments that individuals made were single payments for the entire amount owed, but the annual number of such payments declined by 13.9 percent from FY 2006-07 through FY 2010-11. Complete data were not readily available on the length of time it took individuals to make surcharge payments. However, over the five-year period, individuals partially or fully paid 634,513 surcharge parts, which includes surcharges that were assessed before or during those five years. The total number of surcharge parts that individuals partially or fully paid declined from 166,560 in FY 2006-07 to 148,994 in FY 2010-11, or by 10.5 percent. Of the 634,513 surcharge parts, we estimate that individuals still owed circuit courts approximately \$200,000 as of April 2012.

No payments had been made to circuit courts or DOC on 328,450 surcharge parts that were assessed from FY 2006-07 through FY 2010-11. As shown in Table 8, the amount owed on these surcharge parts totaled \$12.7 million. As expected, unpaid amounts are greater in recent years because there has been less time to pay. The available information did not indicate the reasons why individuals had not paid. However, statutes require individuals to pay court-ordered restitution to crime victims and two other surcharges before paying the crime victim and witness assistance surcharge.

Table 8

**Amount of Completely Unpaid Surcharge Parts, by Program<sup>1</sup>**

Fiscal Year the Surcharge Was Assessed	Crime Victim Services Programs	Sexual Assault Victim Services Grant Program	Total
2006-07	\$1,289,400	\$ 677,000	\$ 1,966,400
2007-08	1,417,100	701,100	2,118,200
2008-09	1,716,700	786,300	2,503,000
2009-10	1,792,900	909,900	2,702,800
2010-11	2,157,000	1,205,300	3,362,300
<b>Total</b>	<b>\$8,373,100</b>	<b>\$4,279,600</b>	<b>\$12,652,700</b>

<sup>1</sup> Includes 200,372 surcharge parts that circuit courts were attempting to collect as of June 2012 and 128,078 surcharge parts that DOC was attempting to collect as of April 2012.

**Statewide Economic Trends**

Seven clerk of court offices and two district attorney offices cited the recent economic recession as a potential explanation for the decline in surcharge revenue in recent years. Six clerk of court offices and two district attorney offices indicated that some individuals have difficulty paying

the surcharge because they have few financial resources and are not easily employable, particularly at times of higher unemployment.

Three clerk of court offices and one district attorney office indicated that an overall increase in court costs in recent years may also help to explain the decline in surcharge revenue because individuals are increasingly unable to pay the assessed surcharge. This may be the case particularly when individuals are convicted of multiple offenses, each of which can result in a surcharge assessment. Given the limits on available data, it was not possible for us to determine the effects of increased court costs on the ability of individuals to pay surcharge assessments.

## **Other Issues**

Questions have been raised about the extent to which judges reduce court costs, which include fees, the crime victim and witness assistance surcharge, and up to 33 other surcharges that an individual can potentially be assessed. If a judge determines that an individual will have a significant financial hardship in paying court costs, case law allows the judge the discretion to waive court costs at the time of sentencing. Alternatively, a judge may reduce the amount of court costs owed and instead assess a specific amount that an individual must pay, in which case the amount of the assessed surcharge may or may not be reduced, depending upon factors such as the specific conviction. Although CCAP data do not indicate how often judges waived the surcharge, they do indicate how often judges reduced the amount owed. We estimate that judges reduced 0.7 percent of the 634,513 surcharge parts that were partially or fully paid from FY 2006-07 through FY 2010-11. Seven clerk of court offices indicated that judges in their counties rarely or never waive court costs, but the other four we contacted indicated that judges occasionally do so.

After sentencing occurs, judges can reduce the amount owed but not yet paid on assessed surcharges. Nine clerk of court offices indicated that judges in their counties do not reduce surcharges after sentencing, and two indicated that judges only rarely do so. Such reductions can occur for a number of reasons, including when:

- a judge determines an individual is unlikely to be able to pay the amount owed, in which case the entire amount owed may be forgiven; and
- an individual without a source of income successfully completes court-ordered community service.

We found that judges reduced 15,349 surcharge parts after sentencing, which is 2.4 percent of the 634,513 surcharge parts that were partially or fully paid from FY 2006-07 through FY 2010-11. As shown in Table 9, judges made reductions totaling \$434,800 from FY 2006-07 through FY 2010-11, which is 2.1 percent of the total value of the assessed surcharges. The annual amount of these reductions remained largely consistent over the five years, suggesting that the reductions did not contribute significantly to the decline in surcharge revenue in recent years.



Table 9

**Post-Sentencing Surcharge Reductions  
Made by Circuit Court Judges<sup>1</sup>**

Fiscal Year	Amount
2006-07	\$ (85,800)
2007-08	(94,000)
2008-09	(84,200)
2009-10	(85,700)
2010-11	(85,100)
<b>Total</b>	<b>\$(434,800)</b>

<sup>1</sup> The reductions were made to 634,513 surcharge parts that were partially or fully paid from FY 2006-07 through FY 2010-11.

Questions have been raised about how circuit courts attempt to collect surcharge revenue. Circuit courts employ a variety of methods to collect outstanding court costs, including the surcharge. Although we did not determine how frequently these methods were used, 11 clerk of court offices indicated that:

- 11 circuit courts implement payment plans for individuals unable to pay the full amount owed within 60 days;
- 11 circuit courts intercept state tax refunds;
- 9 circuit courts hire collections agencies when other collection methods fail, and as their fee these agencies typically retain 15 percent to 20 percent of the collected amounts;
- 8 circuit courts jail or threaten to jail individuals who are financially able but refuse to pay, although jail time is not a substitute for payment;
- 7 circuit courts intercept wages if an individual is employed and the court is aware of the employer;
- 7 circuit courts impose a civil judgment, which is not a substitute for payment but places a lien on an individual's property, restricts an individual's access to credit, and imposes interest on the amounts owed;
- 5 circuit courts suspend the driver's licenses of individuals convicted of certain vehicle-related offenses; and
- 5 circuit courts send reminder notices to encourage payment.

Questions have also been raised about how DOC attempts to collect surcharge revenue. When an individual is placed in DOC's custody, including those incarcerated or on probation, parole, or extended supervision, the clerk of court informs DOC of any unpaid surcharge amount, and DOC attempts to collect the amount owed while the individual remains in its custody. Depending on an individual's circumstances, DOC may implement a payment plan, intercept wages, or leverage probation privileges, such as permitting out-of-state travel in return for payment, but it does not have the statutory authority to intercept state tax refunds to obtain surcharge revenue or reduce or forgive amounts owed. DOC indicated that most individuals pay little or nothing while they are incarcerated because they typically have few financial resources.

Although DOC attempts to collect all unpaid court costs at least 90 days before an individual's discharge from its custody, it is not always successful. According to case law, probation, parole, and extended supervision cannot be extended solely to collect unpaid court costs. If an individual is discharged from DOC's custody before all court costs are paid, any unpaid surcharge amount is forgiven. However, if a circuit court files a civil judgment against an individual before the date of discharge, it may continue to attempt to collect court costs, including the surcharge.

Statutes require DOC to notify circuit courts 90 days before discharging an individual who owes victim restitution, but notification is not required if an individual owes only the surcharge and other court costs. Although the 11 clerk of court offices indicated that DOC generally notifies them before discharging individuals, 6 indicated that they are occasionally not notified. Without such notification, circuit courts are unaware of when individuals are discharged. To address situations when notification may not be provided, eight clerk of court offices indicated that when an individual is convicted and sentenced to probation, documents are filed indicating that the circuit court intends to file a civil judgment if the individual has not fully paid court costs when discharged. Doing so allows the circuit court to file a civil judgment even after the individual is discharged.

Finally, some have questioned whether counties submit all collected surcharge revenue to DOA. The 11 clerk of court offices indicated that information about all collected surcharge revenue is entered into CCAP, certified by the county treasurer, and submitted to DOA, which electronically tracks the amounts that each county submits monthly. We examined DOA's data indicating the surcharge revenue that counties had submitted and CCAP data indicating the revenue that counties had collected. We found that the DOA and CCAP data generally matched during our five-year review period. Although we found three instances when circuit courts appear to have collected surcharge revenue that was not submitted to DOA, the amount totaled \$1,308, which is less than 0.1 percent of the total amount of surcharge revenue that counties submitted to DOA from FY 2006-07 through FY 2010-11.

## **Misallocation of Surcharge Revenue**

In conducting this review, we found that some surcharge revenue has not always been properly deposited into the two DOJ appropriations in recent years. These allocation errors occurred because of the complexity of the process for assessing and collecting surcharge revenue, the number of state and local agencies involved, and the limitations of the data systems that state

and local agencies use to track the amounts collected. Moreover, two allocation errors associated with the \$7 surcharge increase in FY 2009-10 occurred because statutes required the revenue to be assessed and collected as part of the surcharge that funds one appropriation, but then required the revenue to be deposited into another appropriation. Because these errors are related only to the allocation of surcharge revenue, they do not affect the overall amount of surcharge revenue collected or explain the decline in surcharge revenue.

Specifically, one allocation error resulted in the sexual assault victim services grant program receiving less funding than was statutorily intended. As noted, revenue from the \$7 surcharge increase was statutorily required to be used to fund the two crime victim services programs. From FY 2009-10 through FY 2010-11, statutes required the \$7 to be assessed as part of the surcharge that funded the sexual assault victim services grant program. Consequently, DOA needed to separate this \$7 portion of the surcharge revenue it received from counties for offenses that were both committed and resulted in surcharges assessed from FY 2009-10 through FY 2010-11. After DOA separated the revenue, it needed to deposit the correct amounts into each of the two DOJ appropriations. However, during those two fiscal years DOA received revenue associated with surcharges assessed for offenses that had been committed before FY 2009-10, and none of this revenue should have been separated. Nevertheless, DOA separated all revenue it received during those two fiscal years because it could not determine when the offenses were committed. Although available data did not allow us to determine the precise amount of surcharge revenue that was inadvertently separated, we estimate that it totaled approximately \$290,000. This amount should have been deposited into the appropriation that funds the sexual assault victim services grant program, but it was instead deposited into the appropriation that funds the two crime victim services programs.

A second allocation error resulted in the sexual assault victim services grant program receiving more funding than was statutorily intended. Because revenue from the \$7 surcharge increase was assessed as part of the surcharge that funded the sexual assault victim services grant program but was statutorily required to be used to fund the two crime victim services programs, DOC also needed to separate this \$7 portion of the revenue that it collected. However, DOC has not separated any revenue it has collected for surcharges associated with offenses that were both committed and resulted in surcharges assessed from FY 2009-10 through FY 2010-11. Through April 2012, we estimate that an additional \$86,000 should have been deposited into the appropriation that funds the two crime victim services programs, but it was instead deposited into the appropriation that funds the sexual assault victim services grant program.

As a result of these two allocation errors, the sexual assault victim services grant program received an estimated \$204,000 less than was statutorily required. DOJ does not plan to correct these errors because the precise amount of misallocated funds is unknown. However, the Legislature has already modified statutes so that beginning with offenses committed in FY 2011-12, revenue from the \$7 surcharge increase is assessed and collected separately from the other portions of the surcharge, which allows the revenue to be more easily deposited into the correct appropriation.

Nevertheless, allocation errors continue to occur for some surcharges assessed in prior years. DOA and DOC are not currently separating any revenue that continues to be collected on surcharges associated with offenses that were both committed and resulted in surcharges assessed from FY 2009-10 through FY 2010-11. As a result, the sexual assault victim services grant program will receive an undetermined amount of additional funding that statutes do not

intend the program to receive, and the amount of funding allocated to the two crime victim services programs will be less than statutorily intended. Although the available information did not allow us to determine this amount, the misallocated revenue will decline over time as individuals pay these assessed surcharges.

Although revenue from some surcharges assessed in prior years continues to be misallocated, rectifying these errors would likely require considerable effort. For example, counties and DOC would need to review information on thousands of surcharges, determine the amounts that had been collected on each of them, and then determine the misallocated amounts. CCAP and DOC's data system would then need to be modified so that revenue from these surcharges could be tracked and deposited into the correct appropriations. The expense involved in doing so may exceed the amount of misallocated revenue.

In addition to the allocation errors associated with the \$7 surcharge increase, we found two instances in FY 2008-09 and one instance in FY 2009-10 in which \$66,900 in surcharge revenue collected by DOC was not deposited into the correct DOJ appropriations. Documentation indicating why these errors occurred was not readily available from DOJ or DOC. However, as a result of the errors:

- \$66,900 less than statutorily required was provided to the crime victim services programs;
- \$59,400 more than statutorily required was used for activities, such as enforcing drug laws and operating crime laboratories, that are funded by a separate DNA analysis surcharge; and
- \$7,500 more than statutorily required was provided to the sexual assault victim services grant program.

After we identified these errors in March 2012, DOJ transferred \$66,900 to the appropriation that funds the two crime victim services programs, including \$59,400 from the appropriation that funds DNA analysis surcharge activities and \$7,500 from the appropriation that funds the sexual assault victim services grant program.

■ ■ ■ ■

Appendix

**Crime Victim and Witness Assistance Surcharge Revenue Submitted,  
by County<sup>1</sup>**

County	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Total
Adams	\$ 29,631	\$ 27,302	\$ 29,645	\$ 27,956	\$ 26,645	\$ 141,179
Ashland	18,488	20,715	22,592	24,267	24,809	110,871
Barron	26,354	28,455	38,014	41,819	45,443	180,085
Bayfield	18,336	15,943	18,993	18,335	20,328	91,935
Brown	143,728	131,660	154,730	167,594	154,633	752,345
Buffalo	6,629	7,039	8,169	8,946	12,288	43,071
Burnett	12,151	14,866	14,940	17,221	20,991	80,169
Calumet	16,136	15,993	21,699	21,763	21,834	97,425
Chippewa	34,390	40,415	51,391	50,162	51,018	227,376
Clark	29,342	32,601	33,339	34,138	31,058	160,478
Columbia	50,408	53,552	61,497	58,850	55,932	280,239
Crawford	6,997	8,235	6,787	6,642	6,571	35,232
Dane	249,337	248,352	263,144	232,725	190,333	1,183,891
Dodge	48,447	44,052	56,498	50,660	43,445	243,102
Door	26,521	30,304	30,322	33,655	29,305	150,107
Douglas	31,255	31,388	37,655	36,365	33,130	169,793
Dunn	19,555	27,473	40,939	50,265	55,868	194,100
Eau Claire	68,680	94,592	117,997	121,489	124,046	526,804
Florence	3,170	2,571	6,963	7,004	7,058	26,766
Fond du Lac	59,799	77,643	101,671	85,141	88,607	412,861
Forest	14,448	18,190	19,560	29,896	24,065	106,159
Grant	30,419	27,954	32,778	38,898	35,247	165,296
Green	10,860	12,392	20,841	20,986	21,252	86,331
Green Lake	13,582	15,101	13,658	15,923	13,586	71,850
Iowa	12,004	15,558	21,098	24,919	20,024	93,603
Iron	2,812	3,121	2,754	2,783	2,256	13,726
Jackson	19,923	16,945	21,530	24,255	24,331	106,984
Jefferson	81,464	82,649	76,726	62,050	55,829	358,718
Juneau	26,776	27,495	29,342	27,288	21,369	132,270
Kenosha	99,005	92,910	133,244	134,784	132,088	592,031
Kewaunee	7,157	7,371	13,042	12,022	10,522	50,114
La Crosse	80,377	69,792	76,225	91,176	84,662	402,232
Lafayette	8,110	8,244	10,087	10,934	9,438	46,813
Langlade	21,841	25,919	26,202	21,599	16,288	111,849
Lincoln	17,495	18,736	23,147	26,557	26,191	112,126

County	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	Total
Manitowoc	\$ 58,842	\$ 70,133	\$ 73,385	\$ 70,272	\$ 65,508	\$ 338,140
Marathon	62,402	67,801	90,102	87,873	96,608	404,786
Marinette	22,846	21,293	24,934	29,994	25,567	124,634
Marquette	9,112	11,466	12,276	9,140	9,225	51,219
Menominee	3,511	2,707	3,220	3,271	2,134	14,843
Milwaukee	467,319	351,235	401,511	384,420	364,826	1,969,311
Monroe	51,502	55,464	74,635	72,739	54,310	308,650
Oconto	28,559	28,851	30,416	33,049	34,937	155,812
Oneida	22,942	23,836	31,737	33,280	35,174	146,969
Outagamie	141,030	148,769	147,836	152,471	157,331	747,437
Ozaukee	70,267	60,203	69,281	72,901	61,964	334,616
Pepin	4,214	4,481	5,526	3,693	5,033	22,947
Pierce	9,222	10,872	13,741	18,246	17,004	69,085
Polk	21,467	32,835	33,040	33,054	35,028	155,424
Portage	36,619	31,408	44,242	40,524	38,861	191,654
Price	8,248	9,153	9,732	11,855	9,095	48,083
Racine	167,543	167,216	183,307	195,558	213,335	926,959
Richland	23,294	7,043	15,070	17,586	19,884	82,877
Rock	168,559	186,442	220,412	204,279	164,633	944,325
Rusk	5,326	5,521	6,372	9,574	9,811	36,604
Sauk	70,423	83,498	85,663	81,019	70,409	391,012
Sawyer	18,587	22,384	26,891	29,891	26,859	124,612
Shawano	76,807	76,136	78,075	93,024	96,246	420,288
Sheboygan	118,920	128,014	139,909	140,460	135,177	662,480
St. Croix	32,267	34,699	56,383	58,808	55,822	237,979
Taylor	8,636	11,288	12,235	13,599	12,081	57,839
Trempealeau	27,340	23,670	30,079	28,801	19,316	129,206
Vernon	13,591	12,232	12,511	11,178	10,943	60,455
Vilas	7,811	9,614	12,265	13,222	12,493	55,405
Walworth	68,134	77,214	88,212	85,774	86,059	405,393
Washburn	11,222	9,503	16,742	17,532	18,363	73,362
Washington	61,402	58,838	70,593	79,889	75,801	346,523
Waukesha	142,094	153,488	199,511	200,542	200,533	896,168
Waupaca	26,656	28,123	24,873	33,354	35,261	148,267
Waushara	29,229	28,956	39,217	39,039	41,919	178,360
Winnebago	119,844	130,593	145,727	136,005	119,801	651,970
Wood	86,834	95,435	100,340	100,824	113,910	497,343
<b>Total</b>	<b>\$3,648,248</b>	<b>\$3,675,942</b>	<b>\$4,267,220</b>	<b>\$4,285,807</b>	<b>\$4,091,751</b>	<b>\$19,968,968</b>

<sup>1</sup> According to data maintained by DOA. Table 2, which shows surcharge revenue collected by circuit courts, reflects the amounts in the State's accounting system and does not precisely match DOA's data.



**STATE OF WISCONSIN  
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August 6, 2012

Joe Chrisman  
State Auditor  
Legislative Audit Bureau  
22 East Mifflin Street, Suite 500  
Madison, WI 53703

Dear Mr. Chrisman:

Thank you for providing the Department of Justice an opportunity to comment on your review of the Crime Victim and Witness Assistance Surcharge Revenue (the "Report"). I would also like to thank Representative Vos for joining me in asking the Joint Legislative Audit Committee to request the review, the Committee members for making the request, and you and your staff for your work.

The programs currently supported by the Crime Victim and Witness Assistant (V/W) Surcharge are the cornerstones of Wisconsin's commitment to crime victims. The Victim and Witness Assistance program provides essential notification and other services to crime victims to assist them in understanding and navigating a criminal justice system that may otherwise seem intimidating and incomprehensible to individuals who have personally and involuntarily suffered the indignities and trauma of crime. The Crime Victims Compensation Program is a modest attempt to compensate innocent crime victims for loss due to crime, recognizing that restitution is often inadequate or unavailable. The Sexual Assault Victim Services program provides grants to victim services organizations that in turn provide invaluable direct services to victims of the most heinous of crimes short of homicide.

The decline in V/W surcharge revenue is extraordinarily important because this funding supports Wisconsin's commitment to crime victims. These programs support a class of innocent people who are a relatively neglected part of a defendant-focused criminal justice system. This also matters because the revenue decline comes against a backdrop of increased program costs that the legislature intended to fund through surcharge increases enacted in 2007 Wisconsin Act 20 and 2009 Wisconsin Act 28.

Respectfully, I submit the following comments on the LAB's review.

- (1) The Report indicates a decline in V/W surcharge revenue from nearly \$5.9 million in FY 09 to \$5.7 million in FY 11. DOJ's information from FY 12 shows this trend is continuing, with projected receipts totaling \$5.6 million. But this is not a \$200,000 or \$300,000 per year issue. The effect of the decline is much greater than it appears because this decline is in the context of the surcharge being increased in the 2009 budget act and an expectation that there would be hundreds of thousands of dollars annually in increased revenues to support victim services appropriations. This leaves a significant gap between the funding levels the legislature expected to provide these programs and actual funding levels. The legislature should be appropriately skeptical about the extent of new revenue from an additional V/W surcharge increase. As an alternative, the legislature should consider other funding mechanisms if it wishes to sustain these programs at appropriated levels.
- (2) The Report indicates that approximately \$12.7 million in V/W surcharge parts were assessed between FY 07 and FY 11 and not collected. This extraordinary figure – basically \$1 uncollected for every \$2 collected – actually *understates* the total amount unpaid because it does not reflect amounts owed on surcharges that were partially paid. The Report does not attempt to quantify this amount. Given the significant amount of uncollected V/W assessments, the legislature may wish to consider additional mechanisms to collect these amounts.
- (3) The Report's cover letter strongly suggests that a decreasing number of charges and convictions is the primary cause of decreased surcharge revenue. The number of cases charged is not directly relevant, as the surcharge is only assessed upon conviction. While the number of convictions certainly influences the total amount assessed, the hypothesis that decreasing conviction rates explains the drop in collections is not strongly supported by the data. Although conviction rates declined by 12.4% between FY 09 and FY 11, the potential for the maximum surcharge assessment from criminal convictions was only 0.4% less in FY 11 than in FY 09, as shown in Appendix A. This is because there were more felony convictions in FY 11 than FY 09 and the V/W surcharge was increased.

Moreover, the Report's description of a decline in overall convictions is the result of data-selection bias. According to Table 7 of the Report, overall convictions in FY 11 were *higher* than in FY 08, the last year of data available to the legislature when enacting 2009 Wisconsin Act 28.<sup>1</sup> This is important because *more* convictions subject to a V/W surcharge have occurred than the legislature projected when enacting 2009 Wisconsin Act 28. The revenue should have outpaced projections; instead it has lagged expectations considerably and will be less in FY 12 than in FY 08.

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<sup>1</sup> At that time, the Legislative Fiscal Bureau described conviction rates as declining. See LFB, "Victim and Witness Fund," Paper #514 (May 19, 2009) (available at <http://legis.wisconsin.gov/lfb/publications/budget/2009-11-Budget/Documents/Budget%20Papers/514.pdf>). In FY 09, however, there was a significant increase in conviction rates, making FY 09 more of an aberration than a norm.



Indeed, as shown in Appendix A, the difference between potential V/W surcharge assessments from criminal convictions and actual collections increased significantly in FY 09 – prior to the most recent V/W surcharge increase – and has not recovered. Revenue did not decline in absolute terms in FY 09 because of an unusually high number of convictions. But Appendix A suggests that the current strains on the SAVS and Victim and Witness Assistance Programs may have a much older genesis than previously thought or contemplated in the Report.<sup>2</sup>

- (4) Thus, factors other than convictions must play a significant role in depressing the current surcharge revenue. Possibilities include: (1) declining V/W surcharge assessments in juvenile delinquency adjudications; (2) declining V/W surcharge assessments as a condition of deferred prosecution agreements; (3) a failure of the courts to assess V/W surcharges upon conviction; and/or (4) a failure to collect the V/W surcharge after it has been assessed.<sup>3</sup>

Unfortunately, the Report does not include any data on the first three categories, all of which can theoretically be documented and quantified.

With respect to collections, the Report relies on anecdotes rather than documents and data to suggest the decrease in collections is due to defendants' inability to pay and statewide economic trends. The Report lists tools Courts sometimes use to collect unpaid surcharges, but does not provide any information as to these tools' effectiveness, frequency of use, or whether their effectiveness or frequency has changed over the review period. The Report notes the Department of Corrections sometimes notifies Courts when an offender who owes the V/W Surcharge is to be discharged, but does not attempt to quantify the frequency or determine whether the frequency has changed over time. In sum, the Report provides little information as to whether a change in collection efforts has contributed to the declining revenues.

The “inability-to-pay” hypothesis also might have been tested by reviewing other data. For example, offenders are assessed supervision fees by the Department of Corrections. If the revenue from supervision fees has not similarly declined – particularly from offenders who have a V/W surcharge obligation, then collection

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<sup>2</sup> The programmatic impacts caused by a growing difference between expenditure authority to support all three programs (based on what revenue should be generated) and actual revenue did not occur until FY 12 because DOJ had previously been able to rely on an accumulated surplus in the SAVS appropriation that has now been exhausted.

<sup>3</sup> LAB concludes that there is no evidence that collected amounts are not being distributed and that the amount of post-sentencing court-reduced surcharges is not growing. We have no reason to question these conclusions, though the legislature may wish to consider legislation to prohibit post-sentence surcharge reductions.

methods are likely a more probable explanation of the revenue decline than ability to pay. Indeed, if supervision fee collections on these offenders increased beginning in FY 08 (the year collection rates began to diminish), this may partially explain a decline in V/W surcharge collection.

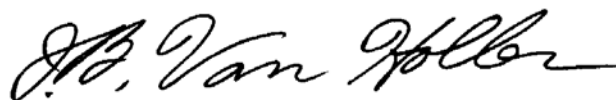
DOJ appreciates that data and related documentation described above may have been difficult to obtain within the scope of this limited review, but respectfully notes that information of this nature would have been helpful to understand how collection activities contribute to the overall deficiencies in V/W surcharge revenue.

- (5) The Report identifies some misallocations by the Department of Administration of V/W surcharge revenue into DOJ accounts. In some instances, this meant that allocations were made to the Victim/Witness Assistance Program that should have been directed to the Sexual Assault Victim Services Program. In other cases, allocations were made to the Sexual Assault Victim Services Program that should have been made to the Victim and Witness Assistance Program. The Report indicates that misallocations are expected to continue in the future in this second category. Because the total amount is uncertain, occurred over the span of four years, is expected to continue in a manner that may balance out misallocations, and expenditures have already been made, these errors cannot be undone.

The Report suggests that these misallocations are largely the result of incomplete information from the collecting agencies stemming from the complexity of the surcharge structure created in 2009 Wisconsin Act 28. DOJ agrees that the statutory structure made it difficult if not impossible for Courts, DOC, and DOA to avoid all errors. While the changes to the surcharge structure in 2011 Wisconsin Act 32 made allocating collected revenues easier from an administrative perspective, the fact that errors will continue demonstrates the need for a more simplified funding approach.

In conclusion, I believe the Report's findings support the desirability of finding more stable funding sources for these programs. The Report also supports a simplification of the current funding mechanisms. Last, the Report indicates a sizable amount of uncollected revenue. The legislature may wish to consider statutory changes to enhance collection efforts or further examine existing collection efforts. I look forward to working with the legislature on these efforts.

Sincerely,



J.B. VAN HOLLEN  
Attorney General

## APPENDIX A

**TABLE: COMPARISON OF V/W SURCHARGE COLLECTIONS WITH ESTIMATED V/W SURCHARGE ASSESSMENTS**

Year	Convictions and Surcharge Amount			Estimated Assessed V/W Surcharge	Revenue	Difference
<b>FY 08</b>	Felonies	12,600	\$85	\$5,685,000	\$5,632,000	(\$53,000)
	Misdemeanors + applicable CF	76,900	\$60			
	Total	89,500				
<b>FY 09</b>	Felonies	15,800	\$85	\$6,761,000	\$5,898,400	(\$862,600)
	Misdemeanors + applicable CF	90,300	\$60			
	Total	106,100				
<b>FY 10</b>	Felonies	15,400	\$92	\$7,051,500	\$5,773,000	(\$1,278,500)
	Misdemeanors + applicable CF	84,100	\$67			
	Total	99,500				
<b>FY 11</b>	Felonies	16,400	\$92	\$6,634,300	\$5,700,400	(\$933,900)
	Misdemeanors + applicable CF	76,500	\$67			
	Total	92,900				

**Notes:**

- Conviction data is drawn from Table 7 of the Report
- The estimated assessed V/W Surcharge is a mathematical calculation based on the statutory surcharge rate in effect at the time of conviction. The actual assessed rates may have depended on the implementation of law changes or the dates offenses were committed, and thus the chart may overstate estimated V/W surcharge assessments in FY 10 when the surcharge was increased. The estimate assumes all applicable civil forfeitures arose from misdemeanor charges.
- The estimated assessed V/W surcharge does not include assessments in juvenile delinquency proceedings or amounts paid as a condition of a deferred prosecution agreement.
- Revenue data is drawn Table 2 of the Report. DOJ's understanding is that Table 2 includes revenue from V/W surcharges assessed in juvenile delinquency proceedings and V/W surcharges paid as a condition of a deferred prosecution.
- The table does not list FY 07 data, which is included in the Report. The information in the Report is inaccurate; conviction rates did not nearly double between FY 07 and FY 08. Table 6 indicates that charging activity was greater in FY 07 than in FY 11. DOJ speculates that the data set for convictions received by the Audit Bureau included only parts of FY 07.