

REPORT TO THE
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**A Performance Audit
of
Court Fines, Surcharges and Fees**

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Table of Contents

	Page
Digest	i
Chapter I	
Introduction	1
Trial Courts' Responsibilities Vary	1
Uniform Bail Schedule Helps Promote Consistency Among the Courts	3
Recent Fine, Surcharge, and Cost Collections Have Increased	7
Audit Scope and Objectives	8
Chapter II	
Few Errors Exist in Surcharge and Cost Assessments	11
Some Justice Courts Need Additional Training	11
Juvenile Courts Have Minor Surcharge and Programming Errors ..	17
No Errors Were Found in Surcharge and Fee Assessments for District Courts	19
Recommendations	20
Chapter III	
Most Surcharge Revenue Distributions Comply with Statute	21
Most State Agencies Adequately Manage Surcharge Revenue	23
Recommendations	27
Chapter IV	
Concerns with Other Fees and Costs Need to Be Addressed	29
Capital Projects Fund Will Not Be Sufficient for Bond Payments Without Legislative and AOC Action	29

Table of Contents (Cont)

Page

Justice Court Security Surcharge Provides Revenue to
Several Entities 35

Costs Assessments Have Been Decreasing 36

Recommendations 39

Appendices 41

Agency Response 53

Digest of A Performance Audit of Court Fines, Surcharges and Fees

Chapter I: Introduction

The Utah state court system consists of three types of trial courts that handle criminal and traffic proceedings: district, juvenile, and justice courts. The two main administrative bodies that support the court system are the Judicial Council, the policy-making body—which consists of judges representing all types of courts, and the Administrative Office of the Courts (AOC), that implements the standards, policies, and rules established by the Utah Judicial Council. This audit focused on determining if trial courts are assessing fines, fees, and surcharges according to statute, and it reviewed the distribution and uses of surcharge revenue.

Chapter II: Few Errors Exist in Surcharge and Cost Assessments

Some Justice Courts Need Additional Training. A review of a sample of court cases from six justice courts showed that two justice courts need additional training on assessing fines and other fees. Salt Lake City Justice Court incorrectly categorized some fines as non-surchargeable costs, which resulted in the state not receiving a small amount of revenue, \$18,966, to which it was entitled. The justice court also failed to assess the traffic mitigation surcharge on DUI violations, resulting in \$14,460 in missed revenue for the city over the last three years. North Salt Lake City Justice Court incorrectly assessed plea in abeyance fees, charging offenders \$50 more than the amount prescribed in statute.

These errors are similar to errors found in previous audits conducted by the AOC's internal auditors and the State Auditor's Office. The Board of Justice Court Judges is considering requiring all justice courts to use the same case management software program that is used by district courts, called the Court Records Information System (CORIS), to help alleviate some concerns including errors in calculating fines and surcharges.

Juvenile Courts Have Minor Surcharge and Programming Errors. A programming error in Courts and Agencies Records Exchange (CARE), the centralized case management system used by all juvenile courts, led to an improper distribution of almost \$10,000 since 2006. CARE was not programmed to calculate and distribute a \$7 court

complex fee that should be assessed on certain traffic violations—those listed in Title 41 of the *Utah Code*. These funds should have been distributed to the capital projects fund instead of the fine and surcharges portions of the bail. Additionally, the courts should use more consistent language in court orders among juvenile courts. Inconsistent language led to one minor error in the bail calculation.

No Errors Were Found in Surcharge and Fee Assessments for District Courts. It appears that district courts have adequate controls in place to ensure accurate surcharge calculation and payment application. A review of 50 cases from four district courts did not show any errors in surcharge or other fees calculations. From this limited review, it appears that proper controls exist within CORIS. CORIS is a centrally controlled case management software program that all district courts use, which was developed and is operated by the AOC.

Chapter II: Recommendations

1. We recommend that the AOC continue to provide training to all justice courts to ensure the courts are implementing current court policies and procedures.
2. We recommend that the Judicial Council continue to pursue the feasibility of requiring all justice courts to use the CORIS case management software.
3. We recommend that courts use consistent language when recording court orders with fines in order to ensure proper surcharge calculation.

Chapter III: Most Surcharge Revenue Distributions Comply with Statute

Most State Agencies Adequately Manage Court Surcharge Revenue. A surcharge of either 35 percent or 85 percent is assessed on fines and plea in abeyance fees (referred to as the 35/85 percent surcharge) depending on the type of conviction. The revenue from this surcharge is utilized by 12 state programs that are mostly related to criminal justice purposes. In 2006, \$18 million in surcharge revenue was distributed to the 12 programs. Ten of the 12 accounts that receive funds from the 35/85 percent surcharge appear to be using the revenue according to statute.

The Intoxicated Driver Rehabilitation Account and the Statewide Warrant Operations Account, however, need increased accountability.

For these two accounts, we found instances where programs lack clear accounting records that directly link the use of surcharge revenue to the appropriate expenses. Agencies responsible for oversight of these two accounts concur with the needed changes and have stated they will implement our recommendations. These two accounts combined received \$1.8 million in 2006.

Chapter III: Recommendations

1. We recommend that the Division of Substance Abuse and Mental Health develop a plan to periodically monitor counties' use of the surcharge revenue they receive (in addition to local substance abuse authorities that they already monitor), and provide additional guidance as needed.
2. We recommend that the Department of Public Safety keeps the surcharge revenue for the statewide warrant system in a separate account and ensures it is used to help cover the costs of the statewide warrant system.

Chapter IV: Concerns with Other Fees and Costs Need to Be Addressed

Capital Projects Fund Will Not Be Sufficient for Bond Payments Without Legislative and AOC Action. The capital projects fund is a restricted account of the general fund that is used to pay for the Matheson Courthouse, Logan, Vernal, and West Jordan court facilities. The AOC projects that the expenses from this account will be about \$4 to 4.3 million per year until the bonds are paid off at the end of fiscal year 2018. However, capital projects funding will not be sufficient in future years to cover the bond payments because contributions to the capital projects fund have decreased, and the Legislature has directed surplus funds to other purposes. The decrease in contributions is also partially due to the increased number of justice courts which do not charge a court complex fee, but take some of the case workload from the state courts that do charge a \$7 court complex fee.

The AOC is aware of the shortage of the funds in the capital projects fund and has recommended to the Judicial Council that they use \$1.3 million in turnover savings to pay part of the bond payment. The AOC reports that this action should keep the fund solvent until 2011.

Also, the AOC reports that the Judicial Council will request \$300,000 in ongoing general funds in the 2008 General Session. If the Legislature approves an appropriation in 2008, coupled with the one-time \$1.3 million contribution, the capital projects fund will remain solvent

through the retirement of the bonds in 2018. However, if the Legislature does not approve an appropriation in 2008, the one-time contribution of \$1.3 million will keep the capital projects fund solvent until 2011. The AOC will need to work with the Legislature to determine how to fund this account through 2018.

Justice Court Security Surcharge Provides Revenue to Several Entities. Instead of contributing to the capital projects fund, justice courts assess a \$32 security surcharge on convictions for certain offenses. The \$32 justice court security surcharge is divided among four entities: county (\$16); local government entity (\$6.40); court security account (\$6.40); and the justice court technology, security, and training account (\$3.20). Counties receive half (\$16) of the security surcharge revenue for a case prosecuted in a city justice court. If a case is prosecuted in a county justice court, counties receive the additional \$6.40 of the security surcharge. The revenue that counties receive goes to their general fund to be used at the counties' discretion. Local government entities also retain the revenue received from fines for convictions.

Cost Assessments Have Been Decreasing. Courts are allowed to pass along costs to offenders to cover such expenses as investigating, searching for, apprehending, and prosecuting the defendant. The revenue from costs collected by a court are remitted to the entity incurring the cost, and there is no surcharge on costs. These costs decreased by 53 percent in justice courts, 38 percent in district courts, and 19 percent in juvenile courts from fiscal year 2004 to fiscal year 2006.

While these cost assessments have been decreasing, there is some concern about how certain justice courts are passing along costs to offenders, associated with offenses processed as a plea in abeyance. The AOC needs to clarify the need for and imposition of these costs.

Chapter IV: Recommendations

1. We recommend the AOC obtain Legislative agreement to develop a long-term solution to obtain revenue for the capital projects fund in order to maintain viability in future years.
2. We recommend that the Legislature, in conjunction with the AOC, study the impact of lost revenue on the capital projects fund due to the creation of new justice courts.

Chapter I

Introduction

Three types of trial courts exist in Utah: district courts, juvenile courts, and justice courts.

The judicial branch of state government consists of a court system and the assistance of administrative bodies to provide continuity and promote effective operations of individual courts. The Utah state court system is comprised of three types of trial courts: district, juvenile, and justice; and two appellate courts: the Supreme Court and Court of Appeals. The two main administrative bodies that support the court system are the Judicial Council, the policy-making body—which consists of judges representing all types of courts; and the Administrative Office of the Courts (AOC), which implements the standards, policies, and rules established by the Utah Judicial Council.

Overall, this audit focused on determining if trial courts are assessing fines, fees, and surcharges according to statute, and a review of the distribution and uses of surcharge revenue. This introductory chapter provides an overview of the trial courts that were audited, describes the fines, surcharges, and other fees associated with criminal and traffic cases, and explains the audit scope and objectives.

Trial Courts' Responsibilities Vary

There are three types of trial courts in Utah which handle criminal and traffic proceedings: district courts, juvenile courts, and justice courts. District and juvenile courts are operated by the state and are sometimes referred to as state courts. Justice courts are operated by a local government entity, such as a county or municipality. The financial controls for state courts are centralized under the direction of the AOC, while the financial controls of justice courts are under the direction of each individual local governmental entity.

District courts try all felonies, and can try misdemeanors and other minor violations in areas which a justice court does not have jurisdiction.

District Courts Have Original Jurisdiction over All Criminal Felonies. District courts also try all class A misdemeanors, and other misdemeanors, violation of ordinances, and infractions in areas in which a justice court does not have jurisdiction. There are 72 full-time district court judges serving in the state's eight judicial districts. All district courts operate under a centralized case management system called Court Records

Juvenile courts hear cases for youths under 18 years of age.

Justice courts try class B and C misdemeanors, violations of ordinances, and infractions within their territorial jurisdiction.

Information System (CORIS). Appendix A shows the eight judicial districts in the state.

Juvenile Courts Have Jurisdiction over Youth. Juvenile courts hear cases for youths under 18 years of age, who violate any state or municipal law, as stated in *Utah Code* 78-3a-104, as well as child welfare matters. Minor traffic citations involving youth are generally handled by a justice court, where one exists, according to *Utah Code* 78-5-105. Twenty-seven juvenile court judges and one commissioner serve in the eight judicial districts in the state. All juvenile courts operate under a centralized case management system called Courts and Agencies Records Exchange (CARE).

Justice Courts Are Limited Jurisdiction Courts. *Utah Code* 78-5-104 states that “Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except those offenses over which the juvenile court has exclusive jurisdiction.” There are 108 justice court judges that serve in 131 justice courts in the state. Justice court judges are appointed by the local government entity for four-year terms. Justice courts’ case management systems are not centralized like district and juvenile courts’ systems. Individual justice courts utilize varying case management systems to track cases and financial information. As a result, justice courts’ accounting systems are independent from each other.

Figure 1.1 compares the three different types of trial courts in Utah. Justice courts’ operations are more decentralized than district and juvenile courts.

Figure 1.1 Comparison of Trial Courts in Utah. There are 131 justice courts, while there are 39 district court and 23 juvenile court locations within the 8 judicial districts in the state.

	District Court	Juvenile Court	Justice Court
Operating Entity	AOC	AOC	Local government entity (city or county)
Authority	Felonies, misdemeanors when no justice court exists	All youths under the age of 18	Class B and C misdemeanors
Number of Courts	39	23	131
Number of Judges	72	27	108
Centralized Case Management System	Yes	Yes	No
Case Management system	CORIS	CARE	Varied

Unlike district and juvenile courts, justice courts are not courts of record, which means no verbatim record of the proceedings is kept. Also, any person not satisfied with a judgment rendered in justice court is entitled to a new trial in the district court. The uniform fine/bail forfeiture schedule helps provides consistency in the court system for assessing fines when guilty judgments are rendered in all three types of courts.

The bail schedule helps to promote consistency in the court system for assessing fines and plea in abeyance fees.

Uniform Bail Schedule Helps Promote Consistency Among the Courts

The uniform fine/bail schedule, referred to as the bail schedule in this report, helps to minimize the disparity in chargeable amounts that can develop between the different courts, between judges in the same type of court, and between probation/intake staff's recommendations. When a

guilty judgment is rendered, the offender may be required to pay a fine as a financial sanction. The bail schedule consists of a matrix that suggests the chargeable amounts. These amounts include the fine or fee and the applicable surcharges based on the type of conviction. The bail schedule is also used as a guideline for courts when assessing plea in abeyance fees.

Bail Schedule Matrix Includes Surcharges

Two different surcharges can be associated with an offense: the 35/85 percent surcharge and the security surcharge. The 35/85 percent surcharge on criminal and traffic convictions is included in the fine portion of the bail schedule and is used to finance trust funds and support accounts as stated in *Utah Code* 63-63a-2(5). The 35/85 percent surcharge provides revenue for 12 state programs, most of them related to criminal justice purposes. Before 1991, under previous law, a combination of several different special purpose fees were assessed and allocated by the courts for certain violations. However, HB 436 in 1991 combined these various fees into one surcharge, and the Division of Finance has the responsibility to allocate the revenue to 12 programs according to statute.

The percent of 35/85 percent surcharge that is assessed depends on the type of conviction. According to *Utah Code* 63-63a-1, a surcharge of 85 percent is assessed on a fine upon the conviction of the following:

- Felony
- Class A misdemeanor
- Driving under the influence or reckless driving
- Class B misdemeanor not classified under Title 41 (Motor Vehicles)

All other criminal and traffic convictions are assessed a surcharge of 35 percent, except for nonmoving traffic violations. Nonmoving violations are not surcharged.

A security surcharge is also assessed on all criminal convictions, except nonmoving traffic violations. For district and juvenile courts the security surcharge is \$25, and for justice courts the security surcharge is \$32. The security surcharge in justice courts is \$7 more than that in state courts in order to create uniformity in the bail schedule among state and justice courts. State courts assess an additional \$7 court complex fee for

The 35/85 percent surcharge provides revenue for 12 state programs related to criminal justice.

A security surcharge is also assessed on all criminal convictions, except nonmoving traffic violations.

violations of Title 41, as shown below in Figure 1.2, whereas justice courts do not assess this fee. The security surcharge in district courts is used to cover court security costs. This surcharge is discussed in more detail in Chapter IV.

Non-Surchageable Assessments Are Sometimes Added to Fines.

Additional assessments that can be associated with a fine depending on the situation include:

- **Court Complex Fee**—All district and juvenile courts charge a \$7 fee on certain traffic violations (those described in Title 41 of the *Utah Code*) to help pay for the Matheson Courthouse, and Logan, Vernal, and West Jordan court facilities.
- **Cost Assessments**—Statute allows judges to pass along costs to an offender incurred by the court or an associated entity for abnormal costs, such as an investigation, probation, or treatment services (See *Utah Code* 77-18-1). All costs are remitted to the entity incurring the cost.
- **Contempt**—Statute allows courts to assess a monetary sanction when an offender is considered to be in contempt. Two examples of contempt include arguing with a judge or breaking a courtroom door. The assessment for being in contempt should not exceed \$1,000 for state courts and \$500 for justice courts (See *UCA* 78-32-10). Assessments for contempt are remitted to the state general fund or local government entity.
- **Traffic Mitigation Surcharge**—All traffic violations in first-class counties are required to add a \$10 surcharge to the fine to mitigate the impacts of traffic changes due to the reconstruction of Interstate 15. This fee sunset on June 30, 2007.

The bail schedule does not include non-surchageable assessments as part of the bail amount. In order to calculate the actual fine portion of the bail, these non-surchageable assessments, including the security surcharge must first be subtracted from the bail amount. Then, the balance is divided by one plus the surcharge percent in order to determine the actual fine portion of the bail amount. The 35/85 percent surcharge can then be calculated by multiplying the fine portion by the required surcharge percent. Figure 1.2 provides an example of the breakdown of a

The court complex fee is assessed on traffic violations in all district and juvenile courts.

The bail schedule includes the court complex fee, but not other non-surchageable assessments as part of the bail amount.

misdemeanor C criminal conviction with a \$100 bail for failure to stop for a school bus.

Figure 1.2 Breakdown of Fines, Surcharges, and Fees for an Offense. The bail schedule provides a guideline for courts that apply a financial sanction when a guilty judgment is rendered.

Fine, Fee or Surcharge	State Courts	Justice Courts
Bail Schedule	\$100.00	\$100.00
Fine (or plea in abeyance fee)	50.37	50.37
Surcharge (35%)	17.63	17.63
Security Surcharge	25.00	32.00
Court Complex Fee	7.00	0.00

A defendant in a justice court pays a \$32 security surcharge, but not a court complex fee.

In this example, the actual fine of the total amount charged to an offender is calculated by subtracting the non-surchageable assessments—the security surcharge (\$25 for state courts, \$32 for justice courts) and court complex fee (\$7 for state courts) from the total amount (\$100) from the bail schedule. The remainder (\$68) is divided by one plus the surcharge percentage (1.35 percent). (For this example, a 35 percent surcharge was used.) This equals the actual fine amount of \$50.37, which is surcharged at 35 percent, or \$17.63. This example shows the bail schedule was developed to include the fine or plea in abeyance fee, applicable surcharges, and the court complex fee.

Plea in Abeyance Fees Are Processed Similar to Fines

Depending on the type of offense, some offenders may be allowed to waive their constitutional rights to a trial and agree to a plea in abeyance. A plea in abeyance is an agreement that allows the court to dismiss a violation upon completion of certain criteria. An offender entering into a plea in abeyance agreement may sign a document stating that he/she is making a guilty plea. This guilty plea is held for a specific amount of time. If the offender complies with the conditions (such as attending traffic school or paying a plea in abeyance fee), the case will be dismissed

A plea in abeyance is an agreement that permits a court to dismiss a violation upon completion of the abeyance agreement.

after the abeyance period. If the offender fails to comply with the agreement, the guilty plea is recorded and the defendant is sentenced.

A plea in abeyance fee is surcharged the same way as a fine charged to someone who is convicted of a criminal or traffic offense. Like the bail of a criminal conviction, all non-surchageable fees, such as a court complex fee, are assessed separately from the total plea in abeyance bail amount in order to determine the actual plea in abeyance fee and the 35/85 percent surcharge portions of the bail. The 35/85 percent surcharge and plea in abeyance fee are then determined following the same criteria as outlined above.

Plea in abeyance fees are surcharged in the same way in which fines are surcharged.

Recent Fine, Surcharge, and Cost Collections Have Increased

Of the courts that use the CORIS system, the amount collected from criminal fines, fees, and surcharges has increased 27 percent from fiscal year 2004 to fiscal year 2006. Figure 1.3 below shows the criminal fines, surcharges, and costs collected among district courts, juvenile courts, and 34 of the 131 justice courts. We were only able to gather data from the courts that use the court records information system (CORIS) software. We tried different avenues to collect total collections for fines, surcharges, and cost assessments for all courts, but we were unable to obtain a complete data set.

Fine, surcharge and cost collections has increased 27 percent from fiscal year 2004 to fiscal year 2006.

This problem of the incomplete data is mostly due to the fact that justice courts use different software programs. We asked all justice courts to respond to a survey, but only 74 of the 97 justice courts that do not use the CORIS software responded. We also reviewed the self-reported data that justice courts send to the AOC, but after comparing that data with other data sources, it appears that self-reported data is inaccurate, so it is not included in Figure 1.3 below.

For all courts that utilize CORIS software, total collections have increased by \$7 million or 27 percent from FY 2004 to FY 2006.

Figure 1.3 Court Revenue Collections. The total fines, fees, and surcharges are for all courts that utilize the CORIS software; 97 justice courts are not included.

Court	FY 2004	FY 2005	FY 2006	Percent Change
District Courts	\$ 9,195,000	\$10,144,000	\$ 9,936,000	7%
Juvenile Courts	2,006,000	2,003,000	2,031,000	1
Justice Courts	14,009,000	18,152,000	20,119,000	30
Total	\$25,210,000	\$30,299,000	\$32,086,000	27

Figure 1.3 shows that, for the courts with available data, trial court revenue collections have increased by \$7 million over the last two fiscal years. The majority of the increase is among justice courts who have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction.

Also for the district and juvenile courts, the surcharge revenue collected consists of 37 percent in fiscal year 2004 of the total court collections, 35 percent in 2005, and 38 percent in 2006 of total revenue collections. Because of the data problem discussed above, we are unable to show surcharge data for justice courts.

Audit Scope and Objectives

The audit requestor asked our office to review the collection and distribution of surcharges and fees assessed on criminal and traffic convictions. Specifically, we were asked to review the following:

- Review the collection, distribution, and accounting of the surcharges.
- Examine the policies, procedures, and controls concerning surcharges and fees associated with criminal convictions.

To address these concerns, we reviewed cases from each type of court in order to analyze the controls that are in place and the accuracy of the surcharge assessment and distribution to the proper entities. We also

reviewed the accounts/programs that receive funds generated from the different surcharges and fees.

Chapter II shows the results of our case review of district, juvenile, and justice courts. Chapter III addresses the distribution, use, and accounting of the 35/85 percent surcharge revenues. Chapter IV addresses the court complex fee, security surcharge, and other areas that we believe need further review.

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Chapter II

Few Errors Exist in Surcharge and Cost Assessments

For this audit, we reviewed a sample of cases from justice, juvenile, and district courts to determine if fines and other costs are being assessed properly and if surcharges are being calculated according to statute. From the case review, we found most courts have good case management procedures and have adequate internal controls. However, a few courts need additional guidance.

The case review showed that justice and juvenile courts have some errors, while the district courts appear to have adequate controls to prevent errors. Two justice courts from our sample need additional training on assessing surcharges and other costs. Furthermore, if all justice courts were to utilize a centralized case management software program, surcharge and other fee errors could be reduced. The case review also revealed a few minor errors in juvenile courts. Most of those errors for juvenile courts are due to a programming error that exists in their case management software program. The case review in district courts did not show any surcharge or other fee calculation errors.

Some Justice Courts Need Additional Training

After reviewing a sample of justice court cases, we found that two justice courts need additional training on assessing surcharges and fees. We reviewed cases from six justice courts along the Wasatch Front and found one justice court that incorrectly categorized some fines as non-surchageable costs, and failed to assess the traffic mitigation surcharge on DUI violations the last three years. Another justice court incorrectly assessed plea in abeyance fees. It is concerning that the errors that we found are similar to errors found in previous audits of justice courts conducted by the AOC's internal auditors and the State Auditor's Office. Both of these entities conduct periodic reviews of justice courts. The results of their audits, as well as this audit, show that justice courts can benefit from periodic monitoring.

Surcharge and fee errors could be reduced if all justice courts utilized a centralized case management software program.

Two justice courts need additional training on assessing surcharges and fees.

Thirteen percent of the 120 sampled cases in justice courts contained errors.

Because of errors in assessing some fines as non-surchageable costs, the state did not receive the small amount of revenue to which it was entitled from the Salt Lake City Justice Court the last three years. To help alleviate some of the reasons why errors occur in calculation of surcharges and fines, the Board of Justice Court Judges is considering requiring all justice courts to use one case management system called Court Records Information System (CORIS). This system was developed by the AOC.

Figure 2.1 below shows the justice courts that were reviewed. We randomly selected 20 cases at each of the justice courts to determine if surcharges and plea in abeyance cases were calculated correctly according to *Utah Code* 77-2-4.2 and 63-63a-1, as discussed in Chapter 1.

Figure 2.1 Justice Court Case Review. Of the total 120 cases reviewed, 13 percent, or 16 of the cases, had errors in assessing surcharges and fees.

Court	Cases Reviewed	Surcharges Improperly Assessed?	Other Fees Improperly Assessed?
Fruit Heights	20	0	0
Davis County	20	0	0
Mantua	20	0	0
Logan	20	0	0
Salt Lake City	20	1	5
North Salt Lake City	20	0	10
Total	120	1	15

We reviewed 10 cases with fines and 10 plea in abeyance cases for a total of 20 cases each from six justice courts. The review showed:

- One case was incorrectly assessed as a cost assessment, diverting money from the state.
- Five cases did not include a \$10 traffic mitigation surcharge as required by law.
- Ten plea in abeyance cases were improperly assessed costs that were not surcharged.

These errors that we found in the two justice courts are discussed in detail in the following sections.

Salt Lake City Justice Court Incorrectly Assessed Some Costs

From the sample of cases reviewed, we found a case where the offender was required to pay a fine with a surcharge of 85 percent, but the fine was incorrectly categorized as non-surchargable. The impact of this mistake is that the local government entity keeps all the revenue collected, and the state does not receive the surcharge portion of the revenue collected, which the state is entitled to according to statute.

Surcharges are assessed on criminal fines and plea in abeyance fees and revenue from these surcharges are submitted to the state. According to *Utah Code* 63-63a-1, a surcharge consisting of 85 percent of a fine or plea in abeyance fee is assessed for a felony, class A misdemeanor, and for most class B misdemeanors, such as a DUI or reckless driving. A surcharge of 35 percent of a fine or plea in abeyance fee is collected on the remaining class B misdemeanors and class C misdemeanors, except for some class C misdemeanors for non-moving traffic violations or when community service is ordered in lieu of a fine.

If this erroneous case was categorized appropriately as a fine of \$100, then a surcharge of 85 percent would have been applied to this specific offense. This proper categorization would have provided the state \$31.24 in revenue from the 35/85 percent surcharge (this amount is calculated after subtracting the \$32 security surcharge). We recognize the \$31.24 in revenue is a minor issue. However, because of the error that we found in the case review, we then reviewed all cases with non-surchargable costs from fiscal years 2004-2006 at the Salt Lake City Justice Court and found that a total number of 239 cases were improperly classified as a non-surchargable cost rather than a fine.

From these 239 cases, the result was \$18,966 diverted from the state, which the local governmental entity kept. This error was caused because an employee was applying the wrong court codes when fines were ordered by the judge. The justice court has since changed the way they assign costs and has provided additional training to the court clerk who was applying the wrong codes in the case management system.

The 35/85 percent surcharge is assessed on criminal fines and plea in abeyance fees.

The State did not receive surcharge revenue of \$18,966 from one justice court over a three year period.

One justice court failed to assess the \$10 traffic mitigation surcharge on DUI violations.

Another justice court is over charging offenders by \$50 to process plea in abeyances.

Traffic Mitigation Surcharges Were Not Properly Assessed. The case review also showed that the Salt Lake City Justice Court failed to assess a \$10 traffic mitigation surcharge on DUI violations, resulting in \$14,460 in missed revenue for the city over the last three years. This surcharge should have been added to all moving traffic violations in first class counties in order to “. . .mitigate the impacts of traffic changes due to the reconstruction of Interstate 15.” The money generated from this surcharge is remitted to the city in which the citation was issued. All cities in Salt Lake County should assess this surcharge to all moving traffic violations as required in *Utah Code* 63-63b-101. However, this statute sunset on June 30, 2007.

North Salt Lake City Justice Court Is Charging Additional Fees

Finally, the justice court case review showed that North Salt Lake City Justice Court is charging \$75 more than the suggested bail amount for each plea in abeyance fee on traffic violations, which is higher than allowed by statute. According to *Utah Code* 77-2-4.2, the plea in abeyance fee should not be higher than \$25 over the bail schedule amount.

- 3) In all cases which are compromised pursuant to the provisions of Subsection (2):
 - (a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall. . . .
 - (iii) be not more than \$25 greater than the bail designated in the Uniform Bail Schedule;

Using a traffic ticket as an example, when a plea in abeyance is utilized, the defendant pleads guilty to the charges and must adhere to the terms of the plea in abeyance. If the defendant completes the agreement, the charge is dismissed or reduced depending on the agreement. However, if the defendant does not comply with the terms of the agreement, the original conviction is recorded and the defendant is sentenced. Since plea in abeyance cases must be reviewed at the end of the abeyance period (usually after 6, 9, or 12 months) to determine if the defendant has complied with the agreement, the court assesses a cost for this case review. The North Salt Lake City Justice Court reports that it costs an average of \$50 to manage a plea in abeyance case. In addition to the \$50, the court

adds an additional \$25 to cover the security surcharge that is assessed on fines for a total of \$75.

The justice court believes that *Utah Code* 77-2-4.2 only applies to justice courts that use a traffic school as part of their plea in abeyance agreement. Since this justice court does not use a traffic school as part of a plea in abeyance agreement, the court feels that this section of the *Utah Code* does not apply to them.

The AOC's response to this situation is that this justice court is not in compliance with statute and that they should not charge an offender more than \$25 above the bail schedule. The AOC should work with this justice court to resolve the disagreement. This practice is inconsistent with the training provided to justice courts by the AOC.

Justice Courts Could Benefit From Using The Same Case Management Software

To help alleviate the types of problems discussed in our sample review and other audits, the justice courts should consider using a centralized case management system. Currently, a justice court study committee is recommending to the Board of Justice Court Judges that they should require all justice courts to install and use CORIS that is developed by the AOC. While CORIS is being used by all district courts, only 34 of the 131 justice courts use CORIS; and 97 justice courts use a variety of case management software programs.

Several benefits exist for having all the justice courts use the same case management software. These benefits include:

- Accurate calculations of fines and surcharges
- A single point of contact for implementing new features or changes to the program
- Economies of scale for training
- Improved data sharing within the judiciary, law enforcement, prosecution, and the public by offering statewide justice court data search capability through the XChange program

We agree with the benefits mentioned above and believe it would be beneficial to have the justice courts on one complete system. During the audit we found that many of the varied systems used by the justice courts

Justice courts should not charge an offender a plea in abeyance fee more than \$25 above the bail schedule.

Several benefits exist for having all justice courts use the same management software program.

CORIS is a case management software program that was created by the AOC.

lack controls which could be addressed by the CORIS case management program.

For example, all changes to fines, surcharges, and fees would be handled centrally so amounts could not be inadvertently changed. One software program that many justice courts utilize permits the court clerk to change surcharge amounts in the case management system. CORIS has control features to prevent changes to the data, once the original data has been entered into the system. The CORIS database would be centrally located at the AOC, which would allow the AOC better access to data for purposes of verifying and auditing the data.

Also, CORIS could help reduce one specific type of error that was found during the case review of North Salt Lake City. The CORIS program has a warning screen that appears if court staff enter a plea in abeyance fee that is more than \$25 above the bail schedule. The CORIS program will display a screen that states that plea in abeyance fees should not exceed the recommended bail by more than \$25.

A programming error in CORIS is supposed to be fixed with an upcoming patch by the AOC.

A Programming Error in the CORIS Software Needs to Be Corrected. We learned of a problem with the CORIS software program that is supposed to be fixed with an upcoming patch by the AOC. According to **Code of Judicial Administration Rule 4-701 Failure to Appear**: once a person receives a ticket, the person has 14 days to either pay the ticket or to contact the court. If the person does nothing after the 14 days has expired, then the clerk may mail a delinquent notice increasing the bail amount for the initial offense by \$50.

Currently the program does not start to calculate the 14 days until the ticket is entered into the system. Because of this, a person who receives a traffic citation can actually have additional days to pay a fine before a delinquent enhancement is applied. This delayed bail increase will continue to occur on every bail forfeitable traffic ticket until the system is updated with a software patch.

One of the benefits of having the AOC maintain the CORIS program is that programming changes can be made timely, without having to rely on a third party to complete updates or changes to the program. The AOC should continue to monitor their software program for continuous improvements and software changes that may be needed.

Juvenile Courts Have Minor Surcharge and Programming Errors

All juvenile courts use a centralized case management program called Courts and Agencies Records Exchange (CARE) to calculate and distribute revenue collected from juvenile citations. A case review showed a programming error exists in the case management software. This led to the improper distribution of almost \$10,000 since 2006. These funds should have been distributed to the capital projects fund instead of the fine and surcharges portions of the bail. In addition, an inconsistency in court order language can lead to data entry errors. We believe the AOC can easily remedy these two situations.

CARE Replaced an Outdated Case Management System

CARE replaced Utah's Juvenile Justice Information System (JJIS) in order to integrate more efficient technology and achieve lower costs. JJIS relied on an antiquated system of codes and acronyms that became increasingly difficult to learn and use. Therefore, the AOC commissioned a task force to study the feasibility of updating JJIS in 1998. The AOC explored the option of using CORIS, but because of the differences between district and juvenile courts, it was determined that CORIS would not be well suited for the juvenile court system. The first phase of CARE was implemented by the AOC in late 2002. By November 2005, all juvenile courts were using CARE. While the AOC found some minor errors in the initial programming, the AOC believes CARE is more effective than JJIS.

Like CORIS, CARE appears to have adequate controls to ensure accurate surcharge calculations and distribution, based on our case review. As with any other case management programs, CARE needs to be regularly monitored to ensure that controls are adequate and functioning properly, and that the program has been updated as needed to reflect current laws and policies.

Case Review Uncovered a Programming and Surcharge Error

We sampled a total of 200 juvenile cases, (50 cases from four juvenile courts) to determine if fines, fees, and surcharges were being

All juvenile courts use a centrally-operated case management system called CARE.

CARE appears to have adequate controls to ensure proper surcharge calculation and surcharge distribution.

appropriately applied according to statute. Only 37 of the 200 sampled cases actually had fines because many juvenile court cases include other forms of punishment, such as a letter of apology, community service, or other types as determined by the individual courts. We reviewed the 37 cases with fines and identified only three errors that need to be corrected. Figure 2.2 summarizes the juvenile courts sampled and the number of cases reviewed.

Three cases with fines had improper surcharge or other fee assessments.

Figure 2.2 Juvenile Court Cases Review. For the juvenile case review, we sampled 200 cases from four different juvenile courts in the state.

Juvenile Court	Cases Reviewed	Cases with Fines	Surcharges Improperly Assessed?	Other Fees Improperly Assessed?
Salt Lake City	50	11	0	0
Logan	50	9	0	1
West Jordan	50	9	0	0
Tooele	50	8	1	1
Total	200	37	1	2

Figure 2.2 shows three errors in the juvenile case review. Two of the errors—one in Logan and one in Tooele—pertain to a programming error in CARE, which led to improper distribution of funds. The third error, in which the surcharge was improperly assessed in Tooele, suggests that more consistent recording language regarding payment of fines is necessary in juvenile courts to help prevent data entry errors.

A Programming Error in CARE Has Led to an Improper Distribution of Almost \$10,000. According to *Utah Code* 78-7-35(2)(d), \$7 of the bail forfeiture amount for certain traffic violations (those described in Title 41 of the *Utah Code*) should go into the capital projects fund. The capital projects fund is used to pay for construction, operating and maintenance costs for the Matheson Courthouse, Logan, Vernal, and West Jordan court facilities. Two of the juvenile cases reviewed showed that CARE was not programmed to calculate the \$7 on violations of Title 41 and distribute the revenue to the capital projects fund.

CARE was not programmed to assess a \$7 court complex fee violations of Title 41, as required by statute.

A programming error in CARE resulted in 1,410 cases not being assessed a \$7 court complex fee.

In addition to the case review, we identified 1,410 cases that involved violations of Title 41 that should have been assessed the court complex fee since CARE's inception in November 2005. During that time period, the total amount of the court complex fee for the 1,410 cases, \$9,870, was allocated between the 35/85 percent surcharge and the fine or fee for those cases instead of going into the capital projects fund. As a result of this audit, the AOC corrected this programming error on April 28, 2007.

Consistent Language Needed in Juvenile Court Orders. In most juvenile courts, the judge orders the offender to pay a specific fine that "includes all applicable surcharge and fees." However, sometimes a judge orders a offender to pay a fine "plus a \$25 security fee."

Inconsistent language of court orders has led to improper bail forfeiture assessment.

Due to the inconsistent language of fines reported in court orders, the case review found one case in which the judgement entered into CARE was less than the amount ordered by the court. In this case, the court ordered a \$250 fine "plus a \$25 security fee." The clerk incorrectly entered the bail amount into CARE as \$250, from which the \$25 security surcharge was deducted. The actual bail amount that should have been entered into CARE was \$275.

While this is not a significant amount, we are concerned that the lack of consistent recording may lead to future errors. We recommend that the juvenile courts use consistent language in court orders to pay a specific bail amount that "includes all applicable surcharge and fees" to help ensure accurate data entry.

No Errors Were Found in Surcharge and Fee Assessments for District Courts

All district courts use a centrally controlled case management system called CORIS.

Based on our sample, it appears that district courts have adequate controls in place to ensure accurate surcharge calculation and payment application. As with some justice courts, all district courts use the centrally operated program called CORIS to account for and apply payments to the surcharge portion and the fine, fee, or forfeiture portion of a citation.

District courts appear to have adequate controls governing surcharge assessment and distribution.

We reviewed 50 cases from the district courts in Salt Lake City, West Jordan, Logan, and Tooele and did not find any errors in the surcharge or other fees calculations. Each of the cases was properly assessed the appropriate surcharge of 35 percent or 85 percent, as prescribed by statute. Additionally, all 50 cases included the required \$25 security surcharge, and the 10 cases that dealt with violations of Title 41 were properly assessed a \$7 court complex fee.

From this limited review of four district courts, it appears that proper controls exist within CORIS to prevent errors in surcharge and fee calculation. Because no errors were found and proper controls appear to be adequate, we did not believe further sampling was necessary.

Recommendations

1. We recommend that the AOC continue to provide training to all justice courts to ensure the courts are implementing current court policies and procedures.
2. We recommend that the Judicial Council continue to pursue the feasibility of requiring all justice courts to use the CORIS case management software.
3. We recommend that courts use consistent language when recording court orders with fines in order to ensure proper surcharge calculation.

Chapter III

Most Surcharge Revenue Distributions Comply with Statute

In 2006, \$18 million was collected from the 35/85 percent surcharge.

The 35/85 percent surcharge revenue is utilized by 12 state programs that are mostly related to criminal justice purposes. In 2006, \$18 million in surcharge revenue was distributed to the 12 programs. The audit found that most programs, including those programs that receive the largest percentage of surcharge revenue, are utilizing the revenue according to statute. However, two smaller surcharge revenue programs, the intoxicated driver rehabilitation account—managed by the Division of Substance Abuse and Mental Health, and the statewide warrant operations account—managed by the Division of Administrative Services within the Department of Public Safety, need to improve accountability over the surcharge revenue they receive.

The 35/85 percent surcharge revenue, referred to as surcharge revenue in this chapter, is assessed on criminal fines and plea in abeyance fees as described in Chapter I. According to *Utah Code* 63-63a-1, a surcharge consisting of 85 percent is assessed for a felony, class A misdemeanor, and for most class B misdemeanors, such as a DUI or reckless driving. A surcharge of 35 percent is collected on the remaining class B misdemeanors and class C misdemeanors, except for some class C misdemeanors for nonmoving traffic violations or when community service is ordered in lieu of a fine.

The Division of Finance has the responsibility to allocate the surcharge revenue to 12 separate accounts.

According to statute the Division of Finance has the responsibility to allocate the surcharge revenue to 12 separate accounts. These accounts receive a specific amount of the surcharge revenue collected based on amounts set forth in statute. Figure 3.1 shows each of the accounts and the percentage of the surcharge revenue each account receives.

Figure 3.1 Surcharge Revenues Accounts. Crime Victim Reparations Fund receives the largest percentage of surcharge revenue.

Surcharge Accounts	Percent	Surcharge Accounts	Percent
Crime Victim Reparations Fund	35.00%	Public Safety Support Fund for Prosecution Council	3.00%
Public Safety Support Fund for POST	18.50	Statewide Warrant Operations	2.50
Emergency Medical Services	14.00	Substance Abuse Prevention for Juvenile Courts	2.50
General Fund	8.25	Substance Abuse Prevention for USOE	2.50
Intoxicated Driver Rehabilitation	7.50	Guardian ad Litem	1.75
Domestic Violence	4.00	Domestic Violence Services for AG	.50

Crime Victims Reparations Fund receives the largest percentage of surcharge revenue.

Most of the revenue from the 35/85 percent surcharge stays at the state level of government.

As of July 1, 2007, the 8.25 percent of the surcharge will go to the Law Enforcement Operations Restricted Account within the general fund.

The revenue for these accounts stays at the state level of government, except for two accounts, the emergency medical services account and the intoxicated driver rehabilitation account, which provide revenue to local governments.

The accounts and the percentage of revenue that the 12 accounts receive have been adjusted by statute over the years. The most recent change occurred in the 2007 General Session, with the passage of HB 91. Beginning July 1, 2007, the 8.25 percent of the surcharge that went to the state’s general fund will now go to the Law Enforcement Operations Restricted Account within the general fund. The Utah Commission on Criminal and Juvenile Justice (CCJJ) will allocate grants to state, local, or multi-jurisdictional law enforcement agencies from this new account for illegal drug and crime issues.

The amount of surcharge revenue collected has increased over the last three years. Figure 3.2 below shows the total amount of surcharge revenue collected the last six years.

The average increase in surcharge revenue collections is about 5 percent each year since 2001.

Figure 3.2 Annual Surcharge Revenue Collections. Overall, surcharge revenue collections have increased 20 percent the last six years with fluctuations from year to year.

Year	Amount Collected	Percent Change	Year	Amount Collected	Percent Change
2001	\$ 14,661,200		2004	\$ 15,858,100	5%
2002	15,285,900	4%	2005	17,664,200	11
2003	15,064,300	(1)	2006	18,285,400	4
Total Increase from 2001 - 2006					20%

The average increase each year in surcharge revenue collections is about four percent. The revenue collected from surcharge has increased every year since 2001, except for 2003. Appendix E shows the revenue each of the 12 surcharge accounts have received the last three years.

Most State Agencies Adequately Manage Surcharge Revenue

Ten of the 12 surcharge revenue accounts appear to be using the revenue according to statute.

After a cursory review of the 12 accounts that receive surcharge revenue, we found that 10 accounts appear to be using the revenue according to statute. For the cursory review of the 12 accounts, we contacted each entity that manages the accounts to determine how the surcharge revenue is spent and if it is being spent according to statute.

We then reviewed two accounts in detail, the Intoxicated Driver Rehabilitation Account and the Statewide Warrant System, that need increased accountability. These two accounts combined received \$1.8 million in 2006. In addition, we also reviewed, in detail, the two accounts that receive the largest amount of the surcharge revenue: the Crime Victim Reparations Fund, and the Public Safety Support Fund. Both of those accounts, which received \$9.3 million or 51 percent of the surcharge revenue, appear to be utilizing surcharge revenue appropriately after reviewing a sample of expenses from each account.

Two Surcharge Revenue Accounts Need Increased Accountability

DSAMH manages the Intoxicated Driver Rehabilitation Account.

The Intoxicated Driver Rehabilitation Account, which is managed by the Division of Substance Abuse and Mental Health (DSAMH), and the Statewide Warrant System, which is managed by the Department of Public Safety (DPS), need to better manage the surcharge revenue they receive.

For these two accounts, we found two instances where programs lack clear accounting records that directly link the surcharge revenue to the appropriate expenses. We found one instance where it appears the revenue is not being spent in accordance with statute. Also, we found two instances where additional training is needed.

Intoxicated Driver Rehabilitation Account Needs Additional Monitoring. The surcharge revenue for this account is given to DSAMH. This revenue is to be used for substance abuse intervention and treatment programs, according to *Utah Code 62A-15-503*. In fiscal year 2006, this account received \$1,371,400. The division allocates the surcharge revenue to each county in the state based on population, according to *Administrative Rule 523-20-9*. Some counties choose to use the revenue for specific county programs. Other counties choose to transfer the revenue to the local substance abuse authority for their area. The local substance abuse authority uses those funds for similar substance abuse programs as the counties.

Four counties need additional guidance on using revenue from the Intoxicated Driver Rehabilitation Account.

We reviewed 22 counties, or the local substance abuse authority for a county's area, to determine how these surcharge funds are being spent. We found that most counties are accounting for the revenue and uses of the revenue appropriately. However, the counties listed below can improve in accounting for the use of the surcharge revenue.

- **Cache County Should Keep Surcharge Revenue in a Separate Account.** The funding is received by the county and placed in their general fund. For 2006, the county received \$58,075 from the surcharge revenue account. The county has substance abuse programs through the county jail that receive funding from the general fund. The county also provides general fund monies to Bear River Health, the local substance abuse authority. However, the surcharge revenue has not been kept separate from other

revenue sources, so the county cannot show the specific uses of these funds. There needs to be a direct link for the funding to show adequate evidence that the surcharge revenue is being used for appropriate programs.

- **Davis County Is Unclear How Surcharge Revenue Should Be Spent.** In the past, DSAMH has sent the funding to Davis Behavioral Health to use the surcharge revenue for substance abuse programs. Due to a change in procedures, the funding is now received by the county. According to a county official, the recent checks have been placed in a trust account. Surcharge revenue recently placed in the trust account amounts to \$86,778. The county is unclear how that revenue should be spent. DSAMH sends out a letter every time they distribute surcharge revenue to the counties, stating the purposes of the revenue. However, it appears that Davis County needs additional guidance.
- **Rich County Needs to Review Their Use of Surcharge Revenue.** The funding is received by the county and placed in an account. For 2006 the county received \$1,209 in surcharge revenue. The county clerk reported that the surcharge revenue is used by the county sheriff's office to pay officers overtime pay, when overtime is needed. It appears that paying overtime pay is not an appropriate use of these funds according to statute. The county clerk was not aware that paying officers' overtime pay is an inappropriate use of surcharge revenue, and would appreciate additional guidance which could be provided by DSAMH.
- **Box Elder Is Unclear How Revenue Received Has Been Spent.** The funding is received by the county and placed in a separate account. The balance of the account is \$14,145. This balance shows the last two revenue checks received. The county clerk was unable to show how previous surcharge revenue has been spent. The clerk suggested that the revenue may have been absorbed in the general fund. In addition, the county is unclear how the revenue should be spent and needs additional guidance from DSAMH.

DSAMH should develop a plan to periodically monitor all counties' use of surcharge revenue.

Different state agencies provide governance for the surcharge revenue accounts. DSAMH receives the surcharge revenue and allocates it to the counties or local substance abuse authorities within the state. The

division, along with the counties, has responsibility for monitoring these funds to ensure they are being used appropriately. The division visits the local substance abuse authorities in the state annually; however, the division reports that they do not have the resources to visit every county annually. We recommend that the division visits the counties discussed in this report and develops a plan to periodically monitor counties' use of the surcharge revenue. For example, the division could visit counties on a rotation, so that each county is monitored every other year.

Statewide Warrant Operations Account Needs Increased

Accountability. In the second account reviewed, we found that the statewide warrant operations account revenue is combined with other revenue sources at DPS. The surcharge revenue helps fund the statewide warrant system, according to *Utah Code* 63-63a-9. In fiscal year 2006, \$460,700 of surcharge revenue was provided for this account. The revenue is divided between the Bureau of Criminal Identification (BCI) and the Department of Public Safety's Management Information Systems (MIS) based on the Legislature's appropriation. In fiscal year 2006, BCI received \$219,800, and MIS received \$240,900 from surcharge revenue.

However, after the revenue is divided between BCI and MIS, it cannot be traced to determine if it covers statewide warrant system costs. The statewide warrant operations account revenue is combined with other revenue sources for use by BCI. The same situation exists with MIS within DPS. The department is unable to provide information that shows how these revenues are being spent. The department has recognized the deficiency and has stated in that fiscal year 2008, they will keep the surcharge revenue in a separate account for BCI and MIS and link the funding to ensure it helps cover the costs for the statewide warrant system.

Largest Surcharge Accounts Appear to Be Spending Funds Appropriately

We also reviewed the two accounts that receive the largest percentage of surcharge revenue: Crime Victim Reparations Fund, and the Public Safety Support Fund. In fiscal year 2006, Crime Victim Reparations received \$6.4 million, and the Public Safety Support Fund for POST received \$2.9 million, which together totals 51 percent of all surcharge revenue collected for fiscal year 2006.

DPS manages the Statewide Warrant Operations Account.

Surcharge revenue for the statewide warrant operations account should be kept separate from other revenue sources.

In 2006, Crime Victim Reparations received \$6.4 million and POST received \$2.9 million in surcharge revenue.

Crime Victim Reparations Fund. This account provides financial assistance to individuals who are victims of violent crimes. The Crime Victim Reparations fund helps pay medical bills, mental health treatment costs, funeral expenses, and other costs incurred to a victim due to a violent crime. We reviewed the entity's individual expenses for the first quarter of fiscal year 2006. After reviewing their expenses, it appears that the surcharge revenue, which consists of about 63 percent of Crime Victim Reparations' total funding, is being used appropriately, according to *Utah Code* 63-25a-411.

Public Safety Support Fund for POST. This support account, stated in *Utah Code* 63-63a-4(b), is the only source of revenue for the Peace Officer Standards & Training (POST). POST operations are entirely funded by the surcharge revenue. We reviewed a sample of individual expenses of the Public Safety Support Fund. All expenses appeared to go toward POST operations, such as training materials and paying for class instructors.

Recommendations

1. We recommend that the Division of Substance Abuse and Mental Health develop a plan to periodically monitor counties' use of the surcharge revenue they receive (in addition to local substance abuse authorities that they already monitor), and provide additional guidance as needed.
2. We recommend that the Department of Public Safety keeps the surcharge revenue for the statewide warrant system in a separate account and ensures it is used to help cover the costs of the statewide warrant system.

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Chapter IV Concerns with Other Fees and Costs Need to Be Addressed

A few additional issues relating to fees and costs need to be resolved and clarified. First, the capital projects fund will not have sufficient funds to make bond payments on the Matheson Courthouse and other court facilities before fiscal year 2008 ends. Some of the anticipated revenue from the court complex fee has been diverted to other accounts, through legislative actions and due to the establishment of justice courts in the state. The Administrative Office of the Courts (AOC) needs to work with the Legislature to determine alternative means to fund the capital projects fund.

Second, there is some concern about how certain justice courts are passing along costs to offenders, such as pleas in abeyance enhancements. As discussed in Chapter I, these assessments can be passed along to an offender at a judge's discretion. While these costs for state-run and justice courts have decreased over the past few years, the AOC needs to clarify the need for and imposition of these costs.

Capital Projects Fund Will Not Be Sufficient for Bond Payments Without Legislative and AOC Action

The capital projects fund is a restricted account of the general fund that is used to pay for the Matheson Courthouse, Logan, Vernal, and West Jordan court facilities. The AOC projects that the expenses from this account will be about \$4 to 4.3 million per year until the bonds are paid off at the end of fiscal year 2018. However, capital projects funding will not be sufficient in future years to cover the bond payments because contributions to the capital projects fund have decreased and the Legislature has directed surplus funds to other purposes. The decrease in contributions is also partially due to the increased number of justice courts which do not charge a court complex fee, but take some of the case workload from the state courts that do charge a \$7 court complex fee. Also, in past years the Legislature directed \$4.5 million in surplus funds

Decreases in the capital project fund are due to the Legislature directing surplus funds for other purposes, and the increase in number justice courts.

(from the capital projects fund) to be used for other capital court projects and equipment needs.

Capital Projects Fund Has Been Used for Other Purposes

Initially the capitol project fund was created in 1994 to pay for the construction, operating, and maintenance costs of the Matheson Courthouse in Salt Lake City. However, because of the balance in this fund, revenue from this account has been used for other purposes, and this account will need additional revenue in the future to meet bond obligations.

Revenue from this account has been used for other court facilities. In fiscal year 2000, the Legislature approved \$2,700,000 from the account to help with the cost of construction of the new courthouse in Vernal. In fiscal year 2003, the Legislature approved \$700,000 from the account to fund equipment costs for the new courthouse in Logan. In fiscal year 2004, \$1,131,000 in ongoing funds was applied to the annual bond payments for the construction of the new courthouse in West Jordan.

Also, the Legislature appropriated about \$600,000 in ongoing funds from the balance in the capital projects fund to cover existing lease and contract obligations in the court lease and contract line item for building leases and maintenance contracts. The purpose of this appropriation was to help deal with revenue shortfall facing the state in 2003. In the 2005 General Session, the Legislature appropriated a ongoing amount of \$300,000 toward restoring the \$600,000 that was diverted from the account in 2003.

In 2007, the AOC sought to further restore the capital projects fund by asking the Legislature for \$300,000 in ongoing funds. Instead in the 2007 General Session, the Executive Offices and Criminal Justice Appropriations Subcommittee chose to seek \$2,300,000 in one-time funds for the purpose of partially restoring the capital projects fund for funds that have been used to construct courthouses as described above. This option was not accepted by the Executive Appropriations Committee.

In addition to funds being used from this account for other purposes, the creation of new justice courts has also contributed to the problem of

Revenue from the capital projects fund has been used to help pay for four court facilities.

In the 2005 General Session, the Legislature appropriated a ongoing amount of \$300,000 toward restoring revenue that was diverted from the capital projects fund.

insufficient funds for future bond payments. One of the sources of revenue for this account is a \$7 court complex fee that is applied to all violations of *Utah Code* Title 41 in state courts. Justice courts do not assess this fee.

Court Complex Fee Revenue Has Decreased

Justice courts hear most traffic citations within their jurisdiction. Thus, when a justice court is established, most traffic citations that were previously filed in state courts will be filed in justice courts. This has a direct impact on the amount of each citation that is deposited in the capital projects fund.

Even though it is a small portion of the overall bond funding, the court complex fee collection from traffic violations has decreased an average of 11 percent over the last seven years. As more traffic citations are handled by justice courts instead of district courts, the amount of contribution to the capital projects fund from the court complex fee on traffic violations will continue to decrease. Currently there are 131 justice courts operating in the state. Figure 4.1 shows the court complex fee collection from traffic citations over the last seven years.

The establishment of justice courts has an impact on the amount of money distributed to the capital projects fund.

Figure 4.1 Court Complex Fee Collections. While the revenue collected has decreased 51 percent since 2001, the revenue from court complex fee was about 11 percent of the total revenue in the capital projects fund in 2001, and 6 percent in 2006.

Year	Court Complex Fee Revenue From Traffic Citations
2001	\$ 492,000
2002	480,000
2003	423,000
2004	328,000
2005	329,000
2006	265,000
2007*	242,000

* Estimated based on year-to-date collection

To put this in proper context, the revenue from the \$7 court complex fee is only one source of funding for the capital projects fund. The capital projects fund is also funded from civil filing fees. In 2001, the revenue collected from the court complex fee was 11 percent of the total revenue collected for the capital projects fund in 2001. With the creation of additional justice courts since 2001, total revenue collected from the court complex fee has decreased by \$227,000 and revenue collected was 6 percent of the total revenue collected for the capital projects fund in 2006.

Six justice courts have been established over the last seven years, four of which are in Salt Lake County. By creating justice courts in the large urban areas of Salt Lake City, Ogden, and West Valley City alone, more than \$210,000 per year has been diverted from the capital projects fund to the accounts that receive revenue from the justice court security surcharge.

In addition to these three justice courts, the creation of another urban justice court in Provo City will decrease the capital projects fund by approximately \$79,000 per year. This justice court will begin operating on July 1, 2007. This estimate is based on the average amount of revenue collected over the last five fiscal years from Provo District Court's complex

All violations of Title 41 (Motor Vehicles) are tried in state courts are assessed a \$7 court complex fee.

The recent establishment of three justice courts diverts over \$210,000 from the capital projects fund to municipalities and counties.

fee. The new justice court will now hear almost all of the traffic violations within the Provo City limits.

Justice Court Traffic Citations Are Not Assessed a Court Complex Fee

Justice courts do not assess a \$7 court complex fee on traffic citations.

One source for the capital projects fund is a \$7 fee that comes from violations of *Utah Code* Title 41 tried in state courts. As mentioned in Chapter I of this report, state courts have a security surcharge of \$25 per citation. This revenue is deposited into the court security account—a restricted account in the general fund. The proceeds from this account are used to contract for security services at state courts. Justice courts are required by statute to assess a \$32 security surcharge on all citations, but not the \$7 court complex fee.

Figure 4.2 shows the only differences between state and justice court fine assessments for the same offense are the security surcharge and court complex fees.

Figure 4.2 Differences in Fine and Surcharge Assessments for State and Justice Courts. This figure shows an example of a bail amount of \$82 for a routine speeding violation of 1-10 mph over the speed limit.

Fine, Fee or Surcharge	State Courts	Justice Courts
Total Bail	\$82	\$82
Fine	\$37.04	\$37.04
Surcharge (35%)	12.96	12.96
Security Surcharge	25.00	32.00
Court Complex Fee	7.00	0.00

As more justice courts continue to be created, revenue that previously went to the capital projects fund now is part of the \$32 justice court security surcharge.

Legislature and AOC Have

The AOC has recommended that the Judicial Council use \$1.3 million of turnover savings to help pay part of the bond payments

Funding Options

The AOC is aware of the shortage of funds in the capital projects fund. The AOC has recommended to the Judicial Council, and the council approved at its meeting on June 25, 2007, the following action to address the shortfall in the court complex fund. From funds available in the courts' fiscal year 2007 budget because of turnover savings, \$1.3 million in the main line item, court operations, can be applied to eligible expenses in the contract and lease line item. This frees \$1.3 million in the contract and leases line item to be used to pay part of the bond payments.

The AOC reports this one-time contribution is possible because of higher-than-anticipated turnover savings, in part due to the abnormal number of judicial retirements and the length of time those positions remained open. The AOC reports this action should keep the fund solvent until 2011; however, we did not audit the AOC's analysis of the \$1.3 million contribution. Also, the AOC reports that the Judicial Council will again request \$300,000 in ongoing general funds in the 2008 General Session to restore funding that was taken from the capital projects fund in 2003.

To summarize, the AOC reports that if the Legislature approves an appropriation in 2008, coupled with the one-time \$1.3 million contribution, the capital projects fund will remain solvent through the retirement of the bonds in 2018.

However, if the Legislature does not approve an appropriation in 2008, the one-time contribution of \$1.3 million will keep the capital projects fund solvent until 2011. The AOC will need to work with the Legislature to determine how to fund this account through 2018. The Legislature can appropriate funding to meet all bond obligations, or a portion of funding could come from a change in the *Utah Code* to divert up to \$7 from the \$32 justice court security surcharge to help sustain the capital projects fund, since justice courts do not charge a court complex fee on Title 41 traffic violations.

Justice Court Security Surcharge Provides

Revenue to Several Entities

Instead of contributing to the court complex fee, justice courts assess a \$32 security surcharge to all bail amounts. The \$32 justice court security surcharge is divided among four entities for criminal and certain moving traffic violations. Figure 4.3 shows the distribution and required use of the \$32 justice court security surcharge, according to *Utah Code* 78-5-116.5.

Figure 4.3 Justice Court Security Surcharge Allocation.
Counties receive at least 50 percent of the justice court security surcharge.

Local counties receive 50 percent of security surcharge collections from justice courts.

Recipient Entity	Portion Received	Required Use
County	\$16.00	County General Fund
Local Government Entity (city or county)	6.40	Local Entity's General Fund
Court Security Account	6.40	Security at Juvenile and Justice Courts
Justice Court Technology, Security and Training Account	3.20	Technology, Security and Training Needs in Justice Courts

Figure 4.3 above shows that counties receive more security surcharge revenue than the other recipients. Counties receive half of the security surcharge for a case prosecuted in a city justice court. If a case is prosecuted in a county justice court, counties receive \$22.40 or 70 percent of the security surcharge.

The use of security surcharge revenue is not specified in statute.

The revenue that counties receive goes to their general fund. Counties can use this revenue for various purposes. Statute does not specifically state the purpose for which the security surcharge revenue from the county should be used. Since this revenue goes to their general fund with other revenue sources, it would be difficult to determine exactly how counties use this revenue. However, we contacted the large counties in the state to gain an understanding of the uses of this revenue.

Three of the four largest counties told us that the revenue they receive from the security surcharge is used to help pay for housing and

Three of the four largest counties report that they use the security surcharge revenue to help pay for housing and transportation costs of criminals.

Cost assessments have decreased in all three types of courts over the last three years.

transportation costs of criminals. The fourth county uses the revenue to help fund court security in the county justice court. These four counties combined to receive \$1.8 million in revenue from the justice court security surcharge in fiscal year 2006.

Cost Assessments Have Been Decreasing

Cost assessments have decreased over the last three years. However, some courts continue to charge higher costs than others. Courts are allowed to pass along costs to offenders to cover such expenses as investigating, searching for, apprehending, and prosecuting the defendant. The revenue from costs collected by a court are remitted to the entity incurring the cost, and there is no surcharge on cost assessments.

We asked all 131 justice courts to submit how much revenue they had collected in cost assessments for the last three fiscal years. Of the 131 justice courts, 106 of them responded to our data request. The data submitted by the 106 justice courts showed that these cost assessments have decreased from \$1.7 million in fiscal year 2004 to \$800,000 in fiscal year 2006, or 52 percent.

We did not need to survey district and juvenile courts, because their data is centralized under CORIS for district courts and CARE for juvenile courts. Assessed costs among district courts have also been decreasing. These assessed costs have decreased from \$148,000 in fiscal year 2004 to \$92,000 in fiscal year 2006, or 38 percent. Assessed costs among juvenile courts increased from \$16,000 in fiscal year 2004 to \$18,000 in fiscal year 2005, then decreased to \$13,000 in fiscal year 2006 for an overall decrease of 16 percent.

Costs Are Assessed at The Court's Discretion

Statute allows courts to pass along costs to offenders and other parties at a court's discretion. *Utah Code* 77-32a-1 states that "In a criminal action the court may require a convicted defendant to pay costs." *Utah Code* 77-32a-2 further clarifies that "Costs shall be limited to expenses specially incurred by the state or any political subdivision in investigating, searching for, apprehending, and prosecuting the defendant, including

attorney fees of counsel assigned to represent the defendant, interpreter fees, and investigators fees.”

All three types of trial courts are authorized to pass along costs to offenders. Figure 4.4 shows the average cost collection for the three types of trial courts from fiscal year 2004 to fiscal year 2006.

Figure 4.4 Average Cost Assessment Collections per Court. Cost assessments have decreased in all three types of trial courts since 2004.

Court	Count	FY 2004	FY 2005	FY 2006	Change from FY 2004 to FY 2006
District Court	39	\$ 3,800	\$ 2,200	\$ 2,400	(37)%
Justice Court*	106	16,200	10,300	7,700	(52)
Juvenile Court	23	700	800	600	(14)

* Based on analysis of 106 of 131 justice courts

Justice courts pass along more costs per court than the other two types of courts.

Juvenile courts generally assess other types of sanctions, such as community service, rather than pass along their costs.

While all courts have shown a decrease in cost collections, the justice courts charge more cost assessments than the other courts. The AOC reports that justice courts have generally passed along more costs due to misunderstandings among the courts as to what can be classified as a cost. This is the case with the Davis County Justice Court explained below. Juvenile courts’ cost collections may be lower because they generally assess alternate sanctions, such as community service, instead of passing along the costs of the court.

Use of Cost Assessments Is Mixed Among Surrounding States.

We surveyed four other intermountain states to determine if other states allow courts to pass along costs at the courts’ discretion in the same manner that Utah allows. One of the four states surveyed grants the courts the ability to pass along costs at the discretion of the individual court similar to Utah. Two of the states claim judges do not have similar authority; however, one of those states is considering legislation to allow its courts to pass costs on to the offender at the courts’ discretion. The fourth state elected not to comment on its practices.

One justice court charged defendants a \$15 cost for maintaining each plea in abeyance case.

A plea in abeyance fee should be subject to the same surcharge requirements as a fine.

Davis County Justice Court Assesses Costs for Maintaining Plea in Abeyance Cases. The case review in Chapter II showed that Davis County Justice Court charges a \$15 cost for maintaining each plea in abeyance case. Because the court assesses the fee as a cost, it is non-surchageable and the state does not receive any funds from the fee. In fiscal year 2006, the Davis County Justice Court had 1,088 plea in abeyance cases. The amount of revenue that would have been remitted to the state if the fees were surcharged was \$5,712 at a 35 percent surcharge, and \$13,872 at an 85 percent surcharge. While this was the only justice court we found that charges a \$15 court fee for each plea in abeyance case, other justice courts could be engaged in a similar practice.

A plea in abeyance fee should be subject to the same surcharge requirements as a fine, as explained in Chapter I. While assessing costs are legal, the statute requires that an expense to maintain a plea in abeyance case should be added to the plea in abeyance fee (up to \$25), and not be categorized as a separate cost. By processing fees according to the AOC's recommendation, the entire plea in abeyance fee is surchargeable, and the state receives a portion of the revenue collected.

In the past, Davis County kept the \$15 for handling a plea in abeyance case because it is being categorized as a cost. Since becoming aware of this issue, Davis County Justice Court reports that they have taken the necessary steps to ensure that an expense to maintain a plea in abeyance case is added to the plea in abeyance fee, not categorized as cost.

One Justice Court Charges A Fee for Diversion Cases

As part of the survey of justice courts in Chapter II, we looked to see if any justice courts charged fees for diversion because there is a constitutional question as to whether these fees are allowed. As described in the next paragraph, a diversion is similar to a plea in abeyance. Of the 106 justice courts that submitted data (of 131 total justice courts), only one justice court charged fees for diversion cases between fiscal years 2004 and 2006. From fiscal year 2004-2006, the North Salt Lake City Justice Court had 77 diversion cases totaling \$17,294 in diversion fees.

For a diversion agreement, an alleged offender agrees to fulfill specific requirements in order to prevent a violation from going on his/her record. Such requirements could include abstaining from any criminal

**According to the
Utah Constitution,
courts should not
charge a fee for
using diversions.**

citation for a given time period, completing a course meant to correct future behavior, or fulfilling community service. However, in contrast to a plea in abeyance, the alleged offender pleads neither guilty nor innocent. If the offender completes the terms of the agreement, the case is set aside.

According to the *Utah Constitution* Article 1 Section 12, only a person who is guilty can be charged with a fine. In the case of a diversion, the alleged offender pleads neither guilty nor innocent; therefore, the justice court should not charge a fee, according to AOC's general counsel. The North Salt Lake City Justice Court believes they can assess a fee for using diversions because *Utah Code* 77-2-5, which defines the use of diversions, does not specify that a court cannot assess a fee. The AOC general counsel's opinion is that justice courts should not charge fees for a diversion case, and the AOC should remind all justice courts of Article 1 Section 12 of the *Utah Constitution* and clarify the use of diversions.

Recommendations

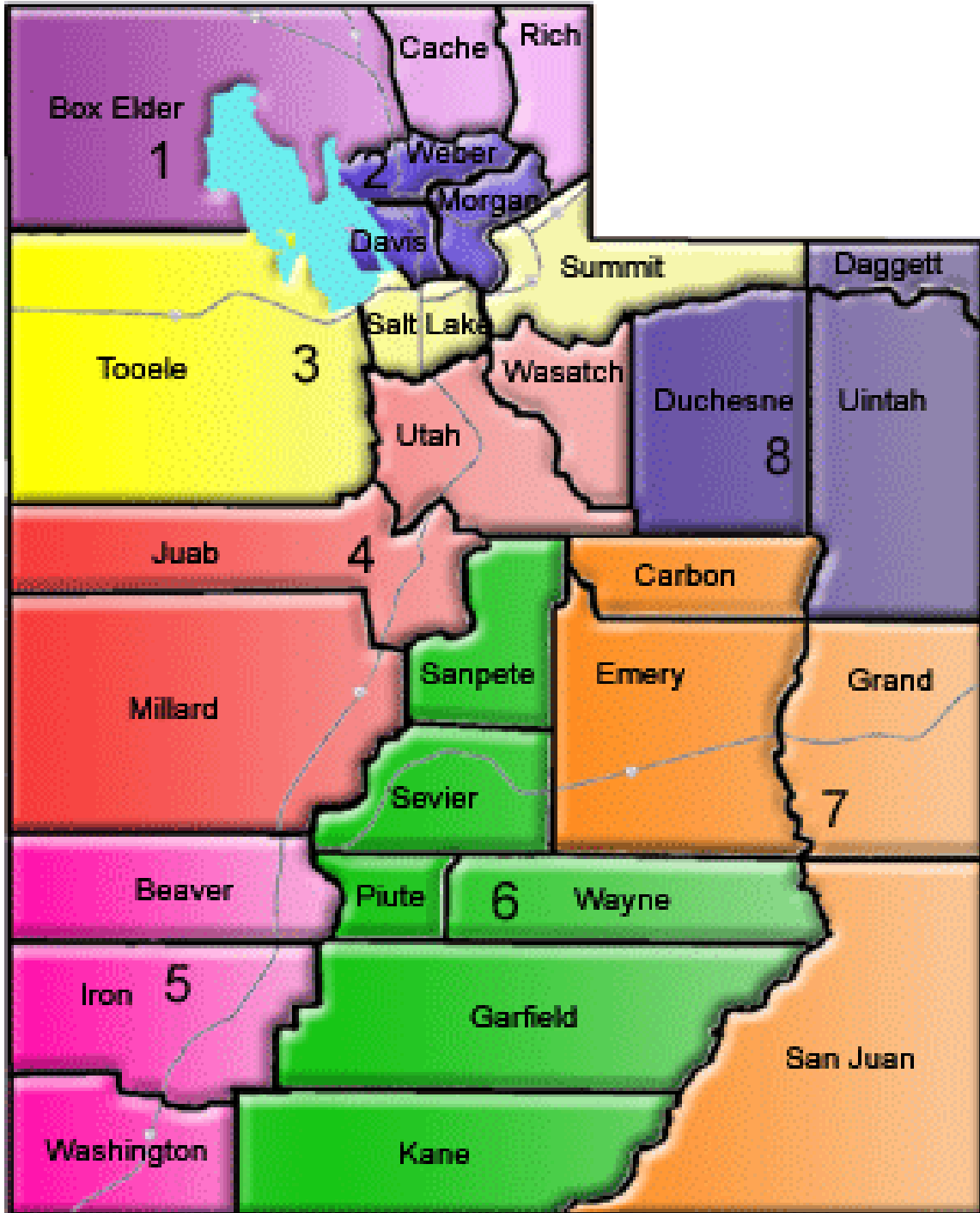
1. We recommend the AOC obtain Legislative agreement to develop a long-term solution to obtain revenue for the capital projects fund in order to maintain viability in future years.
2. We recommend that the Legislature, in conjunction with the AOC, study the impact of lost revenue on the capital projects fund due to the creation of new justice courts.

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Appendices

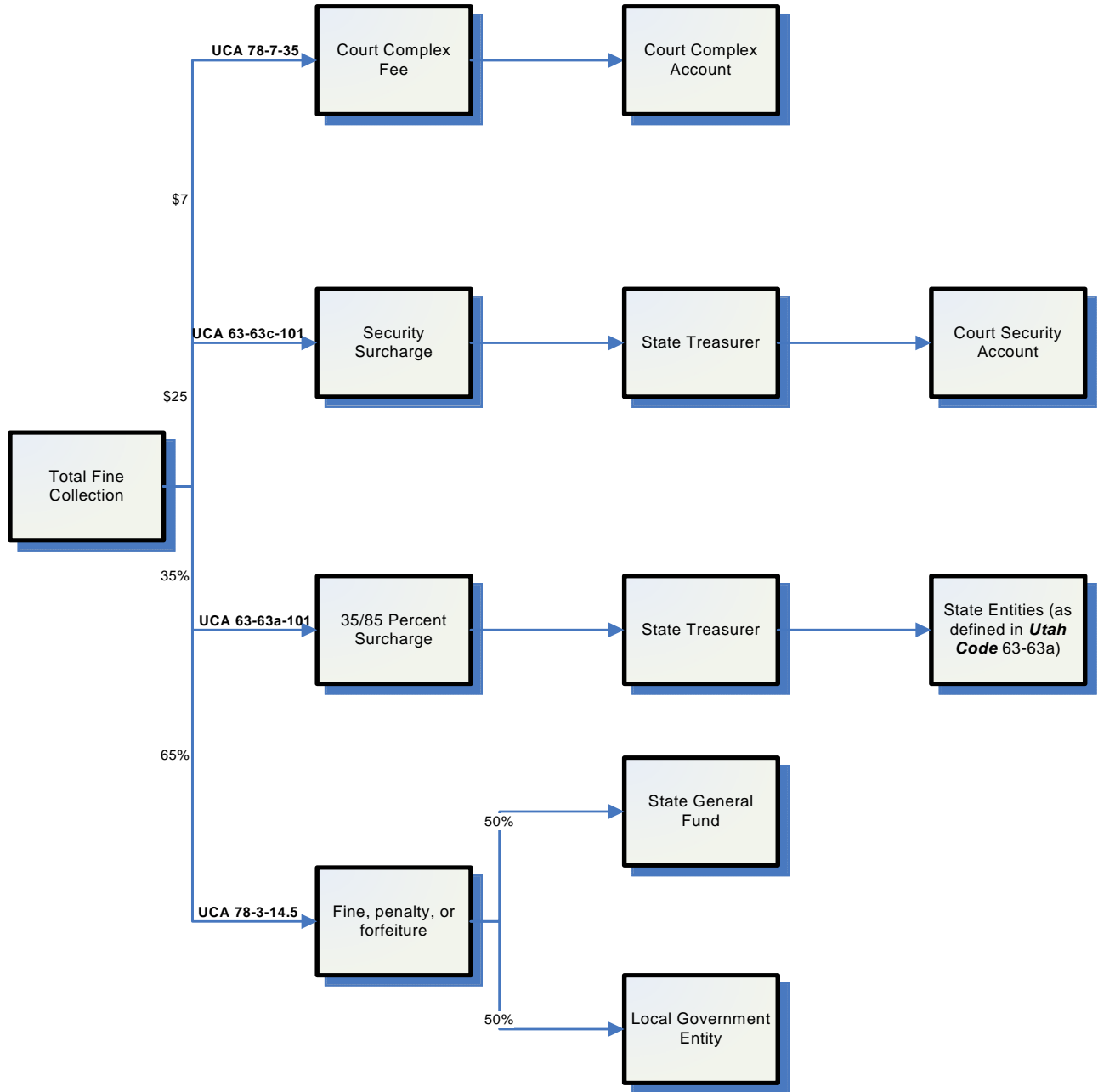
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Appendix A Judicial Districts



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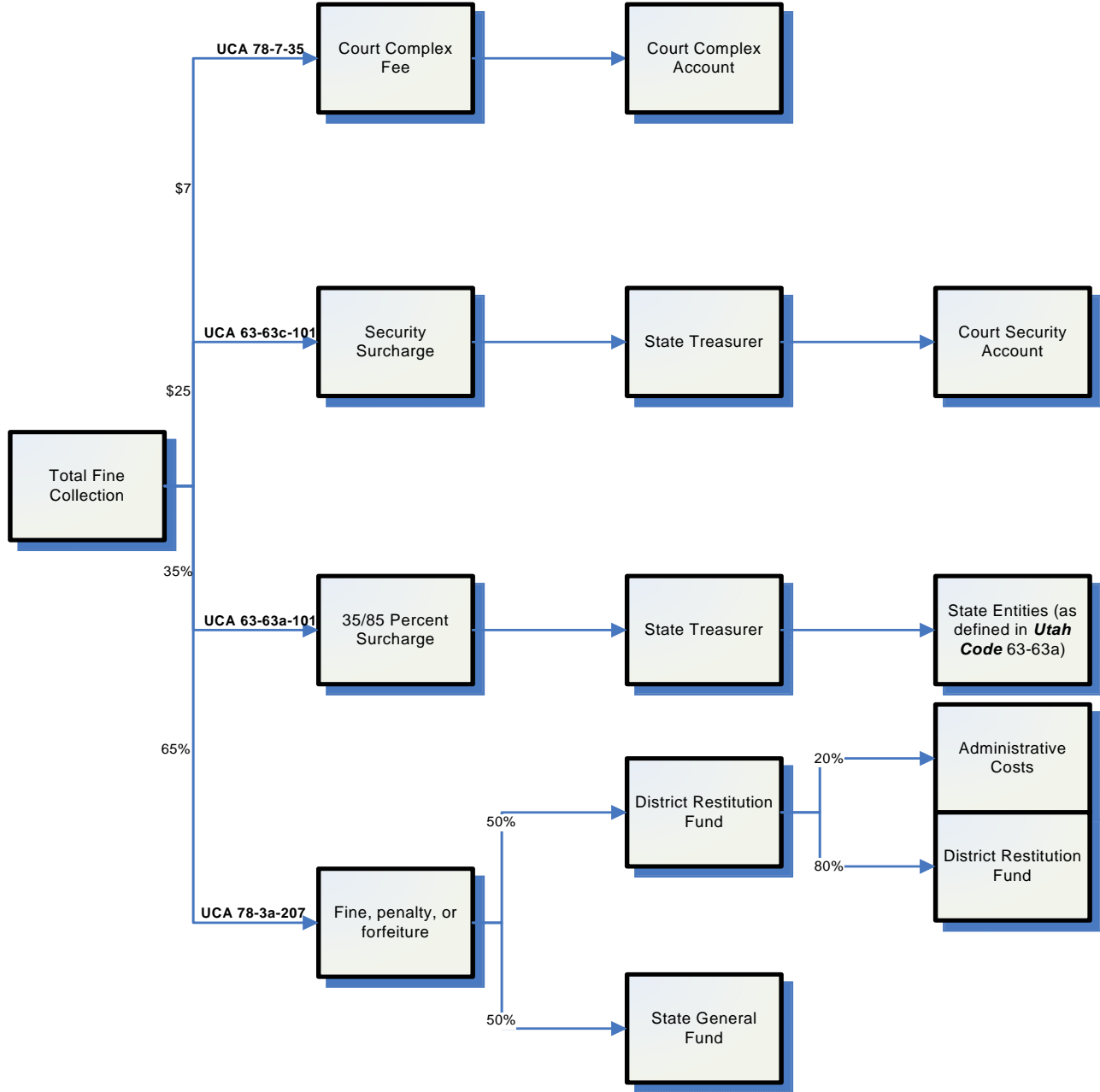
Appendix B District Court Fine/Fee Distribution



This flowchart shows the distribution of funds for a minor traffic violation in a district court outside of Salt Lake County.

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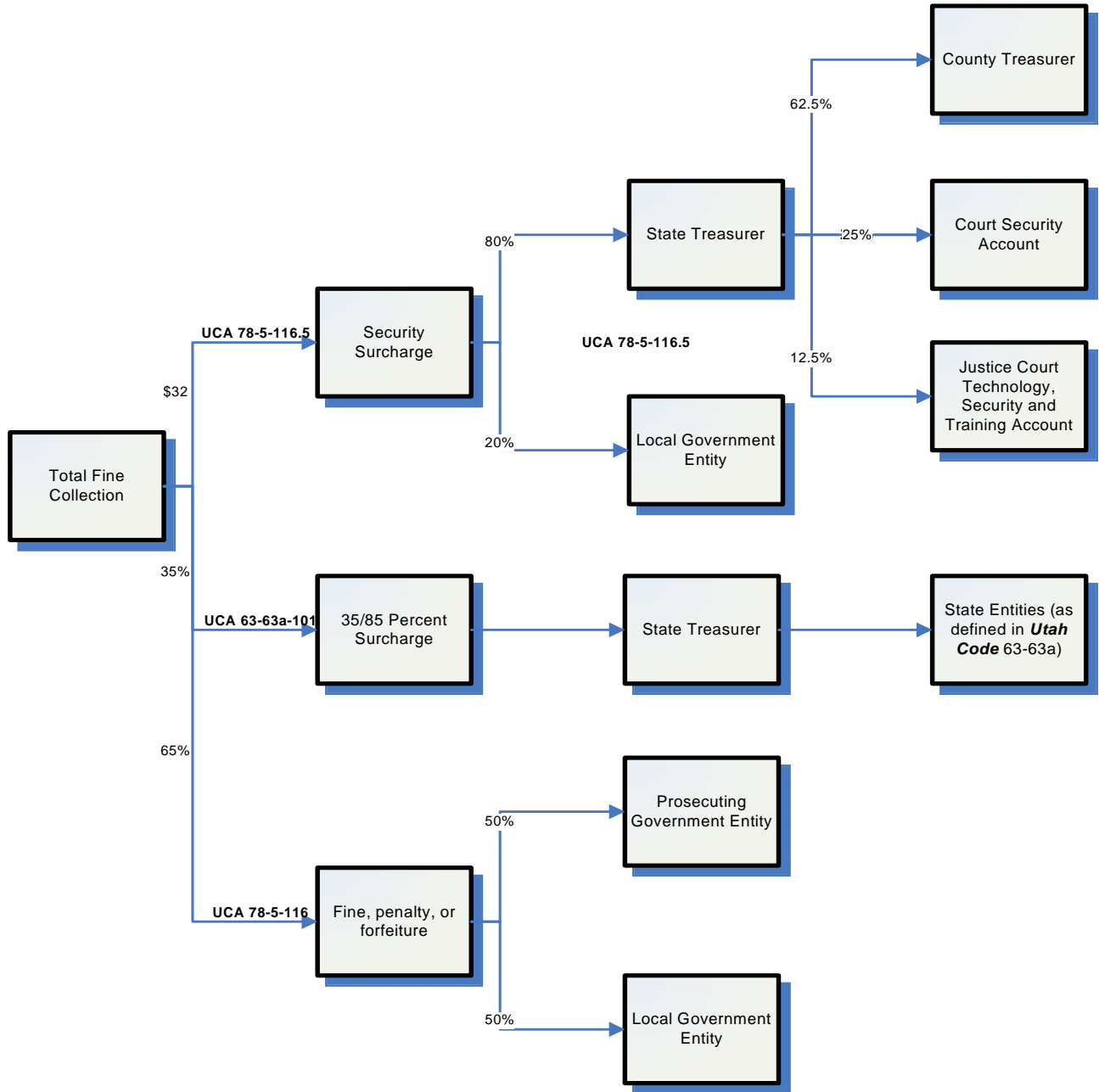
Appendix C Juvenile Court Fine/Fee Distribution



This flowchart shows the distribution of funds for a minor traffic violation in a juvenile court outside of Salt Lake County.

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Appendix D Justice Court Fine/Fee Distribution

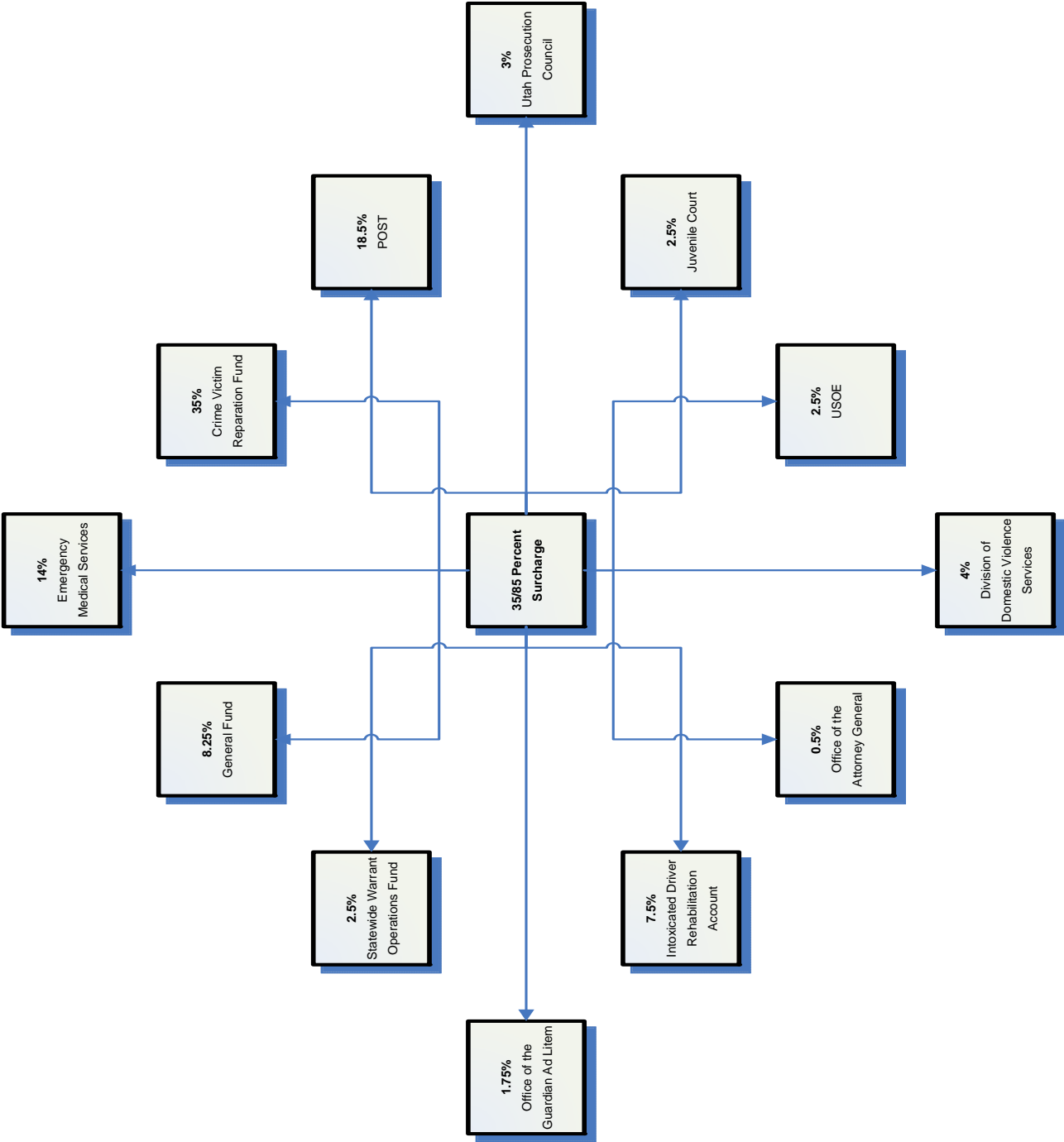


This flowchart shows the distribution of funds for a minor traffic violation in a justice court outside of Salt Lake County.

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Appendix E

The 35/85 Percent Surcharge Distribution



This figure shows the distribution of surcharge funds, as outlined in *Utah Code* 63-63a.

The 35/85 Percent Surcharge Revenue Allocation for Fiscal Years 2004-2006

Surcharge Revenue Accounts	Percent	2004	2005	2006
Crime Victim Reparations Fund	35.00%	\$ 5,550,321	\$ 6,182,458	\$ 6,399,877
Public Safety Support Fund for POST	18.50	2,805,300	2,867,400	2,923,800
Emergency Medical Services	14.00	2,220,128	2,472,983	2,500,000
General Fund	8.25	1,441,673	2,052,797	2,106,422
Intoxicated Driver Rehabilitation	7.50	1,189,355	1,200,000	1,371,402
Domestic Violence	4.00	634,322	700,000	712,200
Public Safety Support Fund for Prosecution Council	3.00	475,742	511,000	525,100
Statewide Warrant Operations	2.50	396,452	433,600	457,134
Substance Abuse Prevention for Juvenile Courts	2.50	392,300	414,600	433,700
Substance Abuse Prevention for USOE	2.50	396,452	441,604	457,134
Guardian ad Litem	1.75	277,516	309,123	319,994
Domestic Violence Services for AG	.50	78,500	78,600	78,600
Total		\$15,858,061	\$17,664,165	\$18,285,363

Agency Response

Wednesday, July 11th, 2007

John Schaff
Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Schaff:

Thank you for the opportunity to comment on *A Performance Audit of Court Fines, Surcharges and Fees*, conducted by the Office of the Utah Legislative Auditor General. We have found the audit complete, accurate, and useful, and have taken steps, within our authority, to implement the recommendations contained therein.

The audit addresses an important fiduciary responsibility of the courts and we were pleased to read that you found the systems and procedures employed by the Administrative Office of the Courts up to the task. A number of findings and recommendations speak to the administration of the various justice courts which are within the administrative purview of local government. While it will be the responsibility of local government to address the issues directed to the justice courts, the Administrative Office of the Courts is committed to providing the training and direction necessary for ensuring the type of consistency called for in the audit.

There are several findings that I would like to comment on specifically, namely the recommendations concerning justice court automation and the court complex fund. We are in complete agreement with the recommendation that all justice courts use the same case management system. The audit correctly points out that many of the errors identified in justice courts would not have occurred had all justice courts been operating under a single system

that was centrally administered to ensure that common definitions are used, appropriate audits are in place, and system changes are made uniformly. The need for a uniform case management system for all justice courts is becoming increasingly apparent and necessary if the justice courts' records are to be accurate and available to the larger criminal justice community and the public.

As the audit reports, the original intended use of the court complex fund has been extended to cover other facility projects, additional on-going funds were withdrawn from the fund to help address the state's revenue shortfall in 2003 (half of which has been restored), and the fund has been adversely effected by the formation of new justice courts. The Administrative Office of the Courts has the ability within its existing FY 2007 budget to pay \$1.3 million toward this year's bond payment rather than paying the entire bond amount from the fund, as a result of higher turnover savings than anticipated. This one time contribution should keep the fund solvent at least until FY 2011. This, coupled with an anticipated request that the 2008 Legislature restore the other half of funds withdrawn in 2003, should make the fund solvent through the bond retirement in 2018. We will closely monitor case filings and revenue and make regular reports to the Executive Offices and Criminal Justice Appropriations Subcommittee to ensure that the fund has the ability to support necessary bond payments through the bond retirement.

I would like to commend your auditors for the highly professional manner in which they performed their work on this audit.

Sincerely,

Daniel J. Becker
State Court Administrator

cc: Chief Justice Christine M. Durham