

35/90 Surcharge: Policy Issues and Recommendations

Presentation to the Judiciary Interim Committee
October 19, 2016

Purpose of this Presentation

- Report on additional data verification of the courts' assessment of the 35/90 Surcharge;
- Present available data on violations and fines by jurisdiction;
- Discuss policy issues of several state restricted accounts and the 35/90 Surcharge used to fund them; and
- Provide recommendations for reporting fines and fees collected by the courts and ways to fund government operations from monies collected

Findings

- Case documents from justice courts are inconsistent in reporting the amount of 35/90 Surcharge collected from fines assessed on convictions
- **Further verification of internal court data revealed no significant issues in the assessment of fines and fees, contrary to previous analysis**
 - E.g., delinquency fees categorized separately in data, but included as part of the fine in case documents
- The amount of fines, fees, and surcharges collected from case filings have dropped during the last 5 fiscal years, mostly due to a drop in annual case filings

Overview of Fines

- A “Total Fine” in Utah court is typically composed of the following:
 - The base fine for the offense
 - The “Court Security Surcharge”
 - The “35/90 Surcharge”
- Fine may include additional charges based on case circumstances:
 - A delinquency fee and/or failure to appear fee, if applicable
 - Motor vehicle fees

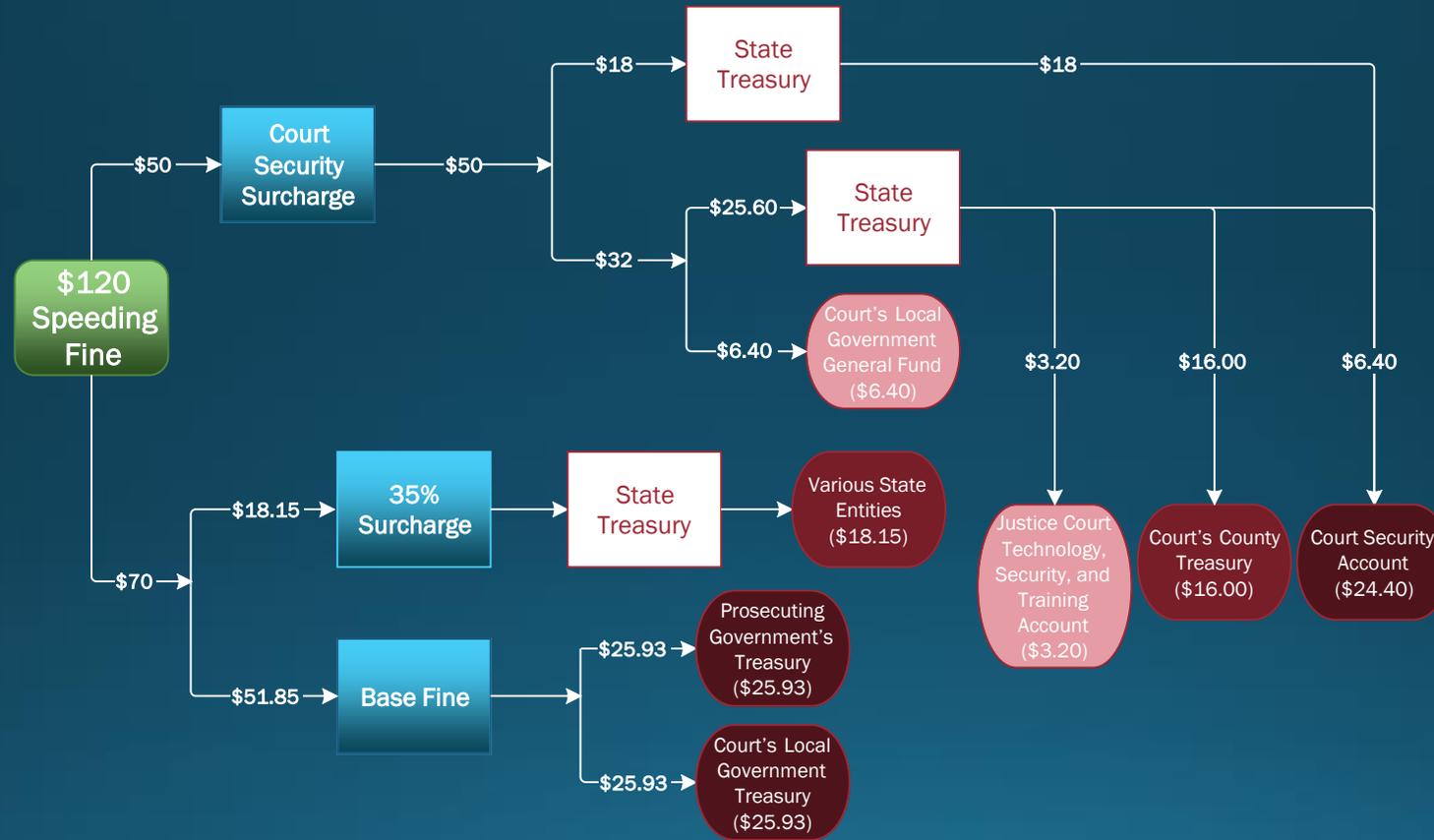
35/90 Surcharge

- Additional Fee added to fines for most offenses
 - 90% surcharge applies to:
 - Felonies
 - Class A misdemeanors
 - Violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving
 - Any Class B misdemeanor not classified within Title 41
 - 35% surcharge applies to:
 - Any other offense not applicable to the 90% surcharge
 - The surcharge does not apply to:
 - Non-moving traffic violations
 - Sentences when community service is ordered in lieu of fine

Fines and Fees in Utah Justice Courts

- Example: Speeding (1-10 mph over limit)
- A total fine is composed of the following:
 - \$50 court security surcharge
 - A fine for the offense set by the Judicial Council and plus any aggravating or mitigating circumstances
 - A surcharge of 35%, calculated on the remaining fine on an exclusive basis
- Generally, fines stay with local jurisdictions while surcharges are remitted to the state for various purposes

Justice Court Fine Distribution



State Entities funded by 35/90 Surcharge

90% surcharge accounts	% allocated	35% surcharge accounts	% allocated
Crime Victim Reparations and Assistance Fund	35.00%	Crime Victim Reparations and Assistance Fund	35.00%
Public Safety Support Fund for POST	18.50%	Public Safety Support Fund for POST	18.50%
Emergency Medical Services	14.00%	Emergency Medical Services	14.00%
Intoxicated Driver Rehabilitation	7.50%	General Fund	8.25%*
Law Enforcement Services	4.50%*	Intoxicated Driver Rehabilitation	7.50%
Domestic Violence	4.00%	Domestic Violence	4.00%
General Fund	~3.75%*	Public Safety Support Fund for Prosecution Council	3.00%
Public Safety Support Fund for Prosecution Council	3.00%	Statewide Warrant Operations	2.50%
Statewide Warrant Operations	2.50%	Substance Abuse Prevention for Juvenile Courts	2.50%
Substance Abuse Prevention for Juvenile Courts	2.50%	Substance Abuse Prevention for USOE	2.50%
Substance Abuse Prevention for USOE	2.50%	Guardian ad Litem	1.75%
Guardian ad Litem	1.75%	Domestic Violence Services for AG	0.50%
Domestic Violence Services for AG	0.50%		

Allocation of surcharge determined by Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation

Sources of Surcharge Funds

- Traffic violations are the most common offense in Justice courts
 - Speeding accounts for 1/3 of total combined fines and plea in abeyance fees
- DUI convictions are the next largest, followed by Impaired Driving violations and Retail Theft
- Felonies less commonly contribute to the surcharge due to a variety of factors:
 - Fewer convictions
 - Reduced ability for convicted individuals to pay larger fines

Data by Jurisdiction

- In total, 325,027 out of 440,586 cases resulted in guilty conviction/plea in abeyance (conviction rate $\approx 74\%$)
- The percentage of filings for speeding violations range from 6.89% of total case filings (Vernal City justice court) to 94.83% (Mantua City justice court)
- Though speeding violations are most common across all jurisdictions, larger jurisdictions tend to have a high number of case filings for trespassing, retail theft, assault, and non-moving traffic violations
- Smaller jurisdictions tend to have speeding violations as the vast majority of case filings, though significant variation exists

Impact of Case Filings on Revenue

- From FY2010-2016:
 - Annual case filings in Justice courts have dropped from ~550,000/yr to ~450,000/yr
 - Drop in traffic case filings represent almost all of the change in case filings
- Thus, enforcement and conviction rates of traffic laws have the largest impact on local and state revenues from court fines

Problem: Funding State Programs

- As the number of case filings drop, the number of fines resulting from convictions also drop
 - Surcharge collected has fluctuated in recent years, though the overall trend is downward
 - Increase in higher surcharge rate (85% → 90% in 2010) mitigated drop in surcharge collected
 - Total surcharge collected impacted by ability to pay fines by convicted persons and payment plans for higher fines

Potential Solutions

- Increase 35% Surcharge Rate
- Change Funding Arrangement
- Apply Surcharge to additional criminal violations, i.e., non-moving traffic violations
- Change Court Sentencing guidelines
 - Increase penalty rates
 - Reduce judge's discretion in applying delinquency fees and failure to appear fees
- Levy additional fees

Increasing 35% Surcharge Rate

- For every 1% increase in the 35% surcharge rate, the total surcharge assessed would increase by about \$218,000 in justice courts.
- Pros:
 - Simple change to raise more revenue for state programs
 - Total fine amount for violations could remain the same
 - Simple change to CORIS programming
- Cons:
 - If fine amounts recommended by the Judicial Council remain the same, the courts and local prosecuting authorities would receive an equal amount less
 - May require all fines and fees to be increased on the Bail and Fine Schedule

Changing Funding Arrangement

- UCA 51-9-401 through 413 gives the percentages of total collected surcharge allocated to various restricted accounts
- Alternative funding arrangements include:
 - Maintain current funding structure, with supplemental appropriations to programs as needed
 - Pros: Used only when needed
 - Cons: Legislature only controls the percentage amounts allocated to each account
 - Require all surcharge amounts to be sent to the General Fund, with each program subject to the normal appropriations process
 - Pros: Gives legislature greatest control over amounts each program is funded
 - Cons: Program funds at risk as a result of the appropriations process

Apply Surcharge to more violations

- A surcharge rate can be placed on violations that are currently not surchargeable (e.g., non-moving traffic violations)
- Pros: Raise revenue quickly
 - >66,000 non-moving violation cases filed in FY2015
 - ~18.3 million in fines assessed in FY2015
- Cons:
 - Would decrease revenue to courts and local governments
 - Public policy objection to applying surcharge to minor violations because of programs funded by surcharge

Change court sentencing guidelines

- Adjust judicial discretion in fine sentencing
 - Example: assess delinquency fees in all cases when person fails to notify the court of intentions regarding the citation/violation
- Pros:
 - Provides administrative simplification and streamlines court processes
 - Raises revenue
- Cons:
 - May be considered punitive

Levy additional fees

- An additional fee can be applied to fund certain programs based on the nature of the violation
 - Example: \$10 traffic violation fee
- Pros:
 - Precedent: The courts assessed a \$10 traffic fee for certain traffic violations as late as 2007
 - Simple way to increase revenue
- Cons:
 - May be financially burdensome
 - Adds administrative complexity

Recommendations

- Standardize the information reported on public case documents to reduce likelihood of missing, inaccurate, or contradictory information
- Consider options to preserve funding to state programs reliant on the 35/90 surcharge without decreasing funding to local court governments and prosecuting authorities

Key Takeaways

- While the courts appear to be assessing the correct fines and surcharges on criminal convictions, public case documents are often inaccurate or present contradictory information
- Funding for state programs reliant on the surcharge has been trending downward due in part to a decrease in case filings since FY2010
- The legislature has several options available to preserve or increase funding to such programs

Questions?