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**FINAL REPORT**  
**OF THE**  
**SENATE STUDY COMMITTEE ON COURT SURCHARGES AND**  
**ADDITIONAL FINES**

**2006**

**SENATE MEMBERS**

**Honorable John Wiles, Chairman**  
**37<sup>th</sup> District**

**Honorable Bill Hamrick**  
**30<sup>th</sup> District**

**Honorable Preston Smith**  
**52<sup>nd</sup> District**

**Honorable Mitch Seabaugh**  
**28<sup>th</sup> District**

**Honorable Joseph Carter**  
**13<sup>th</sup> District**

Prepared by the  
Senate Research Office

## **INTRODUCTION**

The Senate Study Committee on Court Surcharges and Additional Fines was created by Senate Resolution 1027 during the 2006 Legislative Session. The purpose of the study committee is to research the necessity of having over twenty additional fees, surcharges, fines and other charges currently in place in Georgia in the litigation arena. These fees have begun to become more than supplementary charges, and in some cases may be denying citizens access to justice.

The Senate Committee on Assignments appointed the following five members to serve: Senator John Wiles as Chairman; Senator Bill Hamrick; Senator Preston Smith; Senator Mitch Seabaugh; and Senator Joseph Carter.

## **BACKGROUND**

The practice of imposing additional fees on court fines in Georgia began during the 1950s, when the General Assembly passed a bill requiring that a portion of every criminal fine be used to support the Peace Officers' Annuity and Benefit Fund. Currently, the number of required surcharges used to support state and local programs has grown to twenty-two separate fees. These programs include the Brain and Spinal Injury Trust Fund, the Crime Victims Emergency Fund, the County Law Library Fund, and the Peace Officer & Prosecutor Training Fund. Each fund that receives court-imposed fees is identified by a statute that provides guidelines for the method of calculating the surcharge and whether the surcharge is mandatory. Some fees are optional; in order for such fees to apply in a local court, the county or municipality must pass an ordinance or resolution to that effect.

One unintended effect of the creation of more than twenty court surcharges is that the application of multiple fees to a single case can result in confusion on the part of judges and court clerks, which may lead to an unequal distribution of fees. Also, some of the fees are added to the underlying fine, whereas other fees are deducted from the fine itself. The court fee process involves an initial assessment to determine which fees apply to a particular case, a precise calculation of the total fees, the collection of the total fine from the offender, and remittance of the fees to the intended beneficiary funds. This task falls to judges and clerks, who must also update their accounting systems each time a new fee is added by statute. Inevitably, many litigants are unwilling or unable to pay the total fine; such individuals are placed on probation and the fees owed are paid over time. The courts maintain the responsibility to remit the correct amount to the beneficiary funds.

There are approximately 1,100 courts in Georgia that collect and remit surcharges. All 159 counties have a superior court, a juvenile court, a magistrate court, and a probate court. There are 71 state courts, and 393 municipal courts in Georgia.<sup>1</sup> Overlapping jurisdiction amongst the courts (i.e. municipal and state courts can both hear traffic cases) contributes to the uncertainty whether a certain court should be remitting funds to a particular beneficiary fund. Although the legislation creating each beneficiary fund specifies the type of case and which court(s) must remit the surcharge to the fund, the considerable number of beneficiary funds makes the process increasingly complex to calculate.

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<sup>1</sup> <http://www.georgiacourts.org/courts/>

House Bill 1EX, effective since July 2004, created a limited solution to the problem by requiring that every trial court remit the surcharges collected to a central entity, the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA), rather than making the courts responsible for distributing the surcharges to individual beneficiary funds.<sup>2</sup> This legislation also charged the GSCCCA with implementing an accounting system for the collection of surcharges from the courts; the resulting online tool is the Courttrax website.<sup>3</sup> Utilizing this more exact accounting method, the GSCCCA reported that total remittances for all courts for the fiscal year ending on June 30, 2006 were \$83,548,264.95.<sup>4</sup>

Courts must use the partial payment priority list when they receive smaller payments over time.<sup>5</sup> Payments are applied in full to the beneficiary fund with the highest priority, until that beneficiary has received its entire portion. The courts must then use the same formula until the fine has been completely paid off. House Bill 1EX requires that partial payments be remitted to the GSCCCA as soon as they are collected, eliminating the former practice whereby courts held the funds until the fines were paid in full.<sup>6</sup> This legislation also creates a criminal penalty for officers of the court who knowingly fail to remit the funds as required to the GSCCCA.<sup>7</sup>

## **STUDY COMMITTEE MEETINGS AND PRESENTATIONS**

The Senate Study Committee on Court Surcharges and Additional Fines convened on September 20, 2006, in Room 307 of the Coverdell Legislative Office Building. Chairman John Wiles made opening comments reflecting the main goal of the first meeting of the study committee, to discuss the collection and distribution of court-imposed surcharges. The goal of the second and final study committee meeting on December 18, 2006 was to find solutions to the current difficulties of inconsistent application and incomplete collection of these fees.

### **September 20, 2006 Study Committee Meeting**

Mr. John Earle, Project Manager of the Fines and Fees Division of the GSCCCA, presented an overview of his organization and of the court surcharge system. The GSCCCA was established by the General Assembly in 1993, consisting of ten board members. According to the enabling statute, the GSCCCA was created to develop and maintain a record management system for superior court clerks.<sup>8</sup> House Bill 1EX expanded the duties of the GSCCCA. Mr. Earle stated that this legislation had three main objectives: to increase the accountability of the courts; to create a uniform court fee collection system; and to provide funding for indigent defense programs. To these ends, the GSCCCA provides court surcharge calculation and collection training for all court clerks, as well as the online Courttrax tool.

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<sup>2</sup> O.C.G.A. § 15-21A-3

<sup>3</sup> <http://www.courttrax.org/>

<sup>4</sup> GSCCCA report

<sup>5</sup> The partial payment priority list for superior courts is found in § 15-6-95 of the O.C.G.A.

<sup>6</sup> O.C.G.A. § 15-21A-4(a)(1)

<sup>7</sup> O.C.G.A. § 15-21A-8; an officer of the court who receives the fines is guilty of a misdemeanor if he or she fails to remit the funds to the GSCCCA after receiving notice that the funds are delinquent. If the delinquent funds are greater than \$10,000, the crime becomes a felony offense.

<sup>8</sup> O.C.G.A. § 15-6-94

Mr. Earle testified that the GSCCCA keeps track of both remittable fees and reportable fees. A remittable fee is one that the courts collect and send to the GSCCCA for distribution to individual beneficiary funds. For example, remittable fees will be distributed to ten separate funds, including the Peace Officer and Prosecutor Training Fund, the Georgia Crime Victims Emergency Fund, the Brain and Spinal Injury Trust Fund, and the Indigent Defense Fund. A reportable fee is one that the courts must report to the GSCCCA, but the courts keep the funds for local disbursement. These reportable fees will be dispensed to the city general fund, the county general fund, the county jail, the local law library, and various retirement funds for civil servants. The GSCCCA strives to ensure the accuracy of both remittable and reportable fees through extensive court clerk training and continuous auditing of individual courts.

Mr. Lamar Norton and Ms. Marcia Rubensohn testified on behalf of the Georgia Municipal Association (GMA). Unlike superior courts, municipal courts receive no direct state assistance in the collection and remittance of surcharges. Although city court clerks spend a significant amount of time computing and remitting surcharges, very little of this money is earmarked for the benefit of municipal governments. The GMA position is that a flat fee should be established, and the current priority schedule for individual beneficiary funds should be abolished. If a flat fee is put into place, each beneficiary would receive a specific portion of the funds collected. This system would eliminate the current problem with the priority system, which is that beneficiaries that are low on the priority schedule often receive much less than what is due.

Ms. Karen Frickey, a municipal court clerk for the city of Smyrna, testified that the biggest problem with the current surcharge system is that there are too many different fees that must be calculated based on various percentages and priorities. This process is too cumbersome for most small courts. Senator Wiles suggested that the judges may be part of the problem; the judges may have too much discretion to negotiate the fees paid by individuals before the court. The Senator also stated that surcharge training should be mandatory for all court clerks.

Ms. Kristen Vincent, Executive Director of the Brain and Spinal Injury Trust Fund, testified that her program is not receiving the full amount of the surcharges to which it is entitled. The Brain and Spinal Injury Trust Fund was created by statute and very high voter support in 1998, and it requires that convicted DUI offenders pay a 10 per cent surcharge to the Fund in addition to any other required fees. According to Ms. Vincent, these funds are necessary because brain injuries are the leading cause of death for individuals under the age of 45, and there are approximately 45,000 new traumatic brain and spinal injuries annually in Georgia. The Fund has distributed more than \$6 million to assist with the medical costs associated with these types of injuries.

Senator Seabaugh requested an explanation for the following: though the Fund took in \$12 million during the last fiscal year, only \$6 million was distributed to patients. Ms. Vincent replied that the Fund maintains a \$5 million cash reserve to offset loss of revenue due to fluctuating incoming funding, and approximately \$600,000 annually for overhead personnel and administrative costs. The Department of Human Resources is currently completing a performance audit of the Fund, in part to monitor cost efficiency.

Ms. Vincent testified to her belief that the lack of sufficient funding from the court surcharge system to the Brain and Spinal Injury Trust Fund is due to its low position on the priority schedule. In addition, Ms. Vincent believes that many judges are using their discretion to downgrade too many DUI charges to reckless driving charges; when this occurs, the Fund does not receive its surcharge. She recommends the institution of a broader auditing system that tracks the disposition of court cases in addition to the surcharges collected, eliminating the priority schedule and creating instead an equitable distribution system, and imposing additional fees on DUI related cases to ensure that the Brain and Spinal Injury Trust Fund receives adequate revenue. This Fund is the only source of revenue for persons with traumatic brain and spinal injuries, and the legislature should ensure that the amount of funding remains stable.

Senator Wiles noted that the Brain and Spinal Injury Trust Fund may not have been created to ensure a stable cash flow for patient reimbursement; rather, part of the reasoning behind the creation of the Fund was to create a financial incentive to discourage people from driving under the influence. In theory, it's possible that the Fund is receiving fewer funds because there has been a decrease in DUI convictions. Ms. Vincent stated that the DUI arrest rate in Georgia has increased, according to the Department of Public Safety. Senator Wiles stated that the rate of DUI convictions was more important than the number of arrests.

Ms. Shennill Gray, Program Director for the Crime Victims' Compensation Fund, testified that all victim assistance funding is handled by the Georgia Bureau of Investigation. The money goes towards funeral expenses, medical expenses, crime scene clean up costs, psychological counseling, and other related expenses. In addition to court surcharges, the Fund receives money from probation fees, state parole fees, and federal grants. Ms. Gray noted that although the current surcharge system allows beneficiaries to discover which courts are not remitting the required fees, the procedures for retrieving unremitted funds are inadequate.

Mr. Clint Mueller, Legislative Director for the Georgia Association of County Commissioners (ACCG), informed the study committee members that one problem with the current system is that the auditing process does not provide sufficient detail on the county level. Annually, operating local courts costs \$465 million, and counties use the surcharge system to help offset these costs. Unfortunately, the base fines allocated to the counties are too low on the partial payment priority schedule to provide enough funding. Therefore, the remaining costs must be borne by the taxpayers. Also, Mr. Mueller testified that the remittance process is structurally inefficient; he suggests that the individual surcharges should be rolled into one large add-on, thus eliminating the unfair distribution created by the priority list. Senator Wiles commented that he is concerned that the current add-on fees mandated by statute are not being consistently upheld by judges on a case-by-case basis. Senator Wiles also expressed concern about whether certain municipalities were wrongly charging an add-on fee to the red light camera fines, which are then sent to the state.

Ms. Sarah Haskin, Deputy Director of the Georgia Public Defender Standards Council (GPDSC), testified before the study committee regarding indigent defense funding. Indigent defense in Georgia receives funding from four main sources: a 10% add-on on all criminal and traffic violations; a 10% add-on on all bails and bonds with a \$50 cap; a \$15 civil filing fee; and a \$50

waivable indigence application fee. Ms. Haskin stated that the GPDSC supports all auditing efforts made to ensure that the beneficiary funds receive the money that they are due.

Ms. Sandra Michaels, representing the Georgia Association of Criminal Defense Lawyers, expressed her concern that funding for indigent defense is being raised directly from indigent people. She stated that approximately 80% of people charged with a crime in Georgia are legally indigent. According to Ms. Michaels, the indigence application fee is irrational because indigent people are generally an unstable source of revenue. Ms. Michaels also stated that judicial discretion is necessary, because the judges are best able to ascertain whether an indigent person can afford to pay the surcharges. She also suggested eliminating the surcharges on bails and bonds.

Several judges testified before the study committee as to how these surcharges affect them at the courtroom level. Judge Gary Jackson, a City of Atlanta Municipal Court judge, testified on his own behalf that the current court surcharge system is a nightmare to administer. In his opinion, there are too many surcharges and judges do not have enough discretion because most of the add-ons are mandatory. According to Judge Jackson, there are currently 22 different surcharges that change based on the type of case being heard, leading to inconsistent application of fees. The beneficiary funds are important, but perhaps they should be funded through the state budget. Senator Seabaugh disagreed with this suggestion, stating that a budget surplus does not exist, and therefore the beneficiary funds would not receive better funding through the general budget.

Judge Betty Cason, representing the Council of Probate Court Judges, agreed with Judge Jackson's comments on the complexity of the current surcharge system. Although the beneficiary funds are deserving of the money they receive through the system, it is the counties that bear the brunt of the associated costs, such as hiring additional employees, sending these employees to training sessions, and technology expenses. It is difficult for individual courts to make correct accountings of every court case, and very little money is directed back for use by the counties. Senator Wiles commented that the Courtrax system, available online, should make the accounting process easier.

Judge Ben Stoddard, President of the Council of State Court Judges, agrees with the other judges that the surcharge system needs immediate attention and repair. The current remittance and reporting process is piecemeal where it should be unified, via taking a single percentage of each court fine collected, rather than requiring 22 different fees be considered. Judges feel that the charges are overbearing, and many are hesitant to require those that appear before the court to pay every fee.

### **December 18, 2006 Study Committee Meeting**

Mr. John Earle testified before the committee for a second time to share several proposed solutions supported by the GSCCCA. Based on his understanding, there were five main problem areas within the current court surcharge system. First, judges and court clerks are concerned about the expenses involved in training employees to use the current system correctly. In response, the GSCCCA has created an online training program that includes a comprehensive

overview of the existing surcharges, guidelines for creating the required monthly reports, and instructions for using the Courtrax tool. This new training website will become available on January 1, 2007.<sup>9</sup> Second, the judges testified to the extreme complexity of the current system, which changes based on the type of case and due to new fees added via legislation. Mr. Earle stressed that the Courtrax online calculator was designed specifically to deal with this complexity, and that sufficient training should eliminate most confusion.

A third problem with the court surcharge system is the lack of accurate accounting and reporting by the courts. According to Mr. Earle, the GSCCCA auditing process was devised to perform regular reviews of the fines and fees accounting of every court. Also, the GSCCCA makes additional efforts to assist those courts that have had accounting and reporting problems in the past. The final two problems noted by Mr. Earle, that several beneficiary funds are dissatisfied with their positions on the partial payment priority schedule and that some judges believe that the costs associated with surcharges too often outweigh the fine for the underlying offense, are not within the legal parameters set by the legislature for the GSCCCA.<sup>10</sup>

The GSCCCA position is that radical changes to the current court fee system are unnecessary. Court reporting compliance is close to 100%, and 80% of courts have invested in accounting software to ensure accuracy and efficiency. Most of the courts that are experiencing reporting issues are small municipal courts with limited resources; the Courtrax website and the new online GSCCCA training program should alleviate much of the strain. The current auditing process is working effectively to identify delinquent courts, and the GSCCCA takes immediate steps to rectify reporting compliance problems. Mr. Earle stated that education and readily available training for all groups affected by the court surcharge system are the most effective ways to maintain a successful fee system, and that the GSCCCA is fulfilling its legislative mandate to provide these services.

Ms. Sarah Haskin testified before the committee on behalf of the Georgia Public Defender Standards Council. The Council was established in 2003, and House Bill 1EX remains the main funding mechanism for indigent defense programs in Georgia. Ms. Haskin emphasized that the \$50 indigence application fee, one of the funding sources for the GPDSC established by House Bill 1EX, is actually collected in only 4% of indigent cases. In fiscal year 2006, collection under the indigence application fee amounted to \$538,000, and the Council expects this figure to decrease dramatically in fiscal year 2007. This figure is low because most clients refuse to pay the fee for one of two reasons: the client is in jail, or the client plans on petitioning the judge to waive the application fee.

The General Assembly attempted to fix this problem during the 2006 legislative session with the passage of Senate Bill 503, which allows judges to attach the \$50 indigence application fee to the probation requirements, if the fee is not paid up front.<sup>11</sup> Although this law is currently in force, the lack of a uniform court sentencing form means that, too often, the \$50 fee is not earmarked properly for indigent defense funding. Many courts funnel this money into the general fund,

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<sup>9</sup> Please see <http://training.gsccca.org>

<sup>10</sup> O.C.G.A. § 15-6-94

<sup>11</sup> O.C.G.A. § 15-21A-6 and O.C.G.A. § 17-10-8.1

which is distributed based on the partial payment priority schedule rather than directly to indigent defense.

Ms. Haskin proposed two possible solutions. First, the creation of a uniform sentencing form for all superior courts to ensure that the indigence application fee is channeled directly to indigent defense. Second, this fee should be remitted by court clerks and probation companies promptly to the indigent defense fund maintained by the GPDSC. With such changes, the Council aims to collect the indigence application fee from at least 20% of applicants, which would make a significant difference in the amount of money needed from the state for the public defenders budget.

Mr. Rusty Kidd, Chairman of the Brain and Spinal Injury Trust Fund Commission, stated that most of the funding for his organization comes from the surcharge imposed on DUI fines. Unfortunately, revenue from these fines has decreased by 20% over the past two years and is currently insufficient to deal with the needs of Georgia citizens who suffer from traumatic brain or spinal injuries. The Commission would support abolishing the partial payment priority list, and instead dividing partial payments among all beneficiary funds to guarantee that each one gets a portion of the available money. Also, the GSCCCA should have enforcement powers over courts that are delinquent in their reporting, in addition to the audit powers the GSCCCA currently possesses. Finally, the state should provide funding to ensure that all courts have the computers and software they need to accurately calculate and report the surcharges that are collected.

Mr. Ted Baggett, Deputy General Counsel for the Georgia Municipal Association (GMA), agreed with Mr. Earle that large scale changes to the current system will bring immense costs. However, currently city courts are forced to bear much of the cost of the numerous surcharges without receiving enough funds in return. Municipal courts must remit almost all of the add-on fees they collect to the GSCCCA. Due to the partial payment priority schedule, if a litigant cannot afford to pay the entire fine plus all of the surcharges, it is the cities and counties that lose out on that funding. Local governments are then forced to raise funds for the court system and law enforcement in other ways, most often by raising property taxes. Mr. Baggett is concerned that the number of surcharges has reached the point of diminishing returns; when a new surcharge is added, fewer litigants are able to pay everything that they owe. The GMA would support the institution of a pro rata system instead of the priority list; in this manner, every beneficiary would receive at least part of what they are owed, rather than the lower-ranked beneficiaries losing out entirely.

Judge Gary Jackson of the Atlanta Municipal Court returned to state that, while he believes that all of the beneficiary funds are programs worthy of the financial support they receive through court surcharges, he is certain that judges and clerks would be better off if there was one large surcharge rather than many smaller add-ons. In his opinion, it is unfair to charge a litigant more in court fines and fees than the cost of the underlying charge, as is the case in marijuana possession cases. Judge Jackson also pointed out that the Atlanta Municipal Court is one of the busiest courts in the state, and that the clerk of court is often late in remitting its surcharges due to the large number of cases, the large number of surcharges, and the rules regarding which fees must be charged in which types of cases.



Judge Vince Studdard, President of the Council of State Court Judges, also returned to testify before the study committee for a second time. He commended Mr. Earle on the efforts of the GSCCCA to provide accurate statistics on the accounting methods of every court in the state; he also noted that state courts are the only courts to have a 100% reporting rate. The reporting rates overall are encouraging, and he noted that those courts that did not report tended to be smaller municipal courts that may not meet on a regular basis. In Judge Studdard's opinion, the Georgia Public Defender Standards Council should only receive surcharge funding from the courts that utilize the services of public defenders, namely superior court and juvenile court. State courts do not use public defenders, and therefore state court judges should not be required to charge litigants in that arena a surcharge for indigent defense.

Mr. David Jose, a representative from the CourtWare software company, suggested that as changes are made to the court surcharge system, there should be a reliable way of communicating these changes to the vendors who provide accounting software to the courts. This would ensure that all software programs are up to date with the legislation, rather than requiring the vendors to react to changes after the fact. Senator Wiles noted that this would be ideal, but during the legislative session any legislator may introduce a bill at a moment's notice.

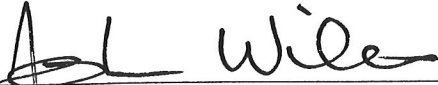
Senator Wiles formally adjourned the Senate Study Committee on Court Surcharges and Additional Fines on December 18, 2006.

### **COMMITTEE RECOMMENDATIONS**

The Senate Study Committee on Court Surcharges and Additional Fines finds that the citizens of Georgia would benefit from the introduction of legislation in 2007 which provides for stiffer penalties for delinquent courts, such as high interest charges on late remittance payments. Such penalties should be designed to discourage late remittances through financial disincentives, or other effective means. The current system is not operating efficiently, as evidenced by the substantial number of courts that are repeatedly late in remitting their collected surcharges to the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA). Once all courts are remitting their collections on time, the budget shortfalls experienced by many of the beneficiary funds due to low positions on the partial payment priority list should be alleviated because the GSCCCA will be able to distribute these funds as fairly as possible.

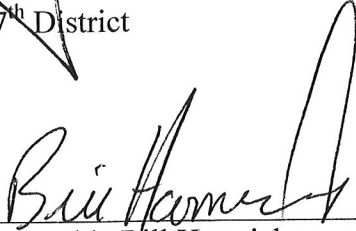
In addition, the members of the study committee support increased efforts by the GSCCCA to provide in-depth training in the use of the Courtrax website and other surcharge calculation software to all judges and clerks across the state. Thorough training is necessary for the accurate calculation of the surcharges and add-on fees, and will prevent confusion and subsequent excessive, or insufficient, charges to litigants. The uniform application of these surcharges and fees is crucial in order to protect access to justice for all Georgia citizens.

Respectfully Submitted,



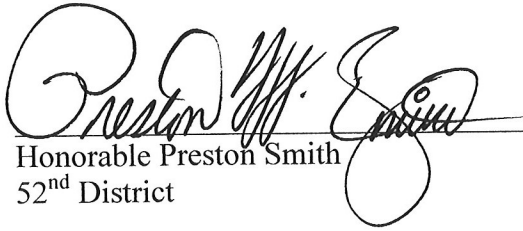
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Honorable John Wiles, Chairman  
37<sup>th</sup> District



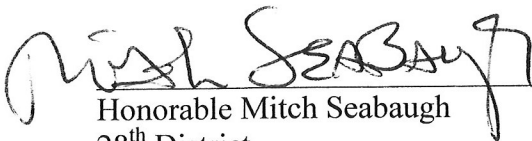
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30<sup>th</sup> District



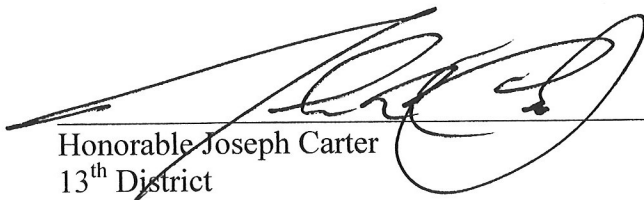
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