

MAR 10 2004
Place On Calendar

HOUSE FILE 2530
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 668)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the assessment of surcharges in criminal
2 proceedings.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2530

1 Section 1. Section 331.302, subsection 2, Code Supplement
2 2003, is amended to read as follows:

3 2. A county shall not provide a penalty in excess of a
4 five hundred dollar fine or in excess of thirty days
5 imprisonment for the violation of an ordinance. The criminal
6 penalty surcharge required by section ~~911.1~~ 911.1 shall be
7 added to a county fine and is not a part of the county's
8 penalty.

9 Sec. 2. Section 364.3, subsection 2, Code Supplement 2003,
10 is amended to read as follows:

11 2. A city shall not provide a penalty in excess of a five
12 hundred dollar fine or in excess of thirty days imprisonment
13 for the violation of an ordinance. An amount equal to ten
14 percent of all fines collected by cities shall be deposited in
15 the account established in section 602.8108. However, one
16 hundred percent of all fines collected by a city pursuant to
17 section 321.236, subsection 1, shall be retained by the city.
18 The criminal penalty surcharge required by section ~~911.1~~ 911.1
19 shall be added to a city fine and is not a part of the city's
20 penalty.

21 Sec. 3. Section 602.8108, subsections 2 through 6, Code
22 Supplement 2003, are amended to read as follows:

23 2. Except as otherwise provided, the clerk of the district
24 court shall report and submit to the state court
25 administrator, not later than the fifteenth day of each month,
26 the fines and fees received during the preceding calendar
27 month. Except as provided in subsections 3, 4, and 5, 6, and
28 7, the state court administrator shall deposit the amounts
29 received with the treasurer of state for deposit in the
30 general fund of the state. The state court administrator
31 shall report to the legislative services agency within thirty
32 days of the beginning of each fiscal quarter the amount
33 received during the previous quarter in the account
34 established under this section.

35 3. ~~When-a-court-assesses-a-criminal-surcharge-under~~

1 ~~section-911.2, the amounts collected shall be distributed as~~
2 ~~follows:~~

3 a- The clerk of the district court shall submit remit to
4 the state court administrator, not later than the fifteenth
5 day of each month, ninety-five percent of ~~the surcharge~~
6 collected all moneys collected from the criminal penalty
7 surcharge provided in section 911.1 during the preceding
8 calendar month. The clerk shall remit the remainder to the
9 county treasurer of the county that was the plaintiff in the
10 action or to the city that was the plaintiff in the action.

11 b- Of the amount received from the clerk, the state court
12 administrator shall allocate eighteen percent to be deposited
13 in the victim compensation fund established in section 915.94
14 and eighty-two percent to be deposited in the general fund.

15 c- ~~4. Notwithstanding provisions of this subsection to the~~
16 ~~contrary,~~ The clerk of the district court shall remit all
17 moneys collected from the drug abuse resistance education
18 surcharge provided in section 911.2 ~~shall be remitted~~ to the
19 ~~treasurer of~~ state court administrator for deposit in the
20 general fund of the state and the amount deposited is
21 appropriated to the governor's office of drug control policy
22 for use by the drug abuse resistance education program and
23 other programs directed for a similar purpose.

24 ~~4. 5. When a court assesses the law enforcement initiative~~
25 ~~surcharge under section 911.3, the~~ The clerk of the district
26 ~~court shall remit to the treasurer of the state,~~ all moneys
27 collected from the assessment of the law enforcement
28 initiative surcharge provided in section 911.3 to the state
29 court administrator no later than the fifteenth day of each
30 month, all the moneys collected during the preceding month,
31 for deposit in the general fund of the state.

32 ~~5. 6.~~ A court technology and modernization fund is
33 established as a separate fund in the state treasury. The
34 state court administrator shall allocate one million dollars
35 of the moneys received under subsection 2 to be deposited in

1 the fund, which shall be administered by the supreme court and
2 shall be used to enhance the ability of the judicial branch to
3 process cases more quickly and efficiently, to electronically
4 transmit information to state government, local governments,
5 law enforcement agencies, and the public, and to improve
6 public access to the court system.

7 ~~6~~ 7. The state court administrator shall allocate all of
8 the fines and fees attributable to commercial vehicle
9 violation citations issued by motor vehicle division personnel
10 of the state department of transportation to the treasurer of
11 state for deposit in the road use tax fund.

12 Sec. 4. Section 805.8, subsection 1, Code 2003, is amended
13 to read as follows:

14 1. APPLICATION. Except as otherwise indicated, violations
15 of sections of the Code specified in sections 805.8A, 805.8B,
16 and 805.8C are scheduled violations, and the scheduled fine
17 for each of those violations is as provided in those sections,
18 whether the violation is of state law or of a county or city
19 ordinance. The criminal penalty surcharge required by section
20 ~~911.2~~ 911.1 shall be added to the scheduled fine.

21 Sec. 5. Section 805.8C, subsection 3, paragraph a, Code
22 2003, is amended to read as follows:

23 a. For violations of section 142B.6, the scheduled fine is
24 twenty-five dollars, and is a civil penalty, and the criminal
25 penalty surcharge under section ~~911.2~~ 911.1 shall not be added
26 to the penalty, and the court costs pursuant to section 805.9,
27 subsection 6, shall not be imposed. If the civil penalty
28 assessed for a violation of section 142B.6 is not paid in a
29 timely manner, a citation shall be issued for the violation in
30 the manner provided in section 804.1. However, a person under
31 age eighteen shall not be detained in a secure facility for
32 failure to pay the civil penalty. The complainant shall not
33 be charged a filing fee.

34 Sec. 6. Section 805.8C, subsection 3, paragraph c,
35 unnumbered paragraph 1, Code 2003, is amended to read as

1 follows:

2 For violations of section 453A.2, subsection 2, the
3 scheduled fine is as follows and is a civil penalty, and the
4 criminal penalty surcharge under section ~~911.2~~ 911.1 shall not
5 be added to the penalty, and the court costs pursuant to
6 section 805.9, subsection 6, shall not be imposed:

7 Sec. 7. Section 902.9, unnumbered paragraph 2, Code 2003,
8 is amended to read as follows:

9 The ~~criminal-penalty-surcharge~~ surcharges required by
10 sections 911.1, 911.2, and 911.3 shall be added to a fine
11 imposed on a class "C" or class "D" felon, as provided by
12 those sections, and ~~is~~ are not a part of or subject to the
13 maximums set in this section.

14 Sec. 8. Section 903.1, subsection 4, Code 2003, is amended
15 to read as follows:

16 4. The ~~criminal-penalty-surcharge~~ surcharges required by
17 sections 911.1, 911.2, and 911.3 shall be added to a fine
18 imposed on a misdemeanor as provided in those sections, and
19 ~~is~~ are not a part of or subject to the maximums set in this
20 section.

21 Sec. 9. Section 909.10, subsection 1, Code 2003, is
22 amended to read as follows:

23 1. As used in this section, unless the context otherwise
24 requires, "delinquent amounts" means a fine, court-imposed
25 court costs in a criminal proceeding, or ~~criminal~~ surcharge
26 imposed pursuant to section 911.1 or 911.2, which remains
27 unpaid after two years from the date that the fine, court
28 costs, or surcharge was imposed, and which is not collected by
29 the county attorney pursuant to section 602.8107. However, if
30 the fine may be paid in installments pursuant to section
31 909.3, the fine is not a delinquent amount unless the
32 installment remains unpaid after two years from the date the
33 installment was due.

34 Sec. 10. Section 911.1, Code 2003, is amended by striking
35 the section and inserting in lieu thereof the following:

1 911.1 CRIMINAL PENALTY SURCHARGE.

2 1. A criminal penalty surcharge shall be levied against
3 law violators as provided in this section. When a court
4 imposes a fine or forfeiture for a violation of state law, or
5 a city or county ordinance, except an ordinance regulating the
6 parking of motor vehicles, the court or the clerk of the
7 district court shall assess an additional penalty in the form
8 of a criminal penalty surcharge equal to thirty percent of the
9 fine or forfeiture imposed.

10 2. In the event of multiple offenses, the surcharge shall
11 be based upon the total amount of fines or forfeitures imposed
12 for all offenses.

13 3. When a fine or forfeiture is suspended in whole or in
14 part, the court shall reduce the surcharge in proportion to
15 the amount suspended.

16 4. The surcharge is subject to the provisions of chapter
17 909 governing the payment and collection of fines, as provided
18 in section 909.8.

19 5. The surcharge shall be remitted by the clerk of court
20 as provided in section 602.6108, subsection 3.

21 Sec. 11. Section 911.2, Code 2003, is amended by striking
22 the section and inserting in lieu thereof the following:

23 911.2 DRUG ABUSE RESISTANCE EDUCATION SURCHARGE.

24 1. In addition to any other surcharge, the court or clerk
25 of the district court shall assess a drug abuse resistance
26 education surcharge of ten dollars if a violation arises out
27 of a violation of an offense provided for in chapter 321J or
28 chapter 124, division IV.

29 2. In the event of multiple offenses, the surcharge shall
30 be imposed for each applicable offense. The surcharge shall
31 not be assessed for any offense for which the court defers the
32 sentence or judgment or suspends the sentence.

33 3. The surcharge is subject to the provisions of chapter
34 909 governing the payment and collection of fines, as provided
35 in section 909.8.

1 4. The surcharge shall be remitted by the clerk of court
2 as provided in section 602.8108, subsection 4.

3 Sec. 12. Section 911.3, Code 2003, is amended by striking
4 the section and inserting in lieu thereof the following:

5 911.3 LAW ENFORCEMENT INITIATIVE SURCHARGE.

6 1. In addition to any other surcharge, the court or clerk
7 of the district court shall assess a law enforcement
8 initiative surcharge of one hundred twenty-five dollars if an
9 adjudication of guilt or a deferred judgment has been entered
10 for a criminal violation under any of the following:

11 a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

12 b. Section 719.8, 725.1, 725.2, or 725.3.

13 2. In the event of multiple offenses, the surcharge shall
14 be imposed for each applicable offense.

15 3. The surcharge shall be remitted by the clerk of court
16 as provided in section 602.8108, subsection 5.

17 EXPLANATION

18 This bill relates to the assessment of surcharges in
19 criminal proceedings.

20 The bill provides that the drug abuse resistance education
21 surcharge and the law enforcement initiative surcharge be
22 remitted by the clerk of the district court to the state court
23 administrator just as the criminal penalty surcharge is
24 currently. Under current law the clerk of the district court
25 remits the drug abuse resistance surcharge and the law
26 enforcement initiative surcharge to the treasurer of state.

27 The bill provides that the drug abuse resistance and law
28 enforcement initiative surcharges be imposed on all applicable
29 offenses.

30 The bill reorganizes Code chapter 911 by creating a
31 separate Code section for each surcharge, but does not create
32 a new surcharge, change the surcharge amount that can be
33 assessed for a criminal offense, or change the distribution of
34 the revenue from the surcharges.

35 The bill also amends various Code sections in the bill to

S.F. _____ H.F. 2530

1 conform with separating the various surcharges into different
2 Code sections.

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HOUSE FILE 2530

S-5249

1 Amend House File 2530, as passed by the House, as
2 follows:

3 1. Page 1, by inserting after line 20 the
4 following:

5 "Sec. _____. Section 602.8102, Code Supplement 2003,
6 is amended by adding the following new subsection:
7 NEW SUBSECTION. 135C. Assess the domestic or
8 sexual abuse surcharge of fifty dollars as provided in
9 section 911.4

10 Sec. _____. Section 602.8107, subsection 4,
11 unnumbered paragraph 2, Code Supplement 2003, is
12 amended to read as follows:

13 This subsection does not apply to amounts collected
14 for victim restitution, the victim compensation fund,
15 criminal penalty surcharge, law enforcement initiative
16 surcharge, domestic or sexual abuse surcharge, amounts
17 collected as a result of procedures initiated under
18 subsection 5 or under section 8A.504, or sheriff's
19 room and board fees."

20 2. Page 2, by inserting after line 23 the
21 following:

22 "4A. The clerk of the district court shall remit
23 all moneys collected from the domestic or sexual abuse
24 surcharge provided in section 911.4 to the state court
25 administrator for deposit in the crime victim
26 compensation fund established in section 915.94."

27 3. Page 4, line 10, by striking the word and
28 figure "and 911.3" and inserting the following: "and
29 911.3, and 911.4".

30 4. Page 4, line 17, by striking the word and
31 figure "and 911.3" and inserting the following: "and
32 911.3, and 911.4".

33 5. Page 4, by inserting after line 20 the
34 following:

35 "Sec. _____. Section 909.8, Code 2003, is amended to
36 read as follows:

37 909.8 PAYMENT AND COLLECTION PROVISIONS APPLY TO
38 SURCHARGE.

39 The provisions of this chapter governing the
40 payment and collection of a fine, except section
41 909.3A, also apply to the payment and collection of
42 surcharges imposed pursuant to chapter 911. However,
43 section 909.10 shall not apply to surcharges assessed
44 under section sections 911.3 and 911.4."

45 6. Page 6, by inserting after line 16 the
46 following:

47 "Sec. _____. NEW SECTION. 911.4 DOMESTIC OR SEXUAL
48 ABUSE SURCHARGE.

49 1. In addition to any other surcharges assessed
50 under this chapter, a domestic or sexual abuse

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Page 2

1 surcharge of fifty dollars shall be assessed by the
2 clerk of the district court if an adjudication of
3 guilt or a deferred judgment has been entered for a
4 criminal violation of section 708.2A, 709.2, 709.3, or
5 709.4.

6 2. In the event of multiple offenses, the
7 surcharge shall be imposed for each applicable
8 offense.

9 3. The surcharge shall be remitted by the clerk of
10 court as provided in section 602.8108, subsection 4A."

11 7. By renumbering as necessary.

By ROBERT E. DVORSKY

S-5249 FILED APRIL 1, 2004

Baudler, Ch
Van Fossen
Berry

Succeeded R:
S: 02530

HSB 668
JUDICIARY

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL
BRANCH BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the assessment of surcharges in criminal
2 proceedings.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 331.302, subsection 2, Code Supplement
2 2003, is amended to read as follows:

3 2. A county shall not provide a penalty in excess of a
4 five hundred dollar fine or in excess of thirty days
5 imprisonment for the violation of an ordinance. The criminal
6 penalty surcharge required by section ~~911.2~~ 911.1 shall be
7 added to a county fine and is not a part of the county's
8 penalty.

9 Sec. 2. Section 364.3, subsection 2, Code Supplement 2003,
10 is amended to read as follows:

11 2. A city shall not provide a penalty in excess of a five
12 hundred dollar fine or in excess of thirty days imprisonment
13 for the violation of an ordinance. An amount equal to ten
14 percent of all fines collected by cities shall be deposited in
15 the account established in section 602.8108. However, one
16 hundred percent of all fines collected by a city pursuant to
17 section 321.236, subsection 1, shall be retained by the city.
18 The criminal penalty surcharge required by section ~~911.2~~ 911.1
19 shall be added to a city fine and is not a part of the city's
20 penalty.

21 Sec. 3. Section 602.8108, subsections 2 through 6, Code
22 Supplement 2003, are amended to read as follows:

23 2. Except as otherwise provided, the clerk of the district
24 court shall report and submit to the state court
25 administrator, not later than the fifteenth day of each month,
26 the fines and fees received during the preceding calendar
27 month. Except as provided in subsections 3, 4, and 5, 6, and
28 7, the state court administrator shall deposit the amounts
29 received with the treasurer of state for deposit in the
30 general fund of the state. The state court administrator
31 shall report to the legislative services agency within thirty
32 days of the beginning of each fiscal quarter the amount
33 received during the previous quarter in the account
34 established under this section.

35 3. ~~When a court assesses a criminal surcharge under~~

1 ~~section-911.2, the amounts collected shall be distributed as~~
2 follows:

3 a- The clerk of the district court shall submit remit to
4 the state court administrator, not later than the fifteenth
5 day of each month, ninety-five percent of ~~the surcharge~~
6 collected all moneys collected from the criminal penalty
7 surchage provided in section 911.1 during the preceding
8 calendar month. The clerk shall remit the remainder to the
9 county treasurer of the county that was the plaintiff in the
10 action or to the city that was the plaintiff in the action.

11 b- Of the amount received from the clerk, the state court
12 administrator shall allocate eighteen percent to be deposited
13 in the victim compensation fund established in section 915.94
14 and eighty-two percent to be deposited in the general fund.

15 c- ~~4. Notwithstanding provisions of this subsection to the~~
16 ~~contrary,~~ The clerk of the district court shall remit all
17 moneys collected from the drug abuse resistance education
18 surcharge provided in section 911.2 ~~shall be remitted~~ to the
19 ~~treasurer of state~~ court administrator for deposit in the
20 general fund of the state and the amount deposited is
21 appropriated to the governor's office of drug control policy
22 for use by the drug abuse resistance education program and
23 other programs directed for a similar purpose.

24 ~~4. 5. When a court assesses the law enforcement initiative~~
25 ~~surchage under section 911.3, the~~ The clerk of the district
26 ~~court shall remit to the treasurer of the state,~~ all moneys
27 collected from the assessment of the law enforcement
28 initiative surcharge provided in section 911.3 to the state
29 ~~court administrator~~ no later than the fifteenth day of each
30 month, all the moneys collected during the preceding month,
31 for deposit in the general fund of the state.

32 ~~5. 6.~~ A court technology and modernization fund is
33 established as a separate fund in the state treasury. The
34 state court administrator shall allocate one million dollars
35 of the moneys received under subsection 2 to be deposited in

1 the fund, which shall be administered by the supreme court and
2 shall be used to enhance the ability of the judicial branch to
3 process cases more quickly and efficiently, to electronically
4 transmit information to state government, local governments,
5 law enforcement agencies, and the public, and to improve
6 public access to the court system.

7 ~~6~~ 7. The state court administrator shall allocate all of
8 the fines and fees attributable to commercial vehicle
9 violation citations issued by motor vehicle division personnel
10 of the state department of transportation to the treasurer of
11 state for deposit in the road use tax fund.

12 Sec. 4. Section 805.8, subsection 1, Code 2003, is amended
13 to read as follows:

14 1. APPLICATION. Except as otherwise indicated, violations
15 of sections of the Code specified in sections 805.8A, 805.8B,
16 and 805.8C are scheduled violations, and the scheduled fine
17 for each of those violations is as provided in those sections,
18 whether the violation is of state law or of a county or city
19 ordinance. The criminal penalty surcharge required by section
20 ~~911.2~~ 911.1 shall be added to the scheduled fine.

21 Sec. 5. Section 805.8C, subsection 3, paragraph a, Code
22 2003, is amended to read as follows:

23 a. For violations of section 142B.6, the scheduled fine is
24 twenty-five dollars, and is a civil penalty, and the criminal
25 penalty surcharge under section ~~911.2~~ 911.1 shall not be added
26 to the penalty, and the court costs pursuant to section 805.9,
27 subsection 6, shall not be imposed. If the civil penalty
28 assessed for a violation of section 142B.6 is not paid in a
29 timely manner, a citation shall be issued for the violation in
30 the manner provided in section 804.1. However, a person under
31 age eighteen shall not be detained in a secure facility for
32 failure to pay the civil penalty. The complainant shall not
33 be charged a filing fee.

34 Sec. 6. Section 805.8C, subsection 3, paragraph c,
35 unnumbered paragraph 1, Code 2003, is amended to read as

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1 follows:

2 For violations of section 453A.2, subsection 2, the
3 scheduled fine is as follows and is a civil penalty, and the
4 criminal penalty surcharge under section ~~911.2~~ 911.1 shall not
5 be added to the penalty, and the court costs pursuant to
6 section 805.9, subsection 6, shall not be imposed:

7 Sec. 7. Section 902.9, unnumbered paragraph 2, Code 2003,
8 is amended to read as follows:

9 The ~~criminal-penalty-surcharge~~ surcharges required by
10 sections 911.1, 911.2, and 911.3 shall be added to a fine
11 imposed on a class "C" or class "D" felon, as provided by
12 those sections, and ~~is~~ are not a part of or subject to the
13 maximums set in this section.

14 Sec. 8. Section 903.1, subsection 4, Code 2003, is amended
15 to read as follows:

16 4. The ~~criminal-penalty-surcharge~~ surcharges required by
17 sections 911.1, 911.2, and 911.3 shall be added to a fine
18 imposed on a misdemeanor as provided in those sections, and
19 ~~is~~ are not a part of or subject to the maximums set in this
20 section.

21 Sec. 9. Section 909.10, subsection 1, Code 2003, is
22 amended to read as follows:

23 1. As used in this section, unless the context otherwise
24 requires, "delinquent amounts" means a fine, court-imposed
25 court costs in a criminal proceeding, or ~~criminal~~ surcharge
26 imposed pursuant to section 911.1 or 911.2, which remains
27 unpaid after two years from the date that the fine, court
28 costs, or surcharge was imposed, and which is not collected by
29 the county attorney pursuant to section 602.8107. However, if
30 the fine may be paid in installments pursuant to section
31 909.3, the fine is not a delinquent amount unless the
32 installment remains unpaid after two years from the date the
33 installment was due.

34 Sec. 10. Section 911.1, Code 2003, is amended by striking
35 the section and inserting in lieu thereof the following:

1 911.1 CRIMINAL PENALTY SURCHARGE.

2 1. A criminal penalty surcharge shall be levied against
3 law violators as provided in this section. When a court
4 imposes a fine or forfeiture for a violation of state law, or
5 a city or county ordinance, the court or the clerk of the
6 district court shall assess an additional penalty in the form
7 of a criminal penalty surcharge equal to thirty percent of the
8 fine or forfeiture imposed.

9 2. In the event of multiple offenses, the surcharge shall
10 be based upon the total amount of fines or forfeitures imposed
11 for all offenses.

12 3. When a fine or forfeiture is suspended in whole or in
13 part, the court shall reduce the surcharge in proportion to
14 the amount suspended.

15 4. The surcharge is subject to the provisions of chapter
16 909 governing the payment and collection of fines, as provided
17 in section 909.8.

18 5. The surcharge shall be remitted by the clerk of court
19 as provided in section 602.6108, subsection 3.

20 Sec. 11. Section 911.2, Code 2003, is amended by striking
21 the section and inserting in lieu thereof the following:

22 911.2 DRUG ABUSE RESISTANCE EDUCATION SURCHARGE.

23 1. In addition to any other surcharge, the court or clerk
24 of the district court shall assess a drug abuse resistance
25 education surcharge of ten dollars if a violation arises out
26 of a violation of an offense provided for in chapter 321J or
27 chapter 124, division IV.

28 2. In the event of multiple offenses, the surcharge shall
29 be imposed for each applicable offense.

30 3. The surcharge is subject to the provisions of chapter
31 909 governing the payment and collection of fines, as provided
32 in section 909.8.

33 4. The surcharge shall be remitted by the clerk of court
34 as provided in section 602.8108, subsection 4.

35 Sec. 12. Section 911.3, Code 2003, is amended by striking

1 the section and inserting in lieu thereof the following:

2 911.3 LAW ENFORCEMENT INITIATIVE SURCHARGE.

3 1. In addition to any other surcharge, the court or clerk
4 of the district court shall assess a law enforcement
5 initiative surcharge of one hundred twenty-five dollars if an
6 adjudication of guilt or a deferred judgment has been entered
7 for a criminal violation under any of the following:

8 a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

9 b. Section 719.8, 725.1, 725.2, or 725.3.

10 2. In the event of multiple offenses, the surcharge shall
11 be imposed for each applicable offense.

12 3. The surcharge shall be remitted by the clerk of court
13 as provided in section 602.8108, subsection 5.

14 EXPLANATION

15 This bill relates to the assessment of surcharges in
16 criminal proceedings.

17 The bill permits a 30 percent criminal penalty surcharge to
18 be assessed on fines for parking violations. Current law
19 provides that a 30 percent criminal penalty surcharge be
20 assessed on all fines for criminal convictions except parking
21 violations. Under current law and in the bill, Code section
22 602.8108, subsection 3, governs the distribution of revenue
23 generated by the assessment of any criminal penalty surcharge.

24 The bill provides that the drug abuse resistance education
25 surcharge and the law enforcement initiative surcharge be
26 remitted by the clerk of the district court to the state court
27 administrator just as the criminal penalty surcharge is
28 currently. Under current law the clerk of the district court
29 remits the drug abuse resistance surcharge and the law
30 enforcement initiative surcharge to the treasurer of state.

31 The bill provides that the drug abuse resistance and law
32 enforcement initiative surcharges be imposed on all applicable
33 offenses.

34 The bill reorganizes Code chapter 911 by creating a
35 separate Code section for each surcharge, but does not create

1 a new surcharge, change the surcharge amount that can be
2 assessed for a criminal offense, or change the distribution of
3 the revenue from the surcharges.

4 The bill also amends various Code sections in the bill to
5 conform with separating the various surcharges into different
6 Code sections.

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MEMORANDUM

.668

TO: Members of the General Assembly

FROM: Iowa Judicial Branch

DATE: February 4, 2004

RE: TLSB 5292DP

The purpose of this bill is to clarify the application of three different surcharges added to criminal penalties: the criminal penalty surcharge, the DARE surcharge, and the law enforcement initiative surcharge.

The legislature established the criminal penalty surcharge, an additional penalty in the form of a surcharge equal to ten percent of a fine imposed, in 1982. The surcharge is levied against all criminal and ordinance violations except for parking violations. The majority of the receipts are deposited in the general fund, a small percentage of the receipts are deposited in city or county general funds, and a small amount is directed to the victim compensation program. The legislature gradually increased the amount of the surcharge over the years from 10% to 30%.

In 1996, the legislature amended this provision by adding a new surcharge, the drug abuse resistance education surcharge, known as the DARE surcharge. Unlike the criminal penalty surcharge, the DARE surcharge was a fixed amount, it was to be assessed only against certain criminal violations involving drugs and operating a vehicle while intoxicated, and all revenues were to be earmarked for the DARE program. Originally, the DARE surcharge was \$5, but the legislature later raised the amount to \$10.

In 2001, the legislature created a third surcharge, the law enforcement initiative surcharge. Like the DARE surcharge, the law enforcement surcharge was a fixed amount and was to be assessed only against certain types of legislation. However, the law enforcement surcharge was addressed in a separate subsection

The criminal penalty surcharge is fairly simple for the courts to assess and implement. However, the same cannot be said for the DARE surcharge. Issues continually arise about how to assess the DARE surcharge in a case involving multiple counts. Current law provides: "In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses." This statement makes sense in the context of the criminal penalty surcharge because the criminal penalty surcharge is a percentage of all fines imposed. But the provision is somewhat confusing in the context of the DARE surcharge because the DARE surcharge is based upon the number of violations of certain crimes rather than amounts of fines.

Similar confusion arises over another provision that provides: "when a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended." Again, this makes sense in the context of reducing the amount of the criminal penalty surcharge assessment, but not in the context of the DARE surcharge because DARE is based upon numbers of violations, not amounts of fines.

Reorganizing the three surcharges into three separate subsections, with specific instructions concerning the application of each type of surcharge would eliminate confusion, facilitate processing, and promote consistent application around the state.

HOUSE FILE 2530

AN ACT

RELATING TO THE ASSESSMENT OF SURCHARGES IN CRIMINAL
PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 331.302, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A county shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a county fine and is not a part of the county's penalty.

Sec. 2. Section 364.3, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten

percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a city fine and is not a part of the city's penalty.

Sec. 3. Section 602.8108, subsections 2 through 6, Code Supplement 2003, are amended to read as follows:

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 3, 4, and 5, 6, and 7, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative services agency within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

~~3. When a court assesses a criminal surcharge under section 911.2, the amounts collected shall be distributed as follows:~~

~~a. The clerk of the district court shall submit remit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of the surcharge collected all moneys collected from the criminal penalty surcharge provided in section 911.1 during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action.~~

~~b. Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the victim compensation fund established in section 915.94 and eighty-two percent to be deposited in the general fund.~~

~~e- 4. Notwithstanding provisions of this subsection to the contrary, The clerk of the district court shall remit all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 shall be remitted to the treasurer of state court administrator for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.~~

~~4- 5. When a court assesses the law enforcement initiative surcharge under section 911.3, the The clerk of the district court shall remit to the treasurer of the state, all moneys collected from the assessment of the law enforcement initiative surcharge provided in section 911.3 to the state court administrator no later than the fifteenth day of each month, all the moneys collected during the preceding month, for deposit in the general fund of the state.~~

5- 6. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system.

6- 7. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit in the road use tax fund.

Sec. 4. Section 805.8, subsection 1, Code 2003, is amended to read as follows:

1. APPLICATION. Except as otherwise indicated, violations of sections of the Code specified in sections 805.8A, 805.8B, and 805.8C are scheduled violations, and the scheduled fine for each of those violations is as provided in those sections, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 911.1 shall be added to the scheduled fine.

Sec. 5. Section 805.8C, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. For violations of section 142B.6, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.2 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

Sec. 6. Section 805.8C, subsection 3, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For violations of section 453A.2, subsection 2, the scheduled fine is as follows and is a civil penalty, and the criminal penalty surcharge under section 911.2 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed:

Sec. 7. Section 902.9, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The ~~criminal penalty surcharge~~ surcharges required by sections 911.1, 911.2, and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by those sections, and ~~is~~ are not a part of or subject to the maximums set in this section.

Sec. 8. Section 903.1, subsection 4, Code 2003, is amended to read as follows:

4. The ~~criminal-penalty-surchARGE~~ surcharges required by sections 911.1, 911.2, and 911.3 shall be added to a fine imposed on a misdemeanor as provided in those sections, and ~~is~~ are not a part of or subject to the maximums set in this section.

Sec. 9. Section 909.10, subsection 1, Code 2003, is amended to read as follows:

1. As used in this section, unless the context otherwise requires, "delinquent amounts" means a fine, court-imposed court costs in a criminal proceeding, or ~~eriminal~~ surcharge imposed pursuant to section 911.1 or 911.2, which remains unpaid after two years from the date that the fine, court costs, or surcharge was imposed, and which is not collected by the county attorney pursuant to section 602.8107. However, if the fine may be paid in installments pursuant to section 909.3, the fine is not a delinquent amount unless the installment remains unpaid after two years from the date the installment was due.

Sec. 10. Section 911.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.1 CRIMINAL PENALTY SURCHARGE.

1. A criminal penalty surcharge shall be levied against law violators as provided in this section. When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty percent of the fine or forfeiture imposed.

2. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses.

3. When a fine or forfeiture is suspended in whole or in part, the court shall reduce the surcharge in proportion to the amount suspended.

4. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

5. The surcharge shall be remitted by the clerk of court as provided in section 602.6108, subsection 3.

Sec. 11. Section 911.2, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.2 DRUG ABUSE RESISTANCE EDUCATION SURCHARGE.

1. In addition to any other surcharge, the court or clerk of the district court shall assess a drug abuse resistance education surcharge of ten dollars if a violation arises out of a violation of an offense provided for in chapter 321J or chapter 124, division IV.

2. In the event of multiple offenses, the surcharge shall be imposed for each applicable offense. The surcharge shall not be assessed for any offense for which the court defers the sentence or judgment or suspends the sentence.

3. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

4. The surcharge shall be remitted by the clerk of court as provided in section 602.8108, subsection 4.

Sec. 12. Section 911.3, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.3 LAW ENFORCEMENT INITIATIVE SURCHARGE.

1. In addition to any other surcharge, the court or clerk of the district court shall assess a law enforcement initiative surcharge of one hundred twenty-five dollars if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following:

- a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.
- b. Section 719.8, 725.1, 725.2, or 725.3.

2. In the event of multiple offenses, the surcharge shall be imposed for each applicable offense.

3. The surcharge shall be remitted by the clerk of court as provided in section 602.8108, subsection 5.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2530, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2004

THOMAS J. VILSACK
Governor