

# MLEA Surcharge Summary

Legislative Finance Committee

*September 2016*

To answer questions from the Interim Legislative Finance Committee regarding collection of the Montana Law Enforcement Academy (MLEA) surcharge, Academy staff contacted 119 Courts of Limited Jurisdiction (CLJ) which include JP courts, city courts, and municipal courts. This was an informal survey, not a methodical audit. In many cases court employees did not have a complete understanding of how their own systems handled the MLEA surcharge. With that in mind, we answered some of our questions and learned some things that could have an impact on MLEA's funding. The following 5 questions were asked;

## **Question 1 - Are Courts collecting the MLEA surcharge for each offense?**

We were worried that some courts might be collecting the MLEA surcharge incorrectly by failing to collect it for each offense. The fear was that when defendants appeared on multiple charges, some courts might collect the MLEA surcharge one time, covering all of the offenses. Every Court we spoke to except one (Whitefish City Court), is collecting the MLEA Surcharge correctly for each offense rather than one time for all offenses. The database system used by CLJ's called "Full Court" requires the courts to collect the surcharge the correct way.

## **Question 2- Are Courts collecting the surcharge for Municipal Infractions and County Ordinances that mirror criminal offenses under State law?**

We had heard that some jurisdictions have enacted Municipal Infractions or County Ordinances that mirrored State offenses. In other words something was illegal under State Law, and the city or county also made it a violation under their codes. MCA Section 7-1-4150 allows cities and counties to create these ordinances, so long as the State criminal offense is punishable only by fine. We were concerned that some courts were failing to collect the MLEA surcharge on those Municipal or County violations. MCA Section 7-1-4150 (B) says that Courts must collect the surcharge on these parallel code violations.

Of the Courts we spoke to, 24 **did** have municipal codes or county ordinances that mirrored state law violations. Of those, 14 said they **do not** collect the surcharge as required by MCA 7-1-4150(b). This error by the courts is costing the academy some money but not an amount that would not solve MLEA's funding problems.

### **Question 3 - How much of the MLEA surcharge is going uncollected due to unpaid fines?**

While this is far from a scientific audit, it seems clear that a significant amount of money is going uncollected due to unpaid fines, and that this is not going to change. All courts reported that they were unable to collect what had been levied. Courts across the state are trying different approaches to recover unpaid fines, fees, and surcharges. Many of the courts we spoke to issue warrants for unpaid fines. Often those courts could not say how many of their total warrants issued were for unpaid fines.

There are some potential problems with this approach. Since judges are supposed to waive fines in cases where a defendant is unable to pay, there's an argument that jailing a person for unpaid fines amounts to a debtors prison. Many courts also told us that issuing warrants for unpaid fines (or failing to appear to explain why fines had not been paid), didn't seem to accomplish the goal of getting the fines paid. Courts in smaller towns that were suffering economically (such as Libby), voiced a lot of frustration about what fines fees and surcharges were doing to their citizens. Many courts did say, however, that they valued what the Academy did and were happy to collect the surcharge for us.

### **Question 4 - When Courts allow someone to make payments on fines, at what point in that process is the MLEA surcharge collected?**

Every court we spoke to said surcharges were taken out of payments automatically by Full Court. Courts had different understandings of how Full Court handled this. The majority said that Full Court allocated the first money collected to surcharges, unless there was restitution owed. Some courts believed that when restitution was owed, the money would be split 50/50 between restitution and the surcharges.

This arrangement could be impacted should the Victim's Rights Constitutional Initiative (Marsy's Law) pass in November, which creates a victims right to be first in line for restitution payments before any government fines or surcharges can be collected:

*(n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be*

*applied first to the restitution owed to the victim before paying any amounts owed to the government.*

### **Question 5 - Does the MLEA surcharge apply to traffic offenses?**

The surcharge **does** apply to almost all traffic offenses because they are treated as criminal misdemeanors:

61-8-711. Violation of chapter -- penalty. (1) It is a misdemeanor for a person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

(2) Each person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than \$10 or more than \$100. For a second conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than \$25 or more than \$200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than \$50 or more than \$500.

Here are two exceptions to the idea that traffic offenses are criminal:

1. MCA 61-8-725 states that speeding in violation of 61-8-303 is not a criminal offense (and thus would not be subject to the surcharge). There are exceptions to this exception, meaning going faster than 90 mph, or speeding in a special zone like a school or work zone are still criminal offenses.
2. MCA 61-13-104 states that a seatbelt violation is not a criminal offense. These 20\$ tickets will not generate a surcharge. (In the case of seatbelt tickets, added surcharges would dwarf the fine.)

### **Why can't local agencies pay more for training?**

Three statutes describe why law enforcement agencies cannot be charged more than they currently are for attending MLEA basic programs:

1. MCA 7-32-303 (5)(a) requires appointing authorities (hiring law enforcement agencies) to "cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial

appointment, an appropriate peace officer basic course certified by the Montana Public Safety Officer Standards and Training Council.”

2. MCA 1-2-116 (2)(a) states that state agencies may not require local governments to “pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency.” MCA 7-32-303 is the statute requiring local governments to attend a state agency program.
3. MCA 44-10-303 authorizes local governments to “expend funds for the room, board and travel of officers attending the Academy.”

### **Summary**

Nationally, the practice of funding law enforcement operations through conviction surcharges is not only unpopular but also not effective. Local law enforcement agencies in Montana are prohibited by law, and could not realistically, absorb the full cost associated with conducting MLEA basic programs.

### **Recommendations**

Through a joint resolution the 64<sup>th</sup> Legislature directed an interim study of long term funding options for the MLEA. Legislative Interim Finance Committee guidance is that the users of the system should fund it. Conventional thinking has been that the “users” of the system are offenders and law enforcement agencies. The MLEA will be requesting a \$5.00 increase in the surcharge authorized under MCA 3-1-318 from the 2017 Legislature in an effort to close the gap between stagnant surcharge revenues and increasing MLEA costs. There have been no increases to the surcharge since it was established in 2003. It is clear from our informal survey that that fail to pay fines warrants among Montana’s Courts of Limited Jurisdiction continue to be a problem, meaning that offenders continue to be unable to pay the fines, and surcharges, levied against them by the courts. This ultimately affects MLEA funding.