

SENATE JUDICIARY  
EXHIBIT NO 3  
DATE 1/18/11  
CASE NO SB 151

**JUDITH BASIN COUNTY JUSTICE OF THE PEACE**

Judge Larry Carver  
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To: The 2011 Senate Judiciary Committee for the hearing on January 18, 2011  
RE: SB 151 – Provide a Court surcharge to fund Montana Crime Prevention Assn.

I apologize to the committee for not being able to be present at the committee hearing for Senate Bill 151. A busy court schedule would not allow a personal appearance today. I am the chairman of the Legislative Committee for the Montana Magistrates Association which is the association of all the limited courts, Justice Courts, Municipal Courts and City Courts in the State of Montana. These courts collect the majority of surcharges for the State of Montana.

The Montana Magistrates Association opposes the passage of all new surcharges. Montana law currently requires Courts to collect three mandatory surcharges in all minor misdemeanor automobile offenses, misdemeanor traffic and fish and game offenses, with the exception of seatbelt violations, daytime or nighttime speeding and open container. These mandatory surcharges amount to thirty-five dollars. Montana Code Annotated 3-1-318 mandates ten dollars for funding of the law enforcement academy, 3-1-317 mandates ten dollars for court automation and 46-18-236 mandates fifteen dollars to fund Deputy County Attorneys. These surcharges are mandatory and may only be waived on a finding of indigency. Additionally, these surcharges must be collected and distributed first.

So as an example, a standard fine or appearance bond for 61-8-344, stop sign violation, is eighty-five dollars. Outside of seat belt and speeding violations, eighty-five dollars is the standard minimum amount imposed. Thirty-five dollars is in surcharges and fifty dollars is the fine. The fifty-dollar fine is split evenly between the State and County or City coffers. The surcharges must be collected first and may not be adjusted. Therefore, any adjustment for a suspended sentence, a deferred sentence or in some instances determined uncollectable, is taken directly from County or City coffers and the State coffers. The Courts of Limited Jurisdiction collect the majority of these state imposed fines and surcharges with less than a third of these minor fines being retained in the County or City to pay for operational costs of Prosecution, Law Enforcement and Courts.

Montana Law requires an additional fifty dollar surcharge to be imposed in cases of felony and misdemeanor crimes (45 code violations) and DUI offenses pursuant to 46-18-236 to fund victim advocacy programs. Therefore, the total surcharges collected for these offenses totals eighty five dollars. These surcharges must be imposed, collected, and distributed first. The fines are split evenly between State and City or County coffers. Fines imposed are higher for these offenses and percentages kept by government coffers is higher. However, so are the operational costs as more of these offenses end up in trial and etc.

The Montana Legislature has had many requests for passage of new surcharges during the last couple of legislative sessions. Many of these requests would have provided funding for good causes. However, where do you draw line? The Montana Magistrates believe that a thirty-five dollar tax on a fifty dollar fine or an eighty-five dollar tax upon all fines from zero up to five

hundred dollars is enough. These surcharges and fines are getting harder for defendant's to pay and more difficult for courts to collect.

Respectfully submitted by Larry Carver, Justice of the Peace