OFFICE OF THE OHIO PUBLIC DEFENDER

H.B. 1 BAIL SURCHARGE & COURT COST INCREASES

FREQUENTLY ASKED QUESTIONS

***Updated and Revised 10/15/09 ***

2937.22: $25.00 SURCHARGE ON BAIL

A. What is the change?

The new law imposes a $25.00 surcharge whenever a person is charged with any offense (other than a non-moving traffic offense) and posts bail.

B. When does the change become effective?

The change becomes effective October 16, 2009.

C. Is this a replacement for the Application Fee?

No. This is a new provision and is separate and apart from the $25.00 indigent application fee.

D. What is the definition of bail?

R.C. 2937.22(A) states:

> (A) Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:
>
> > (1) The deposit of cash by the accused or by some other person for the accused;
> >
> > (2) The deposit by the accused or by some other person for him in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.
> >
> > (3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

Accordingly, the $25.00 surcharge should apply in all instances of bail or bond except for persons who are released "on their own recognizance" where no money is paid or where there is no monetary value set by the court.

Please also note that the $25.00 is not considered bail, it is a surcharge on bail. See FAQ questions L and N for further clarification.

E. Does the surcharge apply to persons Released on Own Recognizance (ROR) or Personal Recognizance?

No. When persons are ROR, no bail is posted, therefore no surcharge is due. Please note there is a difference between persons who are released "on their own recognizance" or on "personal recognizance" involving no exchange of money, and "a recognizance bond" which does have a dollar value attached that is generally forfeited if the person fails to appear. The $25.00 should be charged for recognizance bonds, but not for those released ROR or PR. See question D above for further information.

F. Does the surcharge apply to unsecured bonds?

Yes. Unsecured bonds do not require payment at the time of release, but do fall under the definition of bail pursuant to 2937.22 (A)(3) because there is a dollar amount that will be forfeited if the person fails to appear.

G. Will courts charge it as a separate additional fee, separate from the bail being posted, or will they include it in their bond amount and allow their computer system to deduct the fee (as it does court costs) on a forfeiture or 10% bond?

By definition, a surcharge is in addition to other costs, therefore, the $25.00 surcharge should be added to the cost of bail, not the actual bail amount. Example: the bail is set at $5,000, and the person must pay 10% or $500. The amount due would be $525 (plus any other fees, fines and costs as applicable by law). To facilitate this within an existing computer system, courts may inflate the total amount due to include the $25.00, so long as it is separately and properly accounted for, and that the surcharge is not allocated or remitted to funds other than the Indigent Defense Support Fund.

H. Are Bail Bondsmen (who post "papers") required to front the $25 in cash?

Yes. The bondsmen are required to produce the $25.00 for the court as part of the bail process. It is incumbent on the bondsmen to collect the surcharge and remit it to the court. If the bondsmen fail to collect the funds from the client, they must still remit the surcharge, and it then becomes incumbent on them to then collect it from the client.

I. Is this surcharge to be charged once per case, once per incident no matter how many traffic/criminal charges are filed out of the event, or for each and every offense?

In situations with multiple charges, when the charges track through court at the same time, the court should assess the $25.00 only once whether the bail attaches to each charge or is set covering all charges in one amount, for example in a blanket bond.

If the person is subsequently arrested and charged with unrelated offenses (other than a community control violation), and new bail is set, the person would be charged an additional $25.00 related to the second or subsequent instances of bail being set. For probation violations/community control violations, see FAQ question J.

J. If a defendant is sentenced and thereafter fails to appear for a community control violation [formerly probation violation] (or comply with other court order) and a bench warrant is issued, does the defendant need to post the surcharge again on such bail?

It depends. If a person is charged with a probation violation, it should be considered a separate course of conduct, and therefore subject to assessment of the $25.00 bail surcharge. However, persons committing PV's should not be charged double if the conduct that resulted in the PV also becomes a new or separate case.

For example, if a person is violated for testing positive for drug use, but is not charged with a drug abuse offense, and bail is set, then they would be assessed a $25.00 surcharge. If the person is also charged with a drug abuse offense, and bail is set, they would be assessed a $25.00 surcharge for the drug abuse case, but not the PV. Charging them for both would essentially make the person pay double for the same action or course of conduct.

K. Does the surcharge apply in "agreed bail forfeitures" and appearance waivers that cover costs and/or fines? (REVISED 10/15/09)

It depends. In agreed bail forfeitures the person has technically posted bail, and therefore, the surcharge is applied. The surcharge should be added at the time the original bail amount is collected. If law enforcement agents or officers collect agreed bail forfeitures, they must add the $25.00 surcharge to the total amount collected, and remit it to the court.

However, in situations where the court or a law enforcement officer collects money covering fines and costs and a waiver of appearance, for example a speeding or other traffic ticket, there is no longer a requirement to appear, and no bail is involved, so the $25.00 bail surcharge does not apply.

L. Can you hold the person who is charged for failure to pay the $25.00 surcharge?

No. The surcharge is not bail, it is a surcharge on bail. If the person charged, or someone on his or her behalf pays the bail amount, but not the surcharge, the amount shall be assessed to the person charged and subject to the courts standard collection process and procedures. If the person charged is found not guilty or the charges dismissed, the court may remove the assessment since it is no longer due.

M. The legislature used the word "surcharge", not "cost", which seems to conflict with the definition of "state fines and costs," and clerk's legal authority to collect and distribute such state fines and costs.

HB 1 directs the person charged to pay a surcharge of $25.00 and directs the clerk of court to either retain or remit the money depending on the disposition of the case. This gives the clerk of courts authority to collect and remit the bail surcharge.

N. What if the person posting bail is not the person charged?

The surcharge is not bail, it is a surcharge on bail. Regardless of whether paid by the person charged or on his or her behalf by someone else, the court shall collect the $25.00 surcharge and depending on the disposition of the case, either remit it to the State Treasurer or return it to the person who paid it. If the person charged is convicted, pleads guilty, or forfeits bail, the bail may be returned upon demand of the person who paid it on behalf of the defendant, but not the surcharge. If the person is convicted, pleads guilty or forfeits bail, the court must remit the $25.00 surcharge to the State Treasurer to be deposited to the Indigent Defense Support Fund, with or without the approval of the person who paid the bail. If the person is found not guilty or the charges dismissed, the $25.00 must be returned to the person who paid it on behalf of the defendant.

However, if the court did not collect the $25.00 surcharge, the court cannot deduct the surcharge from the amount paid on behalf of the person charged. For example, if the cost of bail is $100, and the court collects $125, which includes the surcharge, only $100 would be returned. If the cost of bail was $100, and the court collected only $100, the court would return the full $100 to the person who paid it.

O. Can the $25.00 be used to satisfy other penalties, fines or court costs?

No. If the person charged is convicted, pleads guilty, or forfeits bail, the $25.00 should be accounted for separately and remitted to the State Treasurer. The money should not be used for other purposes, regardless of whether it was paid by the defendant or on his or her behalf, and regardless of whether the defendant was not indigent.

P. How do you handle pleas other than "guilty?"

The statute imposes the surcharge if the person is convicted, pleads guilty or forfeits bail. For purposes of the statute, this includes pleas other than guilty that lead to or result in conviction, for example, pleas of no contest and nolo contendere.

Q. The court does not use the term "found guilty" where persons are found to be in violation of conditions of probation or community control. Does the $25.00 still apply? (ADDED 10/15/09)

Yes. In Probation Violations/Community Control Violations, the court does not use the term "found guilty" when the person is found to have violated the terms of probation or community control. However, being found in violation of a condition of probation or community control is the equivalent of being "found guilty," and the court should assess and collect the $25.00 in these situations. The same is true for a person who "admits" to a PV or CC violation. Admitting to the violations is the equivalent of having pled guilty.

R. Does the $25.00 surcharge apply when the court issues a warrant for failure to pay fines and/or costs? (ADDED 10/15/09)

No. When the person is charged only with failure to pay fines, the $25.00 surcharge should not be applied. The court cannot hold a person for failure to pay costs, so the surcharge does not apply in those situations.

S. The law does not apply to non-moving traffic violations. Please define "any offense other than a traffic offense that is not a moving violation." (ADDED 10/15/09)

The $25.00 bail surcharge does not apply to non-moving traffic violations. The O.R.C. defines moving violations identically in two separate places. Both 2949.093(H)(1) and 2343.70(D)(1) define a moving violation as follows:

> *"Moving violation" means any violation of any statute or ordinance, other than section 4513.263 of the Revised Code or an ordinance that is substantially equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.*

Accordingly, the $25.00 surcharge applies to all offenses where bail is set, except for restraining device (seatbelt), pedestrian, and/or parking violations.

2949.091: ADDITIONAL COURT COSTS

1. What is the change?

The new law replaces the existing $15.00 flat amount with a sliding scale based on kind of offense:

$30.00 for felonies
$20.00 for misdemeanors and moving traffic offenses
$10.00 for non-moving traffic offenses, excluding parking violations.

2. When do the changes become effective?

The change becomes effective October 16, 2009.

3. When should the courts begin imposing the new amounts? (REVISED 10/15/09)

The new amounts take effect on October 16, 2009.

4. When should the money begin to be deposited to the Indigent Defense Support Fund as opposed to the General Revenue Fund?

R.C. 2949.091(A)(1)(b) states:

> "All moneys ***collected*** pursuant to division (A)(1)(a) of this section during a month shall be transmitted on or before the twentieth day of the following month by the clerk of court to the treasurer of state and deposited by the treasurer of state to the credit of the indigent defense support fund..." **[emphasis added].**

R.C. 2949(A)(2)(b) has a similar provision that applies to juvenile court.

Furthermore, R.C. 2949.111(A)(2) specifically removes the GRF from the funds where the money collected per 2949.091 is to be deposited, and now reads as follows:

> "State fines or costs" means any costs imposed or forfeited bail collected by the court under section 2743.70 of the Revised Code for deposit into the reparations fund or under section 2949.091 of the Revised Code for deposit into the ~~general revenue~~ indigent defense support fund established under section 120.08 of the Revised Code and all fines, penalties, and forfeited bail collected by the court and paid to a law library association under sections 3375.50 to 3375.53 of the Revised Code.

Accordingly, regardless of the amounts imposed or assessed, any moneys collected on or after October 16, 2009 should be remitted to the credit of the Indigent Defense Support Fund instead of the GRF.

5. How do we handle collections during October 2009?

Because the law takes effect half way through a month, clerks must track the receipt dates of any money collected in October 2009. Money received before October 16 is remitted to the GRF, money received on or after October 16 is remitted to the Indigent Defense Support Fund.

One suggestion was to break October 2009 into two separate pay-ins. On October 16, or as soon thereafter as possible, create a pay-in and report all money collected from October 1 through October 15 on Line 2a of the Treasurer of State form—General Revenue Fund. Then, before November 20, create a subsequent pay-in and report all money collected October 16 through October 31 on Line 2c of the Treasurer of State Form—Indigent Defense Support Fund.

For all future months report all money collected under 2937.22 and 2949.091 on Line 2c of the Treasurer of State form-- Indigent Defense Support fund. The Treasurer of State may eventually amend the remittance form to eliminate the GRF line.

6. Explain how the process works with regard to persons posting bail.

Per 2949.091(A), the court shall impose the costs when the person is convicted of or pleads guilty to a qualifying offense, which suggests the court would impose and collect the money only after conviction or guilty plea. R.C. 2949.091(B), however, directs the court to add these amounts to the cost of bail, which is generally done before conviction or plea. This suggests a system where, whenever bail is posted, the court must collect the costs up front and holds them until disposition of the case. Depending on the outcome of the case, the costs are either imposed (kept by the court and remitted to the State Treasurer) or returned to the person.

In either case, pursuant to 2949.091(B) the funds that must be transmitted to the State Treasurer means only those moneys collected where the person has been convicted, pleads guilty, or forfeits bail. If the person is found not guilty or the charges are dismissed, if any money was collected, the clerk must return the amount collected to the person. Therefore, courts that add the costs to bail, and actually collect the money up front, should exclude these amounts from the moneys remitted to the State Treasurer until after the disposition of the case.

7. What if the person pleas to a lesser offense?

R.C. 2949.091(A)(1) states "The court in which any person *is convicted of or pleads guilty to* shall impose one of the following sums as costs…" *[emphasis added]*.

A similar provision in R.C. 2949.091(A)(2), reads "The juvenile court in which a child *is found to be* a delinquent child or a juvenile traffic offender for an act that if committed by an adult would be an offense shall impose one of the following sums as costs …" *[emphasis added]*.

The sliding scale of costs, therefore, is based the offense for which the person is convicted of or pleads guilty, not the offense originally charged. If the person pleads to a lesser offense, the court should charge the lower amount.

If the court has collected the costs up-front by having added them to bail, the court should refund the difference. For example, if a person is charged with a felony, and the court collected $30, and the person pleads to a misdemeanor, the court would refund $10 to the person and remit $20 to the State Treasurer on their next report.

This provision is similar to the existing language in R.C. 2743.70 regarding the Reparations Fund.

8. How do you handle pleas other than "guilty?"

The statute imposes the costs if the person is convicted of or pleads guilty to a qualifying offense. For purposes of the statute, this includes pleas other than guilty that lead to or result in conviction, for example, pleas of no contest and nolo contendere.

9. Previously the law did not apply to non-moving traffic violations. Now it imposes a $10.00 court cost for non-moving traffic violations, except parking. Please define "a traffic offense that is not a moving violation." (ADDED 10/15/09)

The O.R.C. defines moving violations identically in two separate places. Both 2949.093(H)(1) and 2343.70(D)(1) define a moving violation as follows:

> *"Moving violation" means any violation of any statute or ordinance, <u>other than</u> section 4513.263 of the Revised Code or an ordinance that is substantially equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.*

Accordingly, if the violation involves a restraining device (seatbelt) or pedestrian traffic offense as the highest offense to which the person pleas or is found guilty, the court would impose $10.00. This law does not apply to parking violations.

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For more information or clarification on these FAQ's please contact:

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