

Court News

South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

ROBERT L. MCCURDY
ASSISTANT DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269

MEMORANDUM

To: Magistrates and Municipal Judges

From: Robert L. McCurdy, Assistant Director

Subject: Statutory provisions for the distribution of revenue generated by the magistrate courts and municipal courts

Date: June 28, 2017

This past legislative term there was legislation passed regarding the collection, distribution and reporting of court generated revenues. There were several temporary provisos that have been repeated in previous General Appropriations Acts and are repeated again in the 2017 - 2018 General Appropriations Act. **There was also one new proviso regarding the collection of victims' funds.** These provisos are enforcement in nature and have no effect on the amounts of actual surcharges and assessments. Those provisos are listed below.

The entire fees and assessments memorandum for fiscal year 2017 - 2018 will be posted on the Judicial Department website at www.sccourts.org under "Court News."

1. **Effective May 19, 2017**, Section 1 of Act No. 81 of 2017 amended S. C. Code §56-5-1535, previously regarding speeding in work zones, so as to create the offense of "Endangerment of a Highway Worker." Sixty-five percent (65%) of any fine imposed under this section must be remitted to the to the State Treasurer and deposited in a special account, separate and apart from the general fund, designated for use by the Department of Public Safety to be used for work zone enforcement. Twenty-five percent (25%) of any fine imposed under this section must be forwarded to the State Treasurer to be deposited in the State Highway Fund and designated for use by the Department of Transportation to hire any off-duty state, county, or municipal police officer to monitor construction or maintenance zones. Ten percent (10%) of the fine imposed must be remitted to the county governing body in which the charge was disposed, or the municipality, if the charge was disposed in municipal court.

2. Several statutes contained within Title 50: Fish, Game and Watercraft, entitle the Department of Natural Resources be awarded restitution in specified violations of the illegal taking of certain animals. The courts are required to collect that restitution, and forward those funds to the County Treasurer, and then forward it directly to the Department of Natural Resources. A list of those statutes is contained in "**Attachment R**"

Appropriations Act requires that every person placed on probation on or after July 1, 2003, who is represented by a public defender or appointed counsel, **shall** be assessed a fee of \$500.00. These funds shall be collected by the clerk on a monthly basis and forwarded to the Commission on Indigent Defense.

4. Effective July 1, 2017, section 61.7 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act provides a procedure for the collection, distribution, and reporting of a \$40 application fee for appointed counsel in civil actions. The Proviso requires that any person to whom counsel has been provided in any termination of parental rights, abuse and neglect, or any other civil court action, or the parents or legal guardians of a juvenile brought before any court, file application for court appointed counsel, and such representation creates a claim against the assets and the estate of the person who is provided counsel, or the parents or legal guardians of a juvenile provided counsel. Finally, this Proviso provides that any unpaid representation fees may be reduced to judgment against those individuals, parents, or legal guardians

5. Effective July 1, 2017, Section 98.9 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act provides that if a municipality fails to submit the audited financial requirements required under § 14-1-208 to the State Treasurer within 13 months of the end of their fiscal year, the State Treasurer must withhold all State payments to that municipality until the required audited financial statement is received. Section 98.9 is provided below.

98.9. (TREAS: Penalties for Non-reporting) If the State Treasurer receives an audit report from either a county or a municipality that contains a "significant finding" related to court fine reports or remittances to the State Treasurer's Office, the requirements of proviso 117.55 shall be followed if an amount due is specified, otherwise the State Treasurer shall withhold 25% of all state payments to the county or municipality until the estimated deficiency has been satisfied.

If a county or municipality is more than 90 days delinquent remitting court fines, the State Treasurer shall withhold 25% of state funding for that county or municipality until all monthly reports are current.

After 90 days, any funds held by the State Treasurer's Office will be made available to the State Auditor to conduct an audit of the entity for the purpose of determining an amount due to the State Treasurer's Office, if any.

6. Effective July 1, 2017, Section 105.4 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act provides for the annual audits of court fees and fines by the State Auditor, and authorizes the State Auditor to consult with the State Treasurer to determine the jurisdictions to be audited. Section 105.4 is provided below.

105.4. (BCB/AUD: Annual Audit of Court Fees and Fines Reports) The State Auditor shall conduct a minimum of fifteen (15) audits annually of county treasurers, municipal treasurers, county clerks of court, magistrates and/or municipal courts as required by Section 14-1-210 of the 1976 Code and allowed by Proviso 118.4 of this act; however, the State Auditor shall not be required to spend more than the annual amount of \$250,000, received from the State Treasurer to conduct the said audits pursuant to Section 14-1-210 of the 1976 Code. The State Auditor may contract with one or more CPA/accounting firms to conduct the required audits. The State Auditor shall consult with the State Treasurer to determine the jurisdictions to be audited in the current fiscal year. Jurisdictions may be selected randomly or based on an instance in the current or previous fiscal year of failing to report, incorrectly reporting or under remitting amounts owed. The funds transferred to the State Auditor by the State Treasurer shall not be used for any purpose other than to conduct the described audits and report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed and/or mandated are properly collected and remitted to the State. Any unexpended balance on June

findings of the jurisdictions audited to the Senate Finance Committee and the House Ways and Means Committee.

7. Effective July 1, 2017, Section 117.51 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act authorizes the State Office of Victim Assistance to conduct an audit on any county treasurer, municipal treasurer, county clerk of court, magistrate, or municipal court that the State Auditor has determined has not properly allocated revenue generated from court fines, fees, and assessments to the crime victim funds or has not properly expended crime victim funds pursuant to State law. Section 117.51 is provided below.

117.51. (GP: Assessment Audit / Crime Victim Funds) If the State Auditor finds that any county treasurer, municipal treasurer, county clerk of court, magistrate, or municipal court has not properly allocated revenue generated from court fines, fees, and assessments to the crime victim funds or has not properly expended crime victim funds, pursuant to Sections 14-1-206(B)(D), 14-1-207(B)(D), 14-1-208(B)(D), and 14-1-211(B) of the 1976 Code, the State Auditor shall notify the State Office of Victim Assistance. The State Office of Victim Assistance is authorized to conduct an audit which shall include both a programmatic review and financial audit of any entity or non-profit organization receiving victim assistance funding based on the referrals from the State Auditor or complaints of a specific nature received by the State Office of Victim Assistance to ensure that crime victim funds are expended in accordance with the law. Guidelines for the expenditure of these funds shall be developed by the Victim Services Coordinating Council. The Victim Services Coordinating Council shall develop these guidelines to ensure any expenditure which meets the parameters of Title 16, Chapter 3, and Article 15 is an allowable expenditure. Any local entity or non-profit organization that receives funding from revenue generated from crime victim funds is required to submit their budget for the expenditure of these funds to the State Office of Victim Assistance within thirty days of the budget's approval by the governing body of the entity or non-profit organization. Failure to comply with this provision shall cause the State Office of Victim Assistance to initiate a programmatic review and a financial audit of the entity's or non-profit organization's expenditures of victim assistance funds. Additionally, the State Office of Victim Assistance will place the name of the non-compliant entity or non-profit organization on their website where it shall remain until such time as they are in compliance with the terms of this proviso. Any entity or non-profit organization receiving victim assistance funding must cooperate and provide expenditure/program data requested by the State Office of Victim Assistance. If the State Office of Victim Assistance finds an error, the entity or non-profit organization has ninety days to rectify the error. An error constitutes an entity or non-profit organization spending victim assistance funding on unauthorized items as determined by the State Office of Victim Assistance. If the entity or non-profit organization fails to cooperate with the programmatic review and financial audit or to rectify the error within ninety days, the State Office of Victim Assistance shall assess and collect a penalty in the amount of the unauthorized expenditure plus \$1,500 against the entity or non-profit organization for improper expenditures. This penalty plus \$1,500 must be paid within thirty days of the notification by the State Office of Victim Assistance to the entity or non-profit organization that they are in non-compliance with the provisions of this proviso. All penalties received by the State Office of Victim Assistance shall be credited to the General Fund of the State. If the penalty is not received by the State Office of Victim Assistance within thirty days of the notification, the political subdivision will deduct the amount of the penalty from the entity or non-profit organization's subsequent fiscal year appropriation.

8. Effective July 1, 2017, Section 117.108 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act authorizes the SC Criminal Justice Academy to cease providing services to all law enforcement officers of law enforcement agencies encompassed within a political subdivision for failing to comply with proper remittance of court fee and fine money. Section 117.108 is provided below.

117.108 (GP: Remittance of Court Fee and Fine Money) County and city treasurers are required to remit to the State Treasurer set percentages of revenues generated by assessments imposed

15th day of each month.

Should a county and/or city treasurer fail to make the required remittance, the SC Criminal Justice Academy shall cease providing services to all law enforcement officers of all law enforcement agencies encompassed within the political subdivision if they have failed to make remittance for two consecutive months in a fiscal year. The finance director shall certify by July first, under oath, that the county and/or city has remitted all funds or the SC Criminal Justice Academy shall withhold services until such time as remittance is made.

9. Effective July 1, 2017, Section 93.27 of the Temporary Provisions of the 2017 - 2018 General Appropriations Act provides that if a county or municipality does not spend at least 90% of victims' funds collected during the previous fiscal year, the county or municipality shall remit any unspent funds that are greater than the allowed carried forward funds, regardless of the year collected, to the State Victim Assistance Program (SVAP) with the Department of Public Safety, Office of Highway Safety and Justice Programs within 120 days after the end of the fiscal year. Section 93.27 is provided below.

93.27. (DOA: State Victim Assistance Program) A county or municipality may retain carry forward funds that were collected pursuant to Sections 14-1-206 (B) and (D), 14-1-207 (B) and (D), 14-1-208 (B) and (D), and 14-1-211 (B) of the 1976 Code, but no more than \$25,000 or ten percent of funds collected in the prior fiscal year, whichever is higher. If a county or municipality does not spend at least ninety percent of the funds collected pursuant to Sections 14-1-206 (B) and (D), 14-1-207 (B) and (D), 14-1-208 (B) and (D), and 14-1-211 (B) on Article 16, Chapter 3, Title 16 first priority and/or second priority programs during the fiscal year that the funds are received then the county or municipality shall remit any unspent funds that are greater than the allowed carried forward funds, regardless of the year collected, to the State Victim Assistance Program (SVAP) with the Department of Public Safety, Office of Highway Safety and Justice Programs within 120 days after the end of the fiscal year. All funds must be accounted for in the annual audit for each county or municipality.

SOVA shall offer training and technical assistance to each municipality and county annually on acceptable use of both priority one and priority two funds and funds available for competitive bid.

SOVA is authorized to transfer to the State Victim Assistance Program housed in the Department of Public Safety any state funds deemed available under SOVA authority to be placed in the competitive bid process.

The State Victim Assistance Program shall offer any funds remitted to it to non-profit organizations that provide direct victim services on a competitive bid process. These funds may be used by the non-profit for administrative costs and victim services.

Copies of any of the legislation referenced above may be obtained by visiting the Legislative website at <http://www.scstatehouse.gov>.

The **enclosed memorandum** has been updated to reflect these amendments and discusses these changes in more detail. This memorandum supersedes prior memoranda from Court Administration on the collection and distribution of court generated revenue. It attempts to outline and explain the statutory procedures for collecting and distributing revenues in the circuit, family, magistrate, and municipal courts as well as the register of deeds. Examples of several of the distributions covered in the text of the memorandum appear in the attachments.

The actual distribution of revenue generated by the circuit, family, and magistrate courts is handled by the county treasurer in most cases. City treasurers disburse monies generated by the municipal courts. The treasurers are required to remit the funds to the State Treasurer monthly on

Revenue Report, which is generated by the South Carolina Judicial Department's Case Management System (CMS). The city treasurer can determine which funds should be transmitted to the State Treasurer by referring to the municipal courts' remittance form which is included as " **Attachment F** ." For those cities that are on CMS, please refer to the Municipal Revenue Report, rather than Attachment F. Also, see " **Attachment K** " for a schedule of civil filing fees collected in magistrate's court. " **Attachment L** " includes a list of approved expenditures for victims' funds. Also, examples of specific fines and applicable assessments/surcharges are included as " **Attachment M** ." A list of State parking laws exempt from assessments can be found at " **Attachment N** " of the enclosed memorandum. The recommended roadside bond list, which contains numerous crimes and offenses and applicable assessments, is found at " **Attachment P** ." Finally, " **Attachment O** " contains the judge's total calculator.

In this discussion of the distribution of funds, the general rule for each court is stated and followed by an explanation of the statutory exceptions for distribution. The outline which precedes the memorandum summarizes its contents. **Please note in the memorandum specific time guidelines pertaining to the transmittal of these revenues. Strict, prompt adherence to the reporting guidelines is required.**

Please provide copies of this memorandum to all members of your staff whose duties relate to the collection or distribution of court revenues. If you or your staff has any questions concerning the collection or distribution of revenue, do not hesitate to contact this office.

Cc: Municipal Treasurers