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SPRINGFIELD

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FILE NO. 91-007

CRIMINAL LAW AND PROCEDURE:
Procedure for Implementing Penalties
Imposed for Traffic and Criminal
Surcharge Fund and Crime Victims
Assistance Fund

Honorable Mark H. Clarke
State's Attorney, Alexander County
2000 Washington Avenue
Cairo, Illinois 62914

Dear Mr. Clarke:

I have your letter wherein you pose the following questions regarding section 5-9-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1989, ch. 38, par. 1005-9-1) (hereinafter referred to as "the Code") and section 10 of the Violent Crime Victims Assistance Act (Ill. Rev. Stat. 1989, ch. 70, par. 510) (hereinafter referred to as "the VCVA"):

(1) When a defendant is charged with multiple counts in a single prosecution, are the additional penalties authorized by section 10 of the VCVA and section 5-9-1 of the Code to be assessed upon each count individually, or upon the case as a whole; and

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(2) Must the court impose the penalties authorized by these sections, or may local court rules authorize the circuit clerk to impose the penalties as part of court costs?

In response to your first question, it appears that the penalties authorized under section 5-9-1 of the Code are not to be assessed according to the number of offenses for which a defendant is convicted, but rather are to be imposed proportionately upon the amount of fine otherwise assessed by the court in sentencing for specified traffic, criminal or quasi-criminal offenses. Subsection 5-9-1(c) of the Code provides, in pertinent part:

"(c) There shall be added to every fine imposed in sentencing for a criminal or traffic offense, except an offense relating to parking or registration, or offense by a pedestrian, an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed, if not otherwise assessed, shall also be added to every fine imposed upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision in criminal, traffic, local ordinance, county ordinance, and conservation cases (except parking, registration, or pedestrian violations), or upon a sentence of probation without entry of judgment under Section 10 of the Cannabis Control Act, as now or hereafter amended, or Section 410 of the Controlled Substances Act, as now or hereafter amended.

Such additional amounts shall be assessed by the court imposing the fine and shall be collected by the Circuit Clerk in addition to the fine and costs in the case. Each such additional penalty shall be remitted by the Circuit Clerk within one month after receipt to the State Treasurer for deposit into the Traffic and Criminal Conviction Surcharge Fund. * * *"

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Pursuant to subsection 5-9-1(c), if a defendant in a single prosecution encompassing several counts is convicted of every count, it is my opinion that the penalty is to be assessed upon the total amount of fines imposed by the court, unless one of the offenses is specifically exempted by statute from the penalty. If a defendant is convicted of one or more offenses and the court does not impose a fine, it appears that the surcharge authorized under this section could not be assessed.

Subsection 10(b) of the VCVA provides, in part:

"(b) On and after September 18, 1986, there shall be added to each fine imposed upon conviction of any felony or conviction of or disposition of supervision for any misdemeanor, or upon conviction of or disposition of supervision for any offense under The Illinois Vehicle Code, exclusive of offenses enumerated in paragraph (a)(2) of Section 6-204 of that Code, and exclusive of any offense enumerated in Article VI of Chapter 11 of that Code relating to restrictions, regulations and limitations on the speed at which a motor vehicle is driven or operated, an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed. Such additional amounts shall be assessed by the court and shall be collected by the Clerk of the Circuit Court in addition to the fine and costs in the case. Each such additional penalty collected under this subsection (b) or subsection (c) of this Section shall be remitted by the Clerk of the Circuit Court within one month after receipt to the State Treasurer for deposit into the Violent Crime Victims Assistance Fund. * * *

* * *

"

Surcharges imposed under this section of the VCVA, like those imposed under subsection 9-5-1(c) of the Code, are to be imposed by the court proportionately according to the amount of the fine otherwise assessed. Subsection 10(c) of the VCVA, however, also

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provides for the imposition of a surcharge when a defendant is convicted or placed on supervision and no fine is imposed by the court:

"(c) When any person is convicted in Illinois on or after August 28, 1986, of an offense listed below, or placed on supervision for such an offense on or after September 18, 1986, the court which enters the conviction or order for supervision, if it does not impose a fine, shall impose, in addition to any other penalty authorized by law, a charge in accordance with the following schedule:

(1) \$25, for any crime of violence as defined in subsection (c) of Section 2 of the Crime Victims Compensation Act; and

(2) \$20, for any other felony or misdemeanor, excluding any conservation offense.

Such charge shall not be subject to the provisions of Section 110-14 of the Code of Criminal Procedure of 1963."

Consequently, where, for example, a defendant is charged with three felony counts in one prosecution, none of which is specifically excluded by section 10 of the VCVA, and is convicted of all three counts but assessed fines on only two of the counts, the penalties would be assessed on these two counts under subsection 10(b) of the VCVA according to the amount of fine imposed. A penalty would also be assessed on the remaining count under the provisions of subsection 10(c) of the VCVA. Therefore, in assessing the penalties authorized by section 10 of the VCVA, it is my opinion that each separate offense must be considered, together with whether it is specifically excluded from the penalty, its disposition, and the amount of fine, if any, imposed by the court.

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In response to your second inquiry, both section 5-9-1 of the Code and section 10 of the VCVA clearly provide that it is the duty of the court imposing the fine or conviction to assess the penalties authorized therein. (See People v. Rinaldo (1989), 179 Ill. App. 3d 539, 545.) Section 10 of the VCVA provides:

"(b) * * * Such additional amounts shall be assessed by the court and shall be collected by the Clerk of the Circuit Court in addition to the fine and costs in the case. * * *

(c) * * * the court which enters the conviction or order for supervision, if it does not impose a fine, shall impose, in addition to any other penalty authorized by law, a charge in accordance with the following schedule:

* * * " (Emphasis added.)

Section 5-9-1 of the Code provides in pertinent part:

"* * *

Such additional amounts shall be assessed by the court imposing the fine and shall be collected by the Circuit Clerk in addition to the fine and costs in the case.

* * * " (Emphasis added.)

In People v. Scott (1987), 152 Ill. App. 3d 868, 873, citing People v. Tarbill (1986), 142 Ill. App. 3d 1060, 1061, the court vacated a penalty imposed by the circuit clerk under section 10 of the VCVA, stating that the clerk is a nonjudicial member of the court and has no power to levy fines or to impose sentences. (See also People v. Reed (1987), 160 Ill. App. 3d 606, app. denied.) Therefore, it is my opinion that the

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penalties authorized by section 10 of the VCVA and section 5-9-1
of the Code must be imposed by the court.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL