

STATUTORY PROVISIONS FOR THE DISTRIBUTION OF REVENUE GENERATED BY THE CIRCUIT COURT, FAMILY COURTS, MAGISTRATES AND MUNICIPAL COURTS; FEES AND RELATED CHARGES OF THE REGISTER OF DEEDS

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## I. Court of General Sessions

### A. General Rule

1. Disbursement and division of revenue, Sections 14-1-205, 14-17-720, and 14-17-750

Section 14-1-205 sets forth the general rule for distributing the revenue generated in general sessions court from costs, fees, fines, penalties, forfeitures, and other revenues and requires that 56% of all such money (after deducting any payments to informants pursuant to Section 14-17-720 which is discussed below) shall be paid over to the county. The remaining 44% of the revenues generated in general sessions court must be forwarded each month to the County Treasurer for remittance to the State Treasurer on forms and in a manner prescribed by the State Treasurer.

Section 14-17-720 requires that all fines and penalties collected in criminal cases in the court of general sessions be forthwith turned over by the clerk to the County Treasurer. This section also provides that when, by law, any person is entitled to receive any portion of a fine or penalty by reason of being an informer. That person is entitled to immediate payment. Clerks should also turn over any informer monies to the treasurer with a copy of the court order specifying such payment. The treasurer can then disburse to the informer thereby creating a proper audit trail.

Section 14-17-750 requires that the clerk make a full and accurate statement, in writing, to the County Auditor and Treasurer, of all monies collected on account of licenses, fines, penalties and forfeitures during the past month, on the first Wednesday or within ten days thereafter, in each successive month.

2. Assessment, Section 14-1-206(A)

Section 35.11 of the Temporary Provisions of the General Appropriations Act, which suspends Section 14-1-206 for the fiscal year 2004-2005, requires any person who is convicted, pleads guilty or nolo contendere to, or forfeits bond in payment of a fine for an offense tried in general sessions court on or after July 1, 2004 to pay an assessment in an amount equal to 107.5% of the fine actually imposed. If a portion of the fine is suspended, the assessment is calculated on the amount of the fine that is not suspended.

**The assessment cannot be waived, reduced, or suspended.** The amount collected as assessments must be forwarded each month to the County Treasurer, who shall retain 35.35% of the revenue generated by the assessment for the county, and transmit the remaining 64.65% to the State Treasurer by the fifteenth of each month on forms and in a manner prescribed by him.

The 35.35% retained by the county must be used exclusively for providing victim services as required by Article 15 of Title 16; specifically, those service requirements

that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. Any funds retained by the County Treasurer which are not used for victim services at the end of the fiscal year must be carried forward to the next year and used exclusively for services for victims of crimes. All unused funds must be separately identified in the counties adopted budget as funds unused and carried forward from previous years.

To ensure that fines and assessments imposed pursuant to this section and section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed by each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting and distribution of fines and assessments from the point of collection to the point of distribution and a supplementary schedule indicating all fines and assessments collected by the clerk of court for the court of general sessions, the amount of fines and assessments retained by the County Treasurer, the amount of fines and assessments remitted to the State Treasurer, and the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward. Within thirty days of the issuance of the audited financial statement, the county must submit a copy to the State Treasurer, and a statement of the actual cost associated with the preparation of supplementary schedule required in this subsection, 14-1-206(E). Upon submission to the State Treasurer, the county may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the supplementary schedule, not to exceed \$1,000 each year.

The clerk of court and County Treasurer shall keep records of fines and assessments required to be reviewed under this section in the format determined by the county council. See "**Attachment L**" for possible expenditures of victims' funds as recommended by the South Carolina Victims Assistance Network.

### 3. Surcharge on all convictions, Section 14-1-211

In addition to all other assessments and surcharges, a one hundred dollar surcharge is imposed on all convictions obtained in general sessions court. The surcharge must not be imposed on convictions for misdemeanor traffic offenses. However, the surcharge applies to all violations of Section 56-5-2930, driving under the influence of liquor, drugs, or like substances, and Section 56-5-2933, driving under the influence per se. **No portion of the surcharge may be waived, reduced, or suspended.**

The revenue collected pursuant to Section 14-1-211 must be retained by the jurisdiction which heard or processed the case and paid to the County Treasurer, for the

purpose of providing services for victims of crimes, including those required by law. Any funds retained by the County Treasurer pursuant to this Section must be deposited into a separate account for the exclusive use for all activities related to victims services. For the purpose of funds allocation and expenditure, these funds are a part of the general funds of the county. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds may be used for, but are not limited to, salaries, equipment that includes computer equipment and Internet access, or other expenditures necessary for providing services to crime victims. All unused funds must be carried forward from year to year and used exclusively for victim services. All unused funds must be separately identified in the county's adopted budget as funds unused and carried forward from previous years.

The surcharge revenue retained by the county must be reported to the State Treasurer monthly in a form and manner required by that office. To insure that surcharges imposed pursuant to Section 14-1-211(A) are properly collected and remitted to the County Treasurer, the annual independent external audit required to be performed by each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting and distribution of surcharges from the point of collection to the point of distribution and a supplementary schedule detailing the amount of surcharges collected at the court level, the amount retained by the county, the amount of funds allocated to victims' services, how those funds were expended, and any carry forward balances. See "**Attachment L**" for possible expenditures of victims' funds as recommended by the South Carolina Victims Assistance Network.

4. Surcharge on all convictions, Law Enforcement Funding, Section 73.3, Part 1B Temporary Provisos

Effective July 1, 2004, in addition to all other assessments and surcharges, during fiscal year 2004-2005, a twenty-five dollar surcharge is levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in general sessions court. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected from the surcharge must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 73.3 (D) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section.

The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

5. Surcharge on convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUI Per Se), Section 14-1-211(A)(2)

Section 14-1-211(A)(2) requires that a one hundred dollar surcharge be imposed on all convictions of Sections 56-5-2930(DUI) and 56-5-2933(DUI Per Se). **No portion of the surcharge may be waived, reduced, or suspended.** These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer. The State Treasurer shall put these funds in a separate account to be used for spinal cord research at MUSC. Section 56-5-2945 (Felony DUI) was not included in Section 14-1-211(A)(2), so the surcharge is not imposed on those convictions.

All one-time operating and administrative costs for county government related to computer upgrades or programming related to these surcharges shall be deducted from the revenue collected pursuant to (A)(2) before remission to the State Treasurer.

6. DUI assessment, Section 56-5-2995(B)

In addition to the assessments and surcharges discussed in 1.A.2., 1.A.3., 1.A.4, and 1.A.5. above, an additional assessment of twelve dollars must be added to all second and subsequent violations of Section 56-5-2930, DUI, Section 56-5-2933 (DUI Per Se), and for all violations of Section 56-5-2945, Felony DUI (1.A.5. above does not apply to Felony DUI). **No portion of the surcharge may be waived, reduced, or suspended.** These funds should be clearly designated and forwarded to your County Treasurer for transmittal to the State Treasurer for disbursement pursuant to Section 14-1-201.

7. DUI Vehicle Assessment, Section 56-5-2942 (J)

Effective August 19, 2003, the Court must assess a fee of \$40.00 for each motor vehicle owned by or registered to the person convicted of a **second or subsequent** violation of Sections 56-5-2930, 56-5-2933, or 56-5-2945. This fee must be transmitted to the County Treasurer and placed into a special restricted interest bearing account to be used by the Department of Public Safety to defray the expenses of the Division of Motor Vehicles.

8. Drug Court Surcharge, Section 33.7, Part 1B Temporary Provisos

Effective July 1, 2004, in addition to all other assessments and surcharges required to be imposed by law, during fiscal year 2004-2005, a one hundred dollar surcharge is imposed on all misdemeanor and felony drug offense convictions in the



court of general sessions. **No portion of the surcharge may be waived, reduced, or suspended.** The revenue collected pursuant to this Section must be retained by the jurisdiction which heard or processed the case and paid to the State Treasurer within thirty days after receipt. These funds should be clearly designated when transmitted to your County Treasurer and then forwarded to the State Treasurer.

Section 33.7 (D) provides that the State Treasurer may request the State Auditor to examine the financial records of any jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer under this Section. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

9. Boating Under the Influence Breath Test Fee, Section 50-21-114

Section 50-21-114 requires that any individual convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 50-21-112 (BUI) or 50-21-113 (Felony BUI), and who was administered a breathalyzer examination at the time of arrest, must be assessed an additional fee of \$50.00 at the time of sentencing. This fee must be forwarded by the County Treasurer to the State Treasurer and credited to the General Fund of the State to defray any costs incurred by SLED and individuals and institutions attaining the samples forwarded to SLED.

10. Payment of the fine and assessment by installments, Section 14-1-209(A) and 3% collection cost charge, Section 14-17-725

When the fine and assessment are paid in installments, Section 35.11 of the Temporary Provisions of the General Appropriations Act suspends Section 14-1-209(B) for the fiscal year 2004 - 2005 and requires that 51.80722% of each installment be treated as a payment towards the assessment. The remaining 48.192771% is treated as a payment towards the fine. The fine amount must be further divided, with 56% of the amount being retained by the county, and 44% being remitted to the state. The assessment amount must further be divided, with 64.65 being transmitted to the state, and 35.35 being retained by the county for victims' services. Prior to making these computations, you must determine what other assessments may apply (conviction surcharge, DUI assessments, etc.). Those charges must be collected separately and not included in the percentage splits explained above. Funds collected as installments should not be held until full payment is received but must be remitted each month to the County Treasurer. To compensate for any slight shift in funds, the division of the final installment payment should be adjusted so that the portion collected as the assessment does not exceed the amount originally imposed.

When an individual pays the fine and/or assessment through installments, Section 14-17-725 provides that the clerk must collect an additional 3% of the installment payment as a collection cost charge. The collection cost is transmitted to the County Treasurer for deposit to the county general fund.

## B. Exceptions to the general rule

We have identified eleven exceptions to the general rule for the distribution of revenue generated in general sessions court. Other than the DUI, bond estreatments and insurance fraud, it is not anticipated that you will frequently see these exceptions. However, they may occasionally be disposed of in general sessions court and the assessments should be collected and handled as specified in I.A.2., I.A.3., I.A.4. and I.A.5. above.

### 1. DUI and DUI Per Se, \$100.00 Pull-Out, Section 56-5-2940

Section 56-5-2940 requires that \$100.00 of each fine imposed pursuant to Sections 56-5-2930 (DUI) and 56-5-2933 (DUI Per Se) must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. The remainder of the fine shall be split pursuant to I.A.I. above, with 56% being retained by the county and 44% remitted to the state. This applies to first and subsequent offenses of those statutes. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

### 2. DUI and DUI Per Se, \$200.00 Pull-Out, Section 56-5-2940

Section 56-5-2940 requires that \$200.00 of each fine imposed pursuant to a third offense violation of Sections 56-5-2930 (DUI) and 56-5-2933 (DUI Per Se) must be forwarded to the State Treasurer and placed into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the Datamaster, breath testing sight video programs, ignition interlock provisions, and toxicology laboratory. This deduction from the fine would be in addition to the \$100.00 deduction discussed in I.B.1 above. The remainder of the fine shall be split pursuant to I.A.I. above, with 56% being retained by the county and 44% remitted to the state. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

### 3. Felony DUI, \$100.00 Pull-Out, Section 56-5-2945 (C)

Section 56-5-2945 (C) requires that \$100.00 of each fine imposed pursuant to a conviction under Section 56-5-2945 (C) be forwarded to the State Treasurer to be placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. The remainder of the fine shall be split pursuant to I.A.I. above, with 56% being retained by the county and 44% remitted to the state. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

4. DUS, \$100.00 Pull-Out, Section 56-1-460 (C)

Section 56-1-460(C), as it relates to Driving under Suspension, requires that \$100.00 of each fine imposed pursuant to that section must be forwarded to the State Treasurer and placed into a special restricted account to be used by the Department of Public Safety for the Highway Patrol. The remainder of the fine shall be split pursuant to I.A.I. above, with 56% being retained by the county and 44% remitted to the state. This applies to first and subsequent offenses of that statute. These funds should be clearly designated in your monthly report to the County Treasurer and State Treasurer.

a. Exception, Section 12-37-2740, DUS for Failure to Pay Property Tax

An exception to the rule requiring \$100 of each driving under suspension fine be "pulled out" for the benefit of the the Department of Public Safety is found at Section 12-37-2740, Driving Under Suspension For Failure to Pay Property Taxes. That section contains specific penalty provisions for such a violation which are separate and distinct from the penalties provided in Section 56-1-460. When handling those cases, reference should be made to that statute for the penalty requirements, and the \$100 "pull out" does not apply.

5. Bond estreatments, Section 17-15-260

Section 17-15-260 provides that the funds resulting from a bond estreatment are divided as follows: 25% to the state general fund, 25% to the solicitor's office, and 50% to the county general fund. If the case was originated by a municipality, the estreated funds are divided as follows: 25% to the state general fund, 25% to the solicitor's office, 25% to the county general fund, and 25% to the municipality. The state's portion should be turned over to the County Treasurer on a monthly basis for transmittal to the State Treasurer.

a. Payment of estreatment in installments, Section 38-53-70

Section 38-53-70 provides that the court may allow the surety to pay an estreatment in installments for a period of up to six months. However, the surety must pay a handling fee to the court in an amount equal to 4% of the value of the bond. Per Order of the Chief Justice dated November 14, 2002, the 4% handling fee should be dispersed with the other monies estreated pursuant to I.A.3. above.

6. Insurance fraud, Section 38-55-560

Section 38-55-560 requires that 100% of all criminal fines generated from violations of Section 38-55-170 or 540 must be transmitted to the Insurance Fraud Division of the Office of the Attorney General. The statute provides that SLED and the

Attorney General divide these funds equally, and those two agencies have entered into a written agreement whereby the Attorney General receives the funds and then makes the proper distribution to SLED. These funds should be clearly noted on your report to the county so that the proper amount of funds can be transmitted to Byron R. Roberts, Director, Insurance Fraud Division, Office of the Attorney General, P. O. Box 11549, Columbia, South Carolina 29211. See "**Attachment I**" for use in transmitting these funds to the County Treasurer. The assessments discussed in I.A.2., I.A.3., and I.A.4. above should also be collected on these violations.

7. Cruelty to animals, Section 47-1-160

Section 47-1-160 requires that, if the court determines that there was a nonprofit humane organization in the municipality or county materially involved in or aiding in the prosecution of a violation of any cruelty to animal offense found in Chapter 1 of Title 47 of the South Carolina Code of Laws, one half of the fine must be distributed to that organization. The remainder of the fine shall be split pursuant to I.A.1. above, with 56% being retained by the county and 44% remitted to the state. These funds should be clearly noted on your report to the County Treasurer so that the proper amount of the fine is distributed to the appropriate agency. See "**Attachment J**" for use in transmitting these funds to the County Treasurer. The assessments discussed in I.A.2., I.A.3., and I.A.4. above should be collected on these violations.

8. Game or fish law violations, Sections 50-9-910, 50-5-25, 50-21-160, 50-23-220, and 50-9-920

Pursuant to section 50-9-910, one hundred percent of all revenues from fines and forfeitures from violations of Chapters 1 through 16 of Title 50 (Fish, Game, and Wildlife), except for violations of marine resources laws, shall be transmitted to the County Treasurer monthly. The treasurer then transmits the funds by the 15<sup>th</sup> of each month to the Department of Natural Resources, Accounting Department, to be credited to the County Game and Fish Fund for the county in which the offense occurred. The remittances shall be accompanied by a statement showing the name of all persons fined, the amount of each fine, the summons number and the court in which each fine was collected.

Section 50-5-25 provides for the distribution of all revenues from fines and forfeitures for violations of marine resource laws. Similar to the distribution discussed immediately above, that section provides that one hundred percent of these fines shall be transmitted to the County Treasurer monthly, and then forwarded to the State Treasurer by the 15<sup>th</sup> of each month, to be credited to the Wildlife Department and deposited in the County Game and Fish Fund for the county in which the offense occurred.

Section 50-21-160 provides that 75% of all fine revenues generated pursuant to offenses contained within Chapter 21 of Title 50 shall be forwarded to the County

Treasurer monthly, who shall forward it by the 15<sup>th</sup> of each month to the Wildlife Department, Natural Resource Enforcement Division. 25% of those fines must be forwarded to the County Treasurer monthly and retained by the County in which the fine is levied, and placed in the County General Fund.

Section 50-23-220 requires that all revenues received and collected pursuant to Chapter 23 of Title 50 (Titling of Watercraft and Outboard Motors) shall be forwarded to the County Treasurer on a monthly basis, who shall forward these funds to the State Treasurer to be placed in a special fund for the Wildlife Department to be used for expenses in administering the provisions of Chapter 23. As information, the only penalty provision in that Chapter is Section 50-23-280.

Section 50-9-920 requires that revenue from fines and forfeitures for violations of "other sections" of this Title and for "all other offenses investigated or prosecuted by the Department" must be deposited with the State Treasury to the credit of the Game Protection Fund. The phrase "other sections" has been interpreted to include violations of Chapters 18, 19, and 25 of Title 50, since none of the Sections described above affect these Chapters. The phrase "all other offenses investigated or prosecuted by the Department" has been interpreted to include the list of offenses found in Section 50-3-410, as well as any other non-Title 50 offenses investigated or prosecuted by the Department. These funds should be forwarded to your County Treasurer monthly, who shall then forward them to the State Treasurer.

All game or fish law violations are subject to the assessments set forth in I.A.2., I.A.3., and I.A.4. above. The Department of Natural Resources monitors the disposition of all wildlife cases. Should a game or fish law violation be disposed of in your court, you may expect to receive an invoice similar to the one marked "**Attachment G**".

9. Axle weight and gross weight violations, Section 56-5-4160

Section 56-5-4160 provides that all fines collected for violating the weight limits set by Section 56-5-4130 or Section 56-5-4140 must be deposited within 45 days in the account designated the "Size and Weight Revitalization Program Fund for Permanent Improvements". These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the State Transport Police at 220 Executive Center Drive, Winthrop Building, Suite 200, Columbia, South Carolina 29210. The assessment discussed in I.A.2. and I.A.4., but not I.A.3., above should be collected on weight violations.

10. Body Piercing Regulation Violation, Section 44-32-120

Section 44-32-120 requires that 100% of all fines collected from a violation of Chapter 32 of Title 44 of the South Carolina Code of Laws, relating to the regulations over body piercing, must be remitted to the State Treasurer to be credited to the Department of Health and Environmental Control to be used solely to carry out and

enforce the provisions of the Chapter referenced above. These funds should be clearly noted on your report to the County Treasurer so that the proper amount of fines can be transmitted to the State Treasurer for disbursement to DHEC. The assessments discussed in I.A.2., I.A.3., and I.A.4. above should be collected on these violations.

11. Tattooing Regulation Violation, Section 44-34-100(G)

R. 338, S. 104 amends the Code by adding Chapter 34 of Title 44, so as to legalize and regulate tattooing in this State. Section 44-34-100(G) provides that all criminal fines generated from a violation of that Chapter, or from Section 16-17-700 (which was amended by this Bill and now criminalizes violations of Chapter 34 of Title 44), be remitted to the Department of Health and Environmental Control. These revenues should be forwarded to your County Treasurer monthly, along with a list of the disposed cases, who shall remit them to the following address DHEC, Bureau of Health Licensing, Attention: Dennis Gibbs, 2600 Bull Street, Columbia, SC, 29201. The assessments discussed in I.A.2., I.A.3., and I.A.4. above should be collected on these violations.

**See "Attachment A" for examples of the above mentioned collections and disbursements.** A transmittal form which may be used to remit the state's portion of the funds described above to the County Treasurer can be found at **"Attachment D"**.

C. Miscellaneous payments to clerks

This office has identified certain criminal proceedings that often result in a clerk receiving funds pursuant to circuit court action: administrative court costs in fraudulent check cases, repayments to the defender corporation or the Defense of Indigents Fund, probation supervision fees, alcohol and drug abuse program fees, victim restitution payments, and crime reenactment profits. The assessments discussed in I.A.2., I.A.3., and I.A.4. above would not be levied based on these collections alone. Additionally, clerks receive annual fees from bondsmen and runners, a fee for expunging criminal records, a collection cost for restitution payments made in installments, and an application fee for public defender services.

1. Administrative court costs in fraudulent check cases, Sections 34-11-70(b) and (c), and 34-11-90(c) and (d)

In most fraudulent check cases, the court is entitled to collect reasonable administrative court costs not to exceed forty-one dollars. This amount is collected from the prosecuting witness if the court dismisses the case for want of prosecution, Section 34-11-70 (b), or from the defendant if the court dismisses the case upon satisfactory proof of restitution, Section 34-11-70 (c). If the case goes to trial and the defendant is convicted, the cost shall be collected, Section 34-11-90 (d), even if the sentence is required to be suspended as provided in Section 34-11-90 (c).

Whenever there is a conviction, the assessment discussed in I.A.2., I.A.3., and I.A.4. above must be collected along with the fine and administrative court cost. If the fine was ultimately suspended, the assessment discussed in I.A.2. is computed and collected based on the amount of the fine that is not suspended. The assessment discussed in I.A.3. and I.A.4. must be collected in full.

2. Repayment of Defender Corporation or Defense of Indigents Fund as a condition of probation, Section 17-3-30

A circuit judge may require an indigent criminal defendant represented by appointed counsel to pay a specified amount for the representation, usually as a condition of probation. If a public defender corporation exists in the county, the payment should be transmitted either through the County Treasurer or directly to the public defender corporation. If a public defender corporation does not exist in the county, payment should be transmitted either through the County Treasurer or directly to the Commission on Indigent Defense, 1122 Lady Street, Suite 1110, Columbia, South Carolina 29202.

3. Probation supervision fee, Sections 24-21-80 and 90

Adults placed on probation are required to pay a fee toward offsetting the cost of their supervision according to Section 24-21-80. The supervision fee will be based on the individual's ability to pay and must be not less than \$20 nor more than \$100 per month. Section 24-21-90 indicates that the probation officer will collect this probation supervision fee and forward it to the Probation, Parole, and Pardon Services Board. However, since a condition of probation is payment of the fee on the date of sentencing, occasions may arise when the probationer pays the clerk rather than the probation officer. Clerks receiving such fees should turn them over to the probation officer, if known; or to the County Treasurer, who would forward the money to the Board; or directly to the Probation, Parole, and Pardon Services Board.

4. Payment to alcohol and drug abuse programs as required by sentence

Clerks also may receive funds from defendants who, as a part of their sentence, will be attending an alcohol or drug abuse program and who have been required by the sentencing judge to pay a fee in addition to any fine to cover the costs of the defendant's participation in the program. Clerks can transmit the funds to the program (usually the Commission on Alcohol and Drug Abuse) directly or indirectly through the County Treasurer.

5. Restitution and 3% collection cost on installment payments, Sections 14-17-725 and 24-21-490

Pursuant to Section 24-21-490, the Department of Probation, Parole and Pardon is required to collect and distribute court ordered restitution on all probationary cases. The Department began collection and distribution of all probationary cases sentenced on or after September 1, 1998. For all probationary cases sentenced prior to that date, and on all cases where the defendant did not receive probation, clerks are required to collect court ordered restitution in accordance with the following paragraph.

Clerks must collect 3% of the payment as a collection cost charge when an individual makes restitution payments in installments. The collection cost is transmitted to the County Treasurer for deposit to the county general fund.

6. Escrow of crime reenactment profits, Sections 15-59-40 through 15-59-80

South Carolina's "Son of Sam" statutes prohibit any person or legal entity from profiting by contracting with an accused in order to reenact a particular crime by any visual, audio or print medium. Any monies owing under such a contract shall be paid over to the clerk in the county in which the crime is alleged to have been committed. The clerk is required to deposit these sums in an interest bearing escrow account for the benefit of any victims of the crime. Any victim may have a right to such money provided the accused is convicted of the crime and provided, within five years of the date of the crime, the victim recovers a money judgment against the defendant. If the accused is acquitted of the crime charged or upon a showing that five years have elapsed from the establishment of the account and that no actions are pending against the defendant, the clerk shall pay over the escrow monies to the defendant. The assessment discussed above does not attach by mere reason of these payments.

7. Professional Bondsman's, Surety Bondsman's and Runner's fees , Section 38-53-100(d); License fees, Section 38-53-100(c)

A professional or surety bondsman shall pay to the clerk of his home county the sum of \$150 annually for each licensee. This money should be paid directly to and retained by the clerk. A professional bondsman, surety bondsman, or runner doing business in a county other than the bondsman's principal place of business, is required to pay to the clerk in the county in which such foreign business is conducted, the sum of \$100 annually. The statute states that the monies paid by professional bondsmen are to be retained by the clerk. Court Administration is of the opinion that these funds may be used by the clerk to help defray the ordinary expenses of operating the clerk's office. Section 38-53-100 provides that the monies paid to the clerks by surety bondsmen shall be deposited "in an account maintained by (the clerk) for the collection of fees." In addition, the Insurance Commissioner will forward 40% of the licensing fees he receives from bondsmen to the clerk pursuant to Section 38-53-100(c). These monies should



then be deposited with the County Treasurer who is to maintain the funds for the benefit of the clerk's office. See Opinion of the Attorney General dated November 1, 1988.

8. Fee for expunging criminal records, Section 8-21-310(21)

There is a \$35 fee for filing and processing each order for the destruction of arrest records regardless of the number of cases listed in the order. The fee should be collected whenever the clerk's records are expunged pursuant to the provisions of Sections 17-22-150, 22-5-910, 34-11-90(e), and 44-53-450(b). There is no fee for expunging records pursuant to Section 17-1-40 when the defendant is found not guilty or the underlying charge is dismissed or nol prossed unless the dismissal or nol prosee is the result of the successful completion of a pretrial intervention program.

9. Application fee for public defender services, Section 17-3-30(B)

Section 35.10 and 35.12 of the Temporary Provisions of the General Appropriations Act, which suspends Section 17-3-30(B) for the fiscal year 2004 - 2005, provides that any person applying for the services of a public defender on or after July 1, 2004 must pay a \$40 application fee upon executing an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person's assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets or a portion thereof to the Office of Indigent Defense of the State of South Carolina.

The forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the State Treasurer on a monthly basis. The State Treasurer shall transmit the funds to the Public Defender Application Fund. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.

In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial

status and shall be responsible for paying any fee. In juvenile matters, the parents or legal guardians of said juvenile, shall be advised in writing of this requirement at the earliest stage of the proceedings against said juvenile.

Nothing contained above shall restrict or hinder a court from appointing counsel in any emergency proceedings or where existing statutes do not provide sufficient time for an individual to complete the application process.

The appointment of counsel, as herein before provided, creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays to the appointed counsel or defender corporation of the county or counties wherein he is being represented or to the Office of Indigent Defense as provided for above.

Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.

The court may, in its discretion, order any claim or judgment waived, modified or withdrawn.

a. Re-payment if Defendant Placed on Probation, Section 35.13

Section 35.13 of the Temporary Provisos provides that every person placed on probation on or after July 1, 2004, who was represented by a public defender or appointed counsel, shall be assessed a fee of five hundred dollars. The revenue generated from this fee must be collected by the clerk of court and sent on a monthly basis to the Office of Indigent Defense to be divided between the Conflict Fund and the Defense of Indigents/Per Capita Fund administered by that office. However, if a defendant fails to pay this fee, this failure alone is not sufficient basis for incarceration for a probation violation. This assessment shall be collected and paid before any other fees. Provided, however, in those counties which contract with appointed counsel for the defense of indigents other than the public defender, one-half of the fee collected may be remitted by the clerk of court to the county which contracts for payment for these services. The remaining half would be transmitted to the State Treasurer and forwarded to the Office of Indigent Defense.

## **II. Court of Common Pleas**

### **A. Filing Fee, Section 14-1-204**

Section 73.13 of the Temporary Provisions of the 2004/2005 General Appropriations Act increases the civil case filing fee in the court of common pleas for the fiscal year 2004/2005 by \$50. When combined with the \$100 fee provided in Section 8-21-310(11)(a) and discussed below, the civil case filing fee beginning July 1, 2004, is \$150. The additional \$50 required by section 73.13 must be separated from the \$100 fee, separately identified on your transmittal report, and forwarded to the State Treasurer for proper distribution. The remaining \$100 is distributed as provided below.

Section 14-1-204 sets forth the rule for distributing the revenue generated from the civil case filing fee, which is \$100, set forth in Section 8-21-310(11)(a), and requires that 56% of all such money shall be forwarded to the County Treasurer for remittance by the fifteenth day of each month to the State Treasurer on forms and in a manner prescribed by him. The remaining 44% of the revenues generated from civil case filings shall be paid over to the county. Please note that this percentage split is exactly opposite from Section 14-1-205 discussed above in the general sessions section, I.A.1. All other fees and costs listed in Section 8-21-310, such as those normally collected by Registers of Deeds (or by clerks performing that function), are exempt from the percentage division because Section 14-1-204 is intended to apply only to revenue generated by the court.

All of the fees and costs enumerated in Section 8-21-310 are to be remitted to the County Treasurer who will transmit to the State Treasurer \$56.00 of each fee collected for filing a civil case. These fees must be clearly designated when transmitted to the State Treasurer so they can be distributed pursuant to Section 14-1-204.

#### **1. Filing Fee Exception, Section 32.5 of the Temporary Provisos**

The State of South Carolina, or a person or entity (Attorney General) acting on behalf of the State of South Carolina, is not required to pay filing fees in proceedings brought under Chapter 48 of Title 44, the Sexually Violent Predator Act.

### **B. Motion Fee, Section 8-21-320**

Section 8-21-320 requires an assessment of \$25 for every motion made in the court of common pleas. The fee must accompany each motion filed. The court may waive the filing fee upon a proper showing of indigency. The motion fee must be separately accounted for when transferred to the County Treasurer and State Treasurer on a monthly basis. The revenues generated by this fee will be deposited by the State Treasurer in an account to be used by the Judicial Department. Upon receipt of the fee from a litigant, the clerk should indicate on the face of the document that the fee has been paid or the motion is exempt per administrative rule of the Supreme Court. Except

for the exemptions, the fee applies to all motions, including motions filed with the original complaint. To identify exemptions to the Motion Fee requirement, please refer to the memorandum of the Chief Justice dated January 15, 2003, for a complete list. The Order may be found in the "Archives" under the "What's New" section of our website, [www.judicial.state.SC.us](http://www.judicial.state.SC.us).

C. Uniform Enforcement of Foreign Judgments, Section 15-35-900, et seq.

Section 73.13 of the Temporary Provisions of the 2004/2005 General Appropriations Act increases the civil case filing fee in the court of common pleas for the fiscal year 2004/2005 by \$50. When combined with the \$100 fee provided in Section 8-21-310(22) and discussed below, the civil filing fee for enrolling and enforcing a foreign judgment, beginning July 1, 2004, is \$150. The additional \$50 required by section 73.13 must be separated from the \$100 fee, separately identified on your transmittal report, and forwarded to the State Treasurer for proper distribution. The remaining \$100 is distributed as provided below.

The rule set forth in Section 14-1-205 for the division of revenues (see General Sessions section above) applies to the \$100 fee, found in Section 8-21-310(22), for filing, indexing, enrolling, and entering a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act set forth at Section 15-35-900, et seq. Therefore, 56% of those revenues should be remitted to the county and 44% must be delivered monthly to the County Treasurer to be remitted by the fifteenth day of each month to the State Treasurer. All other fees and costs listed in Section 8-21-310, such as those normally collected by Registers of Deeds (or by clerks performing that function), are exempt from the percentage division because Section 14-1-205 is intended to apply only to revenue generated by the court.

All of the fees and costs enumerated in Section 8-21-310 are to be remitted to the County Treasurer who will transmit to the State Treasurer \$44.00 of each fee collected for filing a foreign judgment.

D. Insurance fraud cases, Section 38-55-550

Section 38-55-550 provides that an individual who violates Sections 38-55-170 or 540, pertaining to insurance fraud, is subject to specific civil penalties pursuant to Section 38-55-550(A). The Insurance Fraud Division of the Attorney General's office is designated to initiate proceedings pursuant to Section 38-55-550 by filing a summons and complaint in the court of common pleas. A \$100 filing fee is required and the division of revenues for filing fees discussed in II.A. above applies. If a civil fine is imposed against a defendant in these cases, **the defendant is required to remit 100%** of the civil fine, plus court costs and attorney fees if awarded by the court, directly to Byron R. Roberts, Director, Insurance Fraud Division, Office of Attorney General, P. O. Box 11549, Columbia, South Carolina 29211.

- E. Fee for seeking arbitration of property damage liability claims (automobile accidents), Section 38-77-720 (c)

Claimants seeking arbitration of property damage liability claims arising out of motor vehicle collisions or accidents shall pay a fee of \$10 to the clerk according to Section 38-77-720(c). This section specifies that five dollars shall be retained by the clerk to be paid over to the county as the cost of filing the claim and \$5 shall be used to pay the cost of service.

- F. Other miscellaneous payments to or by clerks which are remitted to County Treasurers
  - 1. Fee for cancellation of notice of lis pendens, see Section 15-11-40. (\$1.00).
  - 2. Fees for hearing applications of debtors for release from civil arrest, see § 15-17-530. (\$2.00/\$4.00).
  - 3. Failure to maintain calendar of civil actions and file book may subject the clerk of court to penalties as for contempt of court, S.C.R.C.P. Rule 79(g).
  - 4. Fee for enrolling appointments and revocations of agents for service of process on judgment creditors, see Section 15-35-860. (.25).
  - 5. Compensation for services in setting off a homestead, see § 15-41-450 (\$5.00 plus fees and costs).
  - 6. Clerk's costs for taking a prosecutor's or witness' own recognizance, see § 17-15-140. (not over \$1.00).
  - 7. Taxes for plays and shows, see § 14-17-720.
  - 8. Certified copy of veteran's discharge, see § 30-15-60. (.50).

### **III. Family Court**

#### **A. General rule**

- 1. Disbursement and division of revenue, Section 14-1-205

The general rule for distribution of all costs, fees, fines, penalties, forfeitures and other revenues generated in family court is stated in Section 14-1-205. The essence of the rule is that 56% of all such monies remain with the county treasury and 44% is remitted to the State Treasurer. **Assessments are no longer added to criminal fines levied in family court.**

2. Payment of the fine by installments and 3% collection cost charge, Section 14-17-725

When an individual pays a fine through installments, Section 14-17-725 provides that the clerk must collect an additional 3% of the installment payment as a collection cost charge. The collection cost is transmitted to the County Treasurer for deposit to the county general fund. The amount treated as the fine must be divided with 56% of the amount going to the county treasury and the remaining 44% being transmitted to the State Treasurer. Funds collected as installments should not be held until full payment is received but must be remitted each month to the County Treasurer and State Treasurer.

A transmittal form which may be used to remit the state's portion of the funds described above to the County Treasurer can be found at "**Attachment D**".

B. Exceptions, same as for Circuit Court

Exceptions to this general rule are the same as the exceptions for general sessions discussed earlier. They include bond estreatments, Section 17-15-260 (see I.B.1.), insurance fraud, Section 38-55-560 (see I.B.2), cruelty to animals, Section 47-1-160 (see I.B.3), game or fish law violations, Sections 50-1-150 and 50-1-170, (see I.B.4.), axle or gross weight violations, Section 56-5-4160 (see I.B.5.), and body piercing regulation violations, Section 44-32-120 (See I.B.6).

C. Specific costs in Family Court:

1. Filing fee, Section 14-1-204

Section 73.13 of the Temporary Provisions of the 2004/2005 General Appropriations Act increases the civil case filing fee in the family court for the fiscal year 2004/2005 by \$50. When combined with the \$100 fee provided in Section 8-21-310(11)(a) and discussed below, the civil filing fee for enrolling and enforcing a foreign judgment beginning July 1, 2004, is \$150. The additional \$50 required by section 73.13 must be separated from the \$100 fee, separately identified on your transmittal report, and forwarded to the State Treasurer for proper distribution. The remaining \$100 is distributed as provided below.

The fee for filing civil actions in the family court is \$100 which is the same fee charged for filing civil actions in circuit court as both filing fees are controlled by Section 8-21-310(11)(a). Section 14-1-204 sets forth the rule for distributing the revenue generated from the filing fee and requires that 56% of all such money shall be forwarded each month to the County Treasurer for remittance by the fifteenth day of each month to the State Treasurer on forms and in a manner prescribed by him. The state's portion of the filing fee must be separately accounted for when transmitted to the County and State Treasurer so the distribution pursuant to Section 14-1-204 can be accomplished. The remaining 44% of the revenues generated from case filings shall be

paid over to the county. Please note that this percentage split is exactly opposite from Section 14-1-205 discussed immediately above and in the general sessions section.

2. Motion Fee, Section 8-21-320

Section 8-21-320 requires a \$25 fee for every motion made in the court of common pleas. The fee must accompany each motion filed. The motion fee does not apply to juvenile delinquency proceedings, nor to matters involving rules to show cause in child and spousal support matters. The court may waive the filing fee upon a proper showing of indigency. The motion fee must be separately accounted for when transferred to the County Treasurer and State Treasurer on a monthly basis. The revenues generated by this fee will be deposited by the State Treasurer in an account to be used by the Judicial Department. Upon receipt of the fee from a litigant, the clerk should indicate on the face of the document that the fee has been paid or the motion is exempt per administrative rule of the Supreme Court. Except for the exemptions, the fee applies to all motions, including motions filed with the original complaint. To identify exemptions to the Motion Fee requirement, please refer to the memorandum of the Chief Justice dated January 15, 2003, for a complete list. The Order may be found in the "Archives" under the "What's New" section of our website, [www.judicial.state.SC.us](http://www.judicial.state.SC.us).

3. Filing a foreign judgment, Section 8-21-310(22)

Section 73.13 of the Temporary Provisions of the 2004/2005 General Appropriations Act increases the civil case filing fee in the family court for the fiscal year 2004/2005 by \$50. When combined with the \$100 fee provided in Section 8-21-310(22) and discussed below, the civil case filing fee beginning July 1, 2004, is \$150. The additional \$50 required by section 73.13 must be separated from the \$100 fee, separately identified on your transmittal report, and forwarded to the State Treasurer for proper distribution. The remaining \$100 is distributed as provided below.

Section 8-21-310(22) provides a \$100 fee for filing a foreign judgment with the family court. These fees are split pursuant to Section 14-1-205, with 56% of the fees being remitted to the County Treasurer and 44% of the fees being transmitted to the State Treasurer. The Department of Social Services has indicated that they may be billed for the filing fee in foreign orders of support actions as defined in Section 20-7-965 since this fee applies in those cases. This fee does not apply to custody decrees as defined in Section 20-7-786.

4. Filing fee exception, Section 20 -7-1440

The \$100 filing fee may be waived by the family court judge, which will most often occur when the petitioner is indigent. Clerks should accept papers for filing if an affidavit of indigency accompanies the filing. The family court judge can later make a

determination as to whether indigency exists. An indigency and motion to sue in forma pauperis form which may be used for any such filing is included as "**Attachment H.**"

Section 20-7-1440 prohibits the charging of court fees in delinquency and neglect actions. Child support actions brought by the Department of Social Services are dependency proceedings and therefore fees should be charged to D.S.S. for these filings.

5. Filing fee exception, Section 20-4-40(f)

Section 20-4-40(f) prohibits the charging of court fees for the filing of a petition for an order for protection from domestic abuse.

6. Support payments made through the Clerk of Court, Section 20-7-1440

If support for a spouse or dependent child is ordered or otherwise paid to the recipient through the clerk's office, Section 20-7-1440 requires that 5% of the amount paid shall be collected by the clerk over and above the amount of each support payment **and such 5% shall be kept by the clerk as costs and turned over to the County Treasurer to be distributed pursuant to the 56% county/44% state split discussed in III.A.1. above.** These funds must be reported separately on a monthly basis so the State Treasurer may distribute the fees pursuant to Section 14-1-203.

7. Uniform Interstate Family Support Act, exception and fees, Section 20-7-1085

Section 20-7-1085 states in regard to UIFSA actions, an initiating court may not require payment of either a filing fee or other costs from an obligee but may request the responding court to collect fees and costs from the obligor. D.S.S. has indicated that they may be billed for both incoming and outgoing Title IV-D UIFSA cases. With regard to Non-title IV-D cases, the clerks of court will not collect the \$100 filing fee or any other costs at the time the petition is filed in an outgoing UIFSA action. Clerks may, however, request by way of cover letter that the responding court collect the filing fee and any other costs from the obligor. The minimum amount of \$100 should be requested to cover the fee for filing. When support is received from a responding state, clerks should not collect a 5% fee on money disbursed.

When South Carolina is the responding state, the respondent may be ordered to pay any fees and costs requested by the initiating state. The office of the clerk of court will be required to forward any such fees and costs collected to the initiating state and to delineate what portion of the amount forwarded to the initiating court is support and what portion is the fee or costs requested by that court. The clerks of court should not assess the 5% fee on any filing fees or costs requested by the initiating state but shall collect 5% of any support collected in South Carolina. Fees and costs are not



considered "support" against which the 5% should be assessed as required under § 20-7-1440.

8. Fee for initiation of protective services or removal action, Section 20-7-1440

When the Department of Social Services initiates an action for protective services or removal of custody, the family court must impose a \$100 fee against the defendant pursuant to Section 20-7-1440. The fee may be waived if the court does not order the removal of custody or intervention and protective services with the child remaining at home. The fee is collected by the clerk and remitted to DSS for use in offsetting expenses associated with its legal representation in child abuse and neglect cases.

#### **IV. Register of Deeds Fees and Related Charges**

##### **A. General Provisions, Section 8-21-310**

On June 19, 1980 the Attorney General issued an Opinion responding to various questions raised by Court Administration as to the proper fees to be charged relative to the office of the Register of Deeds. Please consider this section as an update of that Opinion which was distributed by this office on July 7, 1980.

The following subsections refer to the appropriate paragraphs in Section 8-21-310. As to the proper fee for:

1. filing a mechanics lien - subsection (9), \$10 and an additional \$1 per page for any document more than four pages;
2. filing a partial release of a mortgage - subsection (3), \$6 unless part of the original instrument when initially filed; if the instrument affects more than one mortgage or lien, \$6 for each mortgage or lien affected and \$1 per page for any instrument exceeding one page;
3. filing a transcript of judgment from another county - no charge (There is no specific provision for such in the section. However, subsection (11)(c) does provide the fee for transcripts of judgment from magistrates' courts and federal district courts which is \$10;
4. filing a lis pendens which is accompanied by a summons and complaint - \$100 as provided by subsection (11)(a) (\$100 is not collected twice in this instance);
5. filing a confession of judgment - subsection (11)(d); \$10;
6. filing a change of name petition - Section 15-49-30, Code of Laws of South Carolina, as amended, provides that the fee is the same as provided in Section 8-21-310(11)(a);

7. transfer of property to probate court or vice versa - subsection (9), \$10 and an additional \$1 per page for any document more than four pages;
8. filing appeals in civil matters from agencies, probate courts, arbitration panels, magistrates, etc. - \$100 as provided by subsection (11)(a);
9. assuring an exemplification of records - subsection (17), \$1;
10. filing of arbitration cases - \$100 as provided by subsection (11)(a); except as provided in Section 38-77-720 (arbitration of automobile accidents);
11. filing of mental health liens - no charge (Section 44-23-1140);
12. filing of partnership agreements - subsection (15), \$5;
13. filing of articles of association - subsection (15), \$5;
14. filing of a satisfaction of judgment - subsection (11)(a) provides for no charge