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HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3215

RELATING TO: Prisoner Reimbursement for Incarceration Costs

SPONSOR(S): Committee on Corrections and Representative Culp

COMPANION BILL(S): SB 1216 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CORRECTIONS
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

The bill permits a state correctional institution or the Department of Corrections to:

- seek reimbursement for costs, including certain mental health and dental expenses;
- deduct the costs from an inmate's cash account;
- place a lien against an inmate's account or other personal property; and
- collect proceeds from an inmate's insurance policy;
- place a lien to be carried over in the case of future incarceration;
- apply certain sanctions, including the denial of gain-time for an inmate's willful refusal to cooperate.

The bill also provides for an order of sources in which the state could obtain money from an inmate. In addition, the bill also mandates that an inmate cooperate with the entity seeking reimbursement and provide consequences if an inmate willfully refuses to cooperate.

According to the department, the fiscal impact of this bill is indeterminate, put potentially significant.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Medical Copayment

Section 945.6037, F.S., requires a health care copayment of $4 for each non-emergency health care visit initiated by an inmate. Such copayment is deducted from any existing balance in the inmate's bank account. If the account balance is insufficient, 50 percent of each deposit is withheld until the total amount is paid. The proceeds of each co-payment must be deposited by DOC into the General Revenue Fund. The department may waive all or part of the copayment for an inmate’s visit to a health care provider if the health care is under statutorily specified circumstances pursuant to s. 945.6037 (1)(d), Florida Statutes.

Section 945.6037 (2), Florida Statutes, permits the department to provide by rule a supplemental copayment for a medical consultation relating to an inmate’s health care and occurring outside the prison or for a prosthetic device for an inmate.

Section 945.6037 (3)(a), Florida Statutes, states that an inmate may not be denied access to health care as a result of not paying any copayment or supplemental copayment. The statute also specifies that an inmate must not be given preferential access to health care as a result of paying any copayment or supplemental copayment.

Daily Subsistence Costs

According to the Department of Corrections, the only inmates who currently pay for their subsistence or maintenance are those who have income and who are housed in community correctional centers. These are inmates who are in work release programs or who are employed by Prison Rehabilitative Industries and Diversified Enterprises (PRIDE). The chart below shows the collections for subsistence and transportation in community centers:

Fiscal Year	Number of Inmates	Amount Collected
FY 1991-1992	1668	$3,089,721
FY 1992-1993	1881	$4,886,665
FY 1993-1994	2232	$6,163,613
FY 1994-1995	2313	$7,068,266
FY 1995-1996	2639	$8,144,158
FY 1996-1997	2369	$7,747,200

Section 946.002 paragraph (c), F.S., states that it shall be the policy of the department to require inmates who are paid for work while in community work programs to reimburse the state for lodging, food, transportation, and other expenses incurred for sustaining the inmate.

Rule 33-9.023 requires employed inmates to reimburse the state for subsistence and transportation, medical and dental expenses and for the purchase of tools and equipment necessary for employment.

Section 944.485, F.S. ,was enacted in 1978 and currently authorizes the department to seek reimbursement from inmates for the cost of their own incarceration. The statutes provides the observation that many inmates in the state correctional system have sources of income and assets outside the correctional system. This section further states that each inmate in the state correctional system must disclose all revenue or assets as a condition of parole or other release eligibility. Further, each inmate must pay all or a fair portion of his or her daily subsistence costs based upon the inmate's ability to pay, the liability of the inmate to his or her crime victim, and the needs of the inmate's dependents.

In 1979, s. 944.485, F.S., was found unconstitutional by the Federal District Court in Campbell, et al v. Wainwright (Case No. TCA 79-0934). The Court found that the statute violated the inmate's Fifth Amendment right against self-incrimination. The Court also found that the implementation of the statute was questionable in terms of the benefits derived from the costs of the state trying to recover these costs. The department reports that during the first four months after the implementation of the reimbursement program, about $89,000 was expended to collect approximately $3,100 in reimbursements from inmates.

The 1994 Civil Restitution Lien and Crime Victim's Remedy Act to Recover Incarceration Costs from Inmates

Since 1994, the Florida Statutes have authorized the state to recover the costs of incarceration from offenders who are convicted of a criminal offense. Section 960.29, F.S., states legislative intent to provide a legal mechanism that will enable the state and other aggrieved parties (including crime victims and counties) to recover damages and losses arising from the offender's actions. The legal mechanism is a civil restitution lien against the convicted offender's real and personal property. The civil restitution lien is attached to the offender's current and future property and assets.

Section 960.29 F.S., provides that the amount of each civil restitution lien be equal to the amount of actual damages incurred as a result of the crime. Subsection (4) of Section 960.29(2), F.S. states that the liquidated damages must bear a rational relation to the damages and losses the state and its local subdivisions incur as a result of implementing the offender's sentence. Such damages and losses include the costs of incarceration and other correctional costs related to the implementation of the court's sentence.

Section 960.29, F.S., also states that upon conviction, regardless of financial status at the time of conviction, the offender will incur civil liability for damages and losses to the state, its local subdivisions, and other aggrieved parties (i.e., the victim). Upon a motion by the state or a petition from the local subdivision, the court will enter civil restitution lien orders for the state, its local subdivisions, and the victim.

According to the department, to date, there has not been any civil restitution liens known to be filed against incarcerated offenders for obligations owed to offset the costs of incarceration.

Gain-Time and the Department's Ability to Deny or Forfeit Gain-Time

Section 944.275, F.S., authorizes the department to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, provide incentives for prisoners to participate in productive activities, reward prisoners who perform outstanding deeds or services, reward for achievement.

Effective for crimes committed on or after October 1, 1995, inmates are required to serve 85% of the sentence imposed. Satisfaction of 85% includes both time served in the county jail as well as state incarceration. Inmates who fall under this new provision are eligible to earn up to 10 days per month of incentive gaintime until such time as the tentative release date reaches that date which is equal to 85% of the sentence imposed.

Under section 944.275(5) and (7), F.S., a prisoner's gain-time any be forfeited if a prisoner is found guilty of an infraction of the laws of the state or of the rules of the department. Chapter 33-11.011 specifies that earned gain-time may be forfeited without prior hearing or notice in cases of:

- escape convictions; or
- revocation of parole, conditional release, control release or clemency.

Forfeiture may also occur, after a hearing, for an inmate who:

- violates any penal law or any rule of the department or institution;
- threatens or knowingly endangers the life or physical well-being of another;
- refuses in any way to carry out or obey lawful instructions; or
- neglects to perform the work, duties and tasks assigned in an orderly and peaceful manner.

Inmate Bank Accounts and Canteen Proceeds

The department has established by rule an inmate banking system which permits inmates to have access to a cashless bank account. The rule permits inmates to spend a weekly allowance up to $45. Inmates typically spend funds from their bank accounts to purchase items at the inmate canteen or vending machines. An inmate's primary source of income for deposit in the account is from families and friends.

In FY 1996-97, gross profits from inmate canteen operations were around $9.4 million. Pursuant to s. 945.215, Florida Statutes, revenues generated by canteen sales to inmates are used to offset the costs of prison operations and to benefit the inmate population in areas of education, substance abuse, libraries, religion, visiting pavilions and legal services.

B. EFFECT OF PROPOSED CHANGES:

This bill would authorize the department to seek reimbursement for any expenses incurred by the state for the incarceration of any inmate in a department or state correctional facility.

An order of sources in which the state could obtain money from a prisoner would be provided. First, reimbursement could be obtained from deducting the amount from the prisoner's bank account at the prison. If there are insufficient funds to cover the cost of incarceration, the department is authorized to place a lien against an inmate's bank account or other personal property to provide payment in the event that sufficient funds become available at a later time. Second, reimbursement may be sought from an insurance company, health care corporation, or other source if an inmate is covered by an insurance policy.

The department may place a lien on an inmate's account in the event the inmate refuses to cooperate with the efforts to seek reimbursement. If an inmate willfully refuses to cooperate with the efforts to seek reimbursement, an inmate would be prohibited from earning gain-time as provided by s. 944.275. Florida Statutes.

Given the permissive nature of HB 3215, the department has considerable discretion in whether to implement the provisions of this bill and how to implement the provisions of this bill. For this reason, the effect of HB 3215 is difficult to determine.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, currently, there are no procedures in place for determining when a violation has occurred and how a lien will be placed. Guidelines for judging personal property are not already in place, either.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No.

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      No.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      No.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

      (4) Are families required to participate in a program?

          N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

944.275, 960.29, F.S.

E. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

   See Fiscal Comments.

4. Total Revenues and Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None.

D. FISCAL COMMENTS:

According to the department, an indeterminate, but potentially significant fiscal impact could be incurred if the department elects to seek reimbursement as set forth in the bill. If the department elects to investigate an inmate's financial status and the extent to which the inmate possesses insurance coverage, then there would be an additional, but indeterminate, workload for the department.

In addition, the department estimates that if it elects to place liens against the inmate accounts for reimbursement for incarceration costs, then approximately 75 percent of the inmate population who have money in their bank account could have their accounts rapidly depleted. This could potentially cause the closure of inmate canteens since many inmates will lack the funds to continue to purchase products.

CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

E. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue.

G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

IV. COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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