

STORAGE NAME: h3215a.cor

DATE: March 26, 1998

**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 YEAS 6 NAYS 0
 - (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, but 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 copayment 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 statute 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

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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.

Health Insurance Coverage by inmates

No formal mechanism exists to which the Department of Corrections is notified of the status of incoming inmates with respect to health insurance coverage. The DOC relies on statements by inmates. In determining the accuracy of the inmate reports, the department attempts to verify and track the reported information. If verified that health and/or dental coverage exists for an inmate, the DOC reports many obstacles, such as:

- lapse in coverage due to the loss of income as a result of incarceration;
- contract provisions which prohibit coverage in case of incarceration or residence in a public institution; and
- contract provisions for coverage/exclusions, accessibility, and reimbursement.

Federal regulations prohibit the use of federal funds for service provided to an inmate in a public institution using federal Medicaid funds (42 CFR Chapter IV, s. 435.1008 and s. 435.1009).

The federal law (42 U.S.C. 1382 (e)) provides that no person shall be an eligible individual or eligible spouse for purposes of SSI, with respect to any month, if throughout such month he is an inmate of a public institution. Similar restrictions were discovered by the department in private insurance coverage of parents of youthful offenders. Additionally, 42 U.S.C. 1396 (d)(m)(2) provides that no individual shall be an qualified family member for any period after September 30, 1998. Spousal coverage has been an option pursued by the department.

The department reports problems in their attempt to identify the primary payer in cases of Medicare, Medicaid, Champus and VA coverage.

Florida law requires most employees to provide workers' compensation for their employees. Employers typically secure worker's compensation coverage from insurance companies, self insurance funds, or are self insured. Workers' compensation insurance typically offers reimbursement to workers injured on the job for medical expenses and a portion of lost wages.

When workers suffer a work-related injury or illness, workers' compensation pays for the following:

- reasonable and necessary medical treatment;
- replacement of a portion of lost wages;
- reemployment assistance;

- a scheduled amount for permanent loss of function of a body part;
- dependency benefits in the event of death; and
- lifetime weekly benefits for workers judged to be permanently disabled.

Section 440.15 (9), F.S., prohibits an inmate of a public institution from receiving workers' compensation payments during the period of incarceration unless the inmate has dependents. If an inmate has dependents, payment is made to the dependents.

Again, no formal mechanism exists to notify the Department of Corrections of the status of incoming inmates with respect to their receipt of workers' compensation benefits. The department is forced to rely on the inmates themselves. Neither the DOC nor the Department of Labor and Employment Security is required to verify whether inmates are receiving workers' compensation benefits. In addition to the statements of inmates, the DOC also discovers the existence of payments to inmates through receipt of checks in the mail. State inmates are not allowed to receive cash or checks.

State inmates are not allowed to receive cash or checks. Any checks that are found by mail room staff are mailed back to the issuing institution with a note stating the correctional institution cannot receive checks for inmates.

With respect to workers' compensation, the department has reported a better rate of collection. Inmates with pending cases are often represented by attorneys and either they or the compensation carrier contact the department and are willing to pay for the specific care that is associated with the compensable injury. Proven to work best in cases of chronic injuries, the department reports few cases overall and fluctuations with admissions and releases.

Correctional health care companies reportedly experience the same obstacles as the Department of Corrections. Based on an interview with two companies by committee staff, it was found that, difficulty arises in finding health care providers willing to enter the prison system who are approved providers for the various insurance companies or health care corporations. Hospitalization and catastrophic illness present further impediments.

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.

This bill would apply to all inmates who are in state correctional institutions on October 1, 1998, and it would apply to all inmates who are placed in a state correctional institution, thereafter.

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:

Amendment #1 by the Committee on Corrections substantially rewrites the original bill to increase and reorder the sources available to the department for reimbursement of costs.

The amendment further provides a cap of \$50.00 to be taken from a prisoner's cash account and authorizes subsequent payment plans to a reimbursement cost balance.

The amendment also requires any claim by a state correctional facility of the Department of Corrections to be subordinate to any judgement for restitution or any judgement for child support against the prisoner.

The amendment authorizes the Department of Corrections to seek reimbursement for costs of incarceration for prisoners housed in private correctional facilities under contract with the Correctional Privatization Commission pursuant to Chapter 957.

The bill was amended to create for fiscal year 1998-99 and within existing resources, a task force within the Department of Corrections to investigate and analyze strategies to seek reimbursement for inmate health care costs incurred during incarceration. The purpose of the task force is to meet and consult with the Department of Insurance, the Correctional Medical Authority and the Agency for Health Care Administration to identify the extent to which inmates incarcerated in the state prison system have available assets or who have health care coverage from commercial insurance policies. The task force shall submit its collaborative findings and recommendations to the President of the Senate and the Speaker of the House of Representatives by January 1, 1999.

VI. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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