

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1910

SPONSOR: Criminal Justice Committee and Senator Fasano

SUBJECT: Unclaimed Court Order Payments

DATE: April 15, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Noble</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Favorable</u>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This CS provides authority for the Department of Corrections to deposit the following funds from restitution or other court-ordered payment accounts into the General Revenue Fund:

- (1) offender overpayments that are less than \$10 at the end of the offender’s supervision;
- (2) offender funds, victim’s restitution payments, and other unidentified payments that are not claimed within one year after an offender’s supervision terminates; and
- (3) interest earned on balances in bank accounts holding such funds.

The proposal also provides for the repeal of s. 960.0025, F.S., which directs the department to allocate unclaimed restitution or other court-ordered payments to a direct-support organization as described in s. 960.002, F.S.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 945.31, 960.0025.

**II. Present Situation:**

Florida law provides that sentencing courts may order the Department of Corrections to collect and disburse restitution payments and other court costs from persons who are in the department’s custody or under its supervision. Section 945.31, F.S., authorizes the department to establish bank accounts to collect and disburse restitution and other court-ordered payments from persons in its custody or under its supervision. The department may collect an administrative processing fee of 4 percent of the amount of payments to be deposited in the department’s Operating Trust Fund to offset the cost of the department’s services.

The department has developed the Court-Ordered Payment System (COPS) to keep account of restitution and other court-ordered payments and to issue checks as appropriate. Upon release of an offender from the department's custody or supervision, it is not uncommon for the inmate's COPS account to reflect an overpayment of court costs, or for funds intended for restitution to a specific victim to be unclaimed because the victim cannot be located or has not cashed the victim restitution check. There are also some funds left in accounts for which the purpose cannot be identified. Also, there is apparently no provision in the law for disposition on interest earned on COPS accounts.

### **Overpayments of less than \$10**

Checks for amounts less than \$10.00 are often not cashed by the recipient and are relatively costly to produce. The Office of Program Policy Analysis and Government Accountability (OPPAGA), in Report No. 00-23, Review of the Department of Corrections, noted that "...payments for court order obligations should not be disbursed unless they reach a threshold, such as \$10, due to the cost of the transaction."

The department estimates that approximately 3,000 checks each year are issued to offenders for less than \$10.00. The cost of issuing each check is estimated at about \$3.71.

The department indicates that there are currently approximately \$1,000,000 in outstanding unclaimed checks, and that approximately \$150,000 is unclaimed annually.

### **Unidentified funds**

The department indicates that COPS accounts include some payments whose origin or purpose cannot be identified. The amount of these unidentified funds is not known.

### **Unclaimed victim restitution funds**

Unclaimed victim restitution funds may fall into two categories: uncashed checks issued to victims and funds intended for victims who cannot be located. According to the department, nine of the twenty judicial circuits have standing administrative orders for any unpaid victim's restitution funds to be paid to the Attorney General's Crimes Compensation Fund. The department indicates that approximately \$600,000 was paid to the Crimes Compensation Fund pursuant to these orders during the last fiscal year.

### **Interest on accounts**

OPPAGA also recommended that COPS funds be invested to earn interest. The interest earned on invested COPS funds was approximately \$300,000 last year, and the total accumulated interest on invested COPS funds is approximately \$1,190,000. There is no statutory provision for disposition of the interest earned on COPS accounts.

### **Disposition of unclaimed property**

Chapter 717, F.S., provides the statutory scheme for disposition of unclaimed property. Section 717.1035, F.S., requires that all intangible property held by a governmental agency, for which the owner has not claimed or made inquiry in writing within three years after the date prescribed for payment or delivery, is presumed to be unclaimed property and is subject to the custody of the state if (1) the last known address of the owner is unknown; and (2) the state or a subdivision of the state originated or issued the intangible property. Section 717.113, F.S., states that all intangible property held for the owner by a governmental agency that has not been claimed by the owner for more than one year after it became payable or distributable is presumed unclaimed.

Section 717.103, F.S., establishes general rules for the Comptroller to take custody of unclaimed property. Ultimately, intangible property that remains unclaimed after going through the Comptroller's notification and disposition process is deposited into the State School Fund. However, it is not clear that s. 717.103, F.S., applies to intangible property issued by the state that is presumptively unclaimed property pursuant to s. 717.1035, F.S.

Section 960.0025, F.S., provides direction for the disposition of restitution and other court-ordered payments if the department is unable to locate the person or organization designated by the court to receive the payment, or if the designated payee refuses to accept the payment. In such cases, the department is required to allocate funds to a direct support organization that is established pursuant to s. 960.002, F.S., to assist victims of adult and juvenile crime. However, the Governor's Office indicates that no such direct support organization has been established, and no funds have been transferred pursuant to s. 960.0025, F.S.

### **III. Effect of Proposed Changes:**

**Section 1** of the CS adds additional language to s. 945.31, F.S., to provide the department with authority to deposit the following funds from restitution or other court-ordered payment accounts into the General Revenue Fund: (1) offender overpayments that are less than \$10 at the end of the offender's supervision; (2) offender funds, victim's restitution payments, and other unidentified payments that are not claimed within one year after an offender's supervision terminates; and (3) interest earned on balances in bank accounts holding such funds.

Currently, approximately \$600,000 of unclaimed victim's restitution funds is annually directed to the Crimes Compensation Fund as the result of standing administrative orders in nine judicial circuits or case-by-case decisions in the remaining eleven circuits. This CS would establish a statutory distribution scheme overriding the judicial orders and directing the funds to General Revenue.

Because there is no direct support organization to receive the funds, it appears that under current law at least that portion of the funds that constitute unclaimed property under s. 717.113, F.S. (intangible property held by a court or public agency that has been unclaimed by the owner for more than one year), should be transferred to the custody of the Comptroller for disposition in accordance with chapter 717, F.S. This CS will specify that such funds are to be deposited in the General Revenue Fund.

There is no statutory direction for the disposition of interest that is earned on COPS bank accounts. This CS will direct the interest to the General Revenue Fund.

**Section 2** of the CS repeals s. 960.0025, F.S., which directs that the unclaimed funds be allocated to direct support organizations established to assist victims of adult and juvenile crime. There is currently no such direct support organization that meets the statutory criteria for receiving the funds.

**Section 3** of the CS provides that the act will take effect upon becoming law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS would result in a one time transfer of approximately \$2.2 million of accumulated unclaimed funds and earned interest into the General Revenue Fund.

In addition, approximately \$600,000 in unclaimed victim restitution funds that is currently directed to the Crimes Compensation Fund each year will be re-directed to the General Revenue Fund. Also, the General Revenue Fund will annually receive approximately \$150,000 from unclaimed checks.

Interest on COPS bank accounts will also be deposited in the General Revenue Fund. Currently, approximately \$300,000 in interest accrues annually. This amount will be significantly less after unclaimed funds and interest that is currently being held in accounts is transferred to the General Revenue Fund.

The department will save approximately \$10,000 annually from ceasing distribution of checks in amounts less than \$10.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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