

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.)

Prepared By: Criminal Justice Committee

BILL: SB 1064

SPONSOR: Senators King, Lynn, and Wise

SUBJECT: Restitution & Court-Ordered Payments

DATE: March 4, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	GA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill transfers authority for the collection of restitution and other payments made by offenders from the Department of Corrections (department) to the Department of Revenue (DOR). The departments must conduct a needs assessment and cost-benefit analysis by September 30, 2005, and the transfer of responsibility must be completed by December 31, 2006. DOR is authorized to contract for the service to be provided by a private vendor through competitive bidding.

The bill also requires the department to establish a payment schedule for each offender and to provide the schedule to DOR. Payments are to be disbursed to the victim first, then to other payees as determined by the court or the department. DOR must provide the department with an automated monthly statement of each offender's account.

If DOR cannot locate a victim within 180 days, the money due to the victim will be deposited in the Crimes Compensation Trust Fund.

This bill substantially amends sections 775.089 and 948.09, Florida Statutes.

II. Present Situation:

An offender who is placed under the supervision of the department may be ordered to pay a number of costs and fees. Some of the costs are mandated by statute and others are imposed at the court's discretion. Sections 775.089 and 948.03, F.S., require the court to order payment of restitution to the victim unless it finds clear and compelling reasons not to do so. Costs of supervision are an element of every offender's required payments. If the court does not establish an amount for supervision costs, the department sets a cost that does not exceed the actual per

diem cost of supervision. Currently, this monthly charge is \$103.72 for offenders on probation and \$124.71 for offenders on community control. If the offender is indigent, the department sets the supervision cost at \$50.

In December 2000, the Office of Program Policy Analysis and Government Accountability (OPPAGA) published Report No. 00-23 (revised April 2001) "Review of the Department of Corrections." The report noted that significant control and management problems had plagued the collection and disbursement system since its inception. The department had made improvements in the program, including consolidation of all collected funds into a single interest-bearing account. While recognizing that progress had been made, OPPAGA felt that the department had not been motivated to solve the problems earlier because the collection and disbursement of monies is not central to the department's mission of public safety.

Among specific findings, OPPAGA found the following of most concern:

- It found that the collections process forced highly trained probation officers to function as fiscal clerks. OPPAGA's interviews with regional leadership and employees indicated that officers spent 30 percent of their time, or 1 1/2 days out of the work week, dealing with accounting issues. OPPAGA noted that the department did not agree with this time estimate.
- It found that public safety was compromised by having correctional probation officers (CPOs) spending significant amounts of time in their offices reconciling offender payments rather than being in the community supervising offenders.
- It found that the department failed to prioritize payment of victim restitution as required by s. 948.09(7), F.S. However, the department asserted that the statutes are in conflict regarding whether restitution is to be paid first, and that some courts order payment of court costs as a priority over payment of restitution.

As a remedy for the problems that OPPAGA saw as long-standing issues, the report recommended that the function of collecting and disbursing offender monies be transferred to DOR.

OPPAGA addressed these issues again in Report No. 04-58, "More Efficient Use of Probation Officers and Prioritization of Victim Restitution Needed," dated August 2004. The report found that the department was still not giving top priority to payment of victim restitution. It also found that CPOs were being used as fiscal clerks for a substantial portion of their time, although the report noted that the department had hired intake staff to enter initial sentencing and financial information into the computer. OPPAGA reiterated its opinion that collections and disbursements detracts from public safety and is not compatible with the agency's mission. It again recommended that those functions be transferred to DOR, or that the department consider privatizing the activity.

Several statutes relate to the department's authority or requirement to collect victim restitution, supervision costs, and other court-ordered or statutory fees and costs from supervised offenders. Section 775.089(11), F.S., provides that the sentencing court may order the department to collect

and dispense restitution and other payments from offenders who are placed in the department's custody or supervision. Section 948.09(3), F.S., gives the department the authority to exempt a person from paying all or part of the costs of supervision if it finds that the person: (1) has attempted but cannot find employment; (2) is a student; (3) has an employment handicap; (4) cannot obtain employment due to age; (5) supports dependents and payment of the costs would cause an undue hardship; (6) has been transferred outside the state under an interstate compact; (7) has other extenuating circumstances as determined by the secretary of the department. Section 948.09(7), F.S., requires the department to establish a payment plan for all costs, including a priority for payments, with victim restitution payments authorized under s. 948.03(5), F.S., (now s. 948.03(1)(e)) having precedence over all other court-ordered payments.

Section 945.31, F.S., permits the department to set up bank accounts outside of the State Treasury for the purpose of collecting and disbursing restitution and other court-ordered payments. It may also collect an administrative processing fee of up to 4 percent of the gross amount of the payments, which is deposited into the department's Operating Trust Fund. The department collects this administrative processing fee on top of other payments. The following may be deposited into the General Revenue Fund: (1) offender overpayments that total less than \$10 at the end of the supervision period; (2) offender funds not claimed within 1 year after the end of supervision; (3) victim restitution payments not claimed within 1 year of the end of supervision; (4) interest earned on the COPS bank account; (5) payments that cannot be identified and that are not claimed within 1 year of their receipt.

The department establishes the payment schedule by dividing the total amount of payments owed by the number of months in the supervision period less 4 months. The offender signs an "Offender Financial Obligation Agreement" that the officer attempts to enforce. The 4-month cushion allows time for the department to get final payments from the offender and to process a probation violation report if the offender fails to pay all required amounts. It should be noted, though, that judicial decisions have found that an offender is only required to complete payment of restitution before the supervision period ends unless the court has ordered periodic payments or an earlier payment completion date. *See Hutchinson v. State*, 801 So.2d 291 (Fla. 1st DCA 2001), *Llumbet v. State*, 698 So. 2d 381 (Fla. 4th CA 1997). The department reports that approximately 82 percent of the offenders under active supervision who are ordered to pay restitution do not have a court-ordered monthly payment schedule or payment completion date.

Once a monthly payment amount is established, the entire amount of the monthly payment is applied to victim restitution until that obligation is satisfied. Remaining obligations are paid once restitution is paid in full, unless the department is directed otherwise by the court or other release authority. This recent change in the department's practice resolves one of the main concerns raised by OPPAGA in its two reports.

The department reports that it collected \$94.8 million in Fiscal Year 2003-2004 as follows:

Victim restitution	\$ 37.0 million
Cost of Supervision	\$ 25.9 million
Court costs, fines etc.	\$ 19.8 million
Other court ordered payments (including 4 percent administrative, surcharge, drug testing fees, electronic monitoring fees)	\$ 12.1 million

On December 23, 2004, there were 197,278 offenders under some form of supervision. Of these, 51,726 had been ordered to pay restitution in the total amount of \$614,048,893 and 41,850 (21.2 percent) still owed restitution in some amount. The total amount of outstanding restitution was \$529,849,688. There were 22,379 offenders under active supervision with restitution obligations totaling \$454,917,063.98. The outstanding restitution balance for offenders on active supervision status was \$399,958,319.37. Offenders on active supervision are the ones over whom the department has control and who have the ability to make payments. The department does not collect from supervised offenders who are in custody or who have pending violations. Absconders are offenders who have unlawfully removed themselves from the department’s supervision, and the department has no means to collect from them.

Restitution Owed as of 12/23/04

Offender Status	Number of Offenders	Obligation	Balance
Paid in Full	9,876	\$16,612,720.26	-0-
Absconders	9,916	\$43,730,109.46	\$ 40,248,553.34
In Custody	4,724	\$33,931,784.51	\$ 31,429,692.87
Active, pending violation	4,831	\$64,857,215.77	\$ 58,213,122.17
Active	22,379	\$454,917,063.98	\$399,958,319.37
TOTAL	51,726	\$614,048,893.98	\$529,849,687.75

An offender who does not pay restitution, costs, or fees as ordered by the court or required by statute is subject to processing for a violation of the conditions of supervision. Section 948.032, F.S., provides that the court may revoke probation if an offender fails to comply with an order to pay restitution. However, the court must consider the offender’s employment status, earning ability, financial resources, whether the failure to pay was willful, and any special circumstances concerning the offender’s ability to pay. Section 948.06(5), F.S., concerns violations of probation or community control for failing to pay restitution or costs of supervision. An offender who claims inability to pay must prove by clear and convincing evidence that he or she does not have resources available to pay the obligation despite bona fide efforts to legally acquire the resources. If the offender makes this showing, the court must consider an alternative method of punishment or deterrence. By statute, imprisonment is a last resort in these circumstances.

The process by which the department collects payments from offenders has evolved rapidly in recent months. The department's Court-Ordered Payment System (COPS) is an integral part of the Offender-Based Information System (OBIS). OBIS provides CPOs and other authorized department personnel with 24-hour a day access to detailed information about every offender under the department's custody or supervision. COPS is designed to track each offender's obligation, payments, and disbursements. COPS was implemented statewide in 1993. In FY 2003-2004, more than 645,000 money orders were deposited and more than 379,000 checks were issued through COPS. COPS automatically prepares the offender's payment plan which is provided to him or her by the CPO.

In the past, payments from offenders have been made at the local community corrections office from which the offender is supervised. As noted by OPPAGA, the collection process absorbs a considerable amount of the CPO's time. The department is currently implementing a new system to consolidate these functions at a central location. Offenders will be instructed to mail payment coupons and money orders to the COPS office in Tallahassee. COPS staff will be able to process and post payments using efficient high-speed bank processing equipment. The department's goal is to have the centralized system operating statewide by the end of the calendar year.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 775.089, F.S., to require DOR to collect and disburse restitution and other payments ordered by the court from persons remanded to the custody or supervision of the department.

Section 2 requires the department to transfer responsibility for collection and disbursing restitution and other payments from offenders to DOR by December 31, 2006. The department staffs must work together to conduct a needs assessment and cost-benefit analysis of the restitution and court-ordered payment system. The State Technology Office is to provide assistance if it is available. If the needs assessment and cost-benefit analysis indicate that privatization would be beneficial, DOR is authorized to procure the services of a private vendor through competitive bidding. Any contract with a private vendor must include performance standards. Those standards might include standards relating to customer service, efficiency in disbursing collections, and timeliness in depositing payments, disbursing payments, and correcting errors. Consideration must also be given to maintaining the privacy of victims as required by law.

Section 3 of the bill amends s. 948.09(7), F.S., in several ways. The department retains responsibility for establishing a payment plan for the supervised offender, but new subsection 948.09(7)(b), F.S., requires the department to provide the payment schedule to DOR. DOR is required to disburse payments first to the victim of the offense, then to other payees in the priority order established by either the court or the department. DOR must provide an automated monthly statement of the payments made and amounts disbursed for each offender.

New s. 948.09(7)(c), F.S., requires DOR to use due diligence in locating victims to whom restitution is owed. If the victim cannot be located within 180 days, the payment intended for the victim will be disbursed to the Crimes Compensation Trust Fund established by s. 960.21, F.S. It is not clear whether the 180 days is measured from the time the payment is received from the

offender or from the end of the offender's supervision period. Currently, victim restitution payments that are not claimed within 1 year after termination of supervision are deposited in the General Revenue Fund.

The bill does not fundamentally change the CPO's responsibilities with respect to establishing, monitoring, and enforcing the payment plan. It would remove the CPO's collection responsibilities and theoretically free up more time for the officer to actively supervise assigned offenders. The department has expressed concern that the officer would be required to spend an undetermined amount of time responding to inquiries from DOR regarding the location of inmates and victims, the inmate's supervision status, and other matters. While this may be the case, it appears that this would be less time than required by the current system for bookkeeping activities and the same amount of time as would be required if the collection and disbursement process is centralized within the department.

The bill is directed toward collection of costs from persons on community supervision, but its provisions also apply to collections from offenders who are in the department's custody. The department collects payments from the wages earned by inmates who work in the PRIDE and PIE programs, as well as those in work release. There is no reason why these payments could not be collected and disbursed by DOR in the same manner as payments by supervised offenders.

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:

Because the department reports that it is now giving victim restitution priority for collections, the reiteration of that requirement should not have an impact upon victims. Because the bill shortens the time for escheat of unclaimed restitution payments, it is possible that some victims may not be paid if they miss the new deadline.

C. Government Sector Impact:

It is not possible to determine the costs of the bill at this time. Collection and management of money is within the expertise of the Department of Revenue and, theoretically, transfer of this responsibility should result in savings. In addition, OPPAGA has proposed that removal of the CPOs' money management responsibilities will enable the department to reduce overtime payments.

The department points out that between \$600,000 and \$1,000,000 of unclaimed victim restitution funds are deposited annually into the General Revenue Fund, and that the bill would redirect such unclaimed money to the Crimes Compensation Trust Fund.

Additional costs or savings are dependent upon the results of the needs assessment and cost-benefit analysis. It is clear that some mechanism would be needed for payment information to be available to CPOs through the department's OBIS system, and for offender location and other information to be available to DOR. This could require development of a software program to bridge the COPS program and the DOR system, or some other method for data sharing.

The department estimates that transferring responsibility for collection and disbursement to DOR would save the department less than \$1,000,000 per year, without consideration of any additional costs that may be incurred.

VI. Technical Deficiencies:

Sections 945.31 and 948.09, F.S., contain provisions that conflict with the provisions of the bill. Specifically, s. 945.31, F.S., conflicts in the disposition of unclaimed victim's restitution funds. In both sections, references to collection by the Department of Corrections need to be amended to conform to the bill.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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