

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: Justice Appropriations Committee

BILL: CS/CS/SB 1622

INTRODUCER: Justice Appropriations Committee, Criminal Justice Committee and Senator Haridopolos

SUBJECT: Inmate Litigation Costs

DATE: April 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Sadberry</u>	<u>Sadberry</u>	<u>JA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the Department of Corrections to promulgate a rule that imposes charges on inmates for postage and special delivery costs and duplicating costs in civil legal proceedings. The department's existing rule providing for copying charges was recently invalidated for lack of legislative authority to promulgate the rule.

This bill creates section 945.6038, Florida Statutes.

II. Present Situation:

The Department of Corrections (department) has historically relied on several statutory provisions and administrative rules for its authority to recover duplicating and postage costs from inmates. Costs are often recovered by placing liens on inmate trust accounts. A recent decision by the First District Court of Appeal¹ held that an administrative rule² that allowed the department to charge inmates for copying services and recover those costs was not supported by a specific grant of legislative authority. As a result, the rule was not valid. Since this decision was rendered, the department is without authority to recover those copying costs from inmates. The department is of the opinion that the ability to recover copying costs from inmates helps prevent inmates from filing frivolous lawsuits.

¹ *Smith v. Florida Department of Corrections*, 920 So. 2d 638 (Fla. 1st DCA 2005).

² Rule 33-501.302, F.A.C.

Inmate Trust Accounts

In protecting the financial interest of the state with respect to inmates, the department is authorized to administer money and property received for the benefit of the inmates.³ This is usually done in the form of inmate trust fund accounts. These accounts are often used by inmates to purchase items from the prison canteen or pay for other expenses during incarceration.

Postage Expenses

The department is authorized by statute⁴ to adopt rules relating to when an inmate must pay for the cost of postage for mail that the inmate sends. However, the department is prohibited from adopting a rule that requires an inmate to pay postage costs that the state is constitutionally required to pay. The department promulgated Rule 33-210.102 in 1976. The rule provides that postage will be supplied for mail to courts and attorneys and for pleadings that will be served on parties to a suit for inmates who do not have sufficient funds when the mail is submitted to the mailroom. That supplied postage is not to exceed the payment for the original document and two copies, unless additional copies are legally required.

Duplicating Costs

In 1983, the department promulgated a rule⁵ providing inmates with access to copying services, to the extent it is necessary for the inmate to present his or her legal claims in court. The rule also imposes charges for the copies. This rule sets forth the circumstances under which documents are to be copied and what the costs will be.

The rule imposes a charge of 15 cents per page for legal or letter size copies. If special equipment or paper is needed, then the facility may charge up to the estimated actual cost of making the copies.

The rule also states that inmates who do not have sufficient funds will not be denied copying services for the necessary documents. The rule does provide, however, that the cost for copying the documents is a “debt owed by the inmate.” The department is authorized to collect that fee by placing a hold on the inmate’s account for the estimated cost of providing the copies. The cost of providing the copies shall be collected from any existing balance in the inmate’s bank trust fund account. If the account balance is insufficient to cover the cost, the account shall be reduced to zero. If costs remain unpaid, a hold will be placed on the inmate’s account and all subsequent deposits to the inmate’s account will be applied against the unpaid costs until the debt has been paid.⁶

This administrative rule, which the department had relied on for years, was determined to be invalid by the First District Court of Appeal in May 2005. The court found that none of the statutes cited by the department authorized the department to enact Rule 33-501.302.

Accordingly, the provisions of that rule establishing (1) the amount to be charged to inmates for copying services, and (2) the authorization for deductions from and liens imposed upon inmate trust accounts to cover copying costs were not supported by specific legislative authority. This

³ Section 944.516, F.S.

⁴ Section 944.09(1)(o), F.S.

⁵ Rule 33-501.302, F.A.C, Copying Services for Inmates.

⁶ Rule 33-501.302(5), F.A.C.

ruling has had the effect of denying the department the ability to charge inmates for copying costs.

III. Effect of Proposed Changes:

This bill requires the Department of Corrections (department) to promulgate a rule that imposes charges on inmates for postage and special delivery charges and duplicating costs in civil legal proceedings. The bill specifies the charge of 15 cents per page for letter or legal size copies. The department's existing rule providing for copying charges was recently invalidated for lack of legislative authority to promulgate the rule. Under the bill, if an inmate has insufficient funds to pay postage and duplicating costs, a lien will be placed on the inmate's trust account.

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:

This bill authorizes the Department of Corrections to impose charges on inmates for postage and duplicating costs in civil legal proceedings.

B. Private Sector Impact:

This bill authorizes the Department of Corrections to impose charges on inmates for postage and duplicating costs in civil legal proceedings.

C. Government Sector Impact:

The Department of Corrections estimates that this bill will allow it to recover an undetermined amount of money each year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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