

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 20, 1998 Revised: _____

Subject: Reimbursement for Incarceration

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS/SB 1216 provides for a state correctional institution or the Department of Corrections (DOC) to seek reimbursement for the costs of incarceration, including medical and dental expenses and provides for an order of sources in which the state could obtain money from an inmate. It would mandate that an inmate cooperate with the entity seeking reimbursement and would provide consequences if an inmate willfully refuses to cooperate.

This CS creates an unnumbered section of the Florida Statutes.

II. Present Situation:

DOC's Assessment of Medical Co-Payments for Non-Emergency Medical Visits

Effective October 1, 1997, for each non-emergency visit by an inmate to a health care provider in which the visit is initiated by the inmate, the inmate must make a co-payment of \$4. s. 945.6037 (1) (a), F.S. Prior to the statute being changed in 1997, the law stated that co-payments must be paid by an inmate of not less than \$1 or more than \$5 as set by rule by the DOC. See, Ch. 97-260, s. 7, 1997 L.O.F. 4615, 4619. However, the statutes prohibit the requirement of a co-payment for the required initial medical history and physical examination of the inmate.

The co-payment for an inmate's health care must be deducted from any existing balance in the inmate's bank account. s. 945.6037 (1) (b), F.S. If the account balance is insufficient to cover the co-payment, 50 percent of each deposit to the account must be withheld until the total amount owed has been 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 co-payment for an inmate's visit to a health care provider if the health care is under statutorily specified circumstances. s. 945.6037 (1) (d), F.S. The instances where the department may waive the co-payment are when the department renders medical services when the care:

1. Is provided in connection with an extraordinary event that could not reasonably be foreseen, such as a disturbance or a natural disaster;
2. Is an institution wide health care measure that is necessary to address the spread of specific infectious or contagious diseases;
3. Is provided under a contractual obligation that is established under the Interstate Corrections Compact or under an agreement with another jurisdiction which precludes assessing such a co-payment;
4. Was initiated by the health care provider or consists of routine follow-up care;
5. Is initiated by the inmate to voluntarily request an HIV test;
6. Produces an outcome that requires medical action to protect staff or inmates from a communicable disease; or
7. When the inmate is referred to mental health evaluation or treatment by a correctional officer, correctional probation officer, or other person supervising an inmate worker.

The department is authorized to provide by rule for a supplemental co-payment for a medical consultation relating to an inmate's health care and occurring outside the prison or for a prosthetic device for an inmate. s. 945.6037 (2), F.S. The supplemental co-payment must be used to defray all or part of the security costs associated with the surveillance and transport of the inmate to the outside consultation or with the fitting and maintenance of the prosthetic device. The proceeds of each supplemental co-payment must be deposited into the General Revenue Fund.

Section 945.6037 (3) (a) , F.S., states that an inmate may not be denied access to health care as a result of not paying any co-payment or supplemental co-payment that is provided for in this section. The statute also specifies that an inmate must not be given preferential access to health care as a result of paying any co-payment or supplemental co-payment that is provided for in this section.

Efforts by the Department of Corrections to Seek Reimbursement from Inmates

Presently, the only state inmates who currently pay for their subsistence or maintenance are those inmates who have income and are housed in community correctional centers. On an annual basis, the DOC collects several million in subsistence and transportation fees from inmates housed in community correctional centers. Section 946.002, F.S., states that it is the policy of DOC to

require inmates paid for work while in community work programs to reimburse the state for lodging, food, transportation, and other expenses incurred for sustaining the inmate.

Section 944.485, F.S., was enacted in 1978 and currently authorizes the DOC 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. The statute requires each inmate in the state correctional system to disclose all revenue or assets as a condition of parole or other release eligibility. The statute requires that each inmate pay all or a “fair portion” of his or her daily subsistence costs based upon the inmate’s ability to pay, as well as based on 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 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 in trying to recover these costs. During the first four months after the implementation of the reimbursement for costs of the incarceration program, DOC expended approximately \$89,000 and only collected about \$3,100 in reimbursements from inmates. Despite this section being held unconstitutional in a federal district court, the case was not appealed and the statutory section was not repealed and removed from the Florida Statutes.

Inmate Bank Accounts in the State Prison System

The department has established Rule 33-3.018, *Florida Administrative Code*, permitting inmates to have interest-free checking accounts, or demand deposit accounts, through the Inmate Bank Trust Fund. Section (3) of the rule permits inmates with extended limits of confinement, such as those on work release, to spend a weekly allowance up to \$35 for personal use, based on sufficient balances in their individual inmate bank accounts. The department effectively applies spending allowance restrictions to all inmates with a bank account. Personal use includes purchases from canteens and vending machines.

According to the department, an inmate's primary source of income for deposit in his account is from family or friends. By rule, the department permits inmates in correctional institutions to draw a weekly amount of up to \$45 from their account to purchase canteen items, which is up from a previous \$30 limit. *See*, Rule 33-3.018 (3), *Florida Administrative Code*.

Pursuant to Rule 33-3.018 (1) (c), *Florida Administrative Code*, inmates may establish personal savings accounts or similar interest bearing accounts with a bank, savings and loan association, or similar private financial institutions. However, the department is not responsible for transactions between inmates and private financial institutions or for financial transactions between inmates and other parties.

Remedies to Recover Medical Care Costs for Jail Inmates

In 1983, the Florida Legislature authorized county or municipal detention facilities to seek reimbursement for the statutorily authorized medical expenses. Ch. 83-189, s. 2, 1983 *Fla. Laws* 728. A local detention facility also has statutory authority to seek reimbursement for incurring medical expenses, which covers actual medical care, treatment, hospitalization, or transportation, as outlined in s. 951.032, F.S. A local detention facility may seek reimbursement for such medical costs from the prisoner or person receiving the medical care, treatment, hospitalization, or transportation by deducting the cost from the prisoner's cash account on deposit with the detention facility. s. 951.032 (1) (a), F.S. If there is not enough money in the prisoner's cash account to cover the medical expenses, the detention facility may place a lien on the prisoner's cash account.

The lien may be carried over to future incarceration of the same offender as long as the future incarceration takes place in the same county where the lien originated and the future incarceration takes place within three years of the date the lien was placed against the prisoner's account. *Id.* A local detention facility may seek reimbursement for medical costs from a prisoner's insurance company, health care corporation, or other source if the prisoner is covered by an insurance company or subscribes to a health care corporation or other source for those expenses. s. 951.032 (1) (b), F.S.

In 1994, the Legislature passed SB 428, which amended s. 948.03, F.S. Ch. 94-294, s. 1, 1994 *Fla. Laws* 2055. The amendment authorized courts to be able to require, as a condition of probation or community control, the repayment of costs related to medical care received in a county or municipal. *Id.* In imposing such a condition, the court may consider many factors, such as any possible fault of the facility for the medical costs incurred, the financial resources of the probationer, and the present and future financial needs of the probationer and their dependents. This statutory authorization to impose medical cost repayment as a condition of probation does not seize all of the possible medical costs that would be incurred in a local detention facility. Because of the relatively infrequent use of post-incarceration community supervision, probationers would only be repaying medical costs incurred while they were held in pretrial detention or if they were incarcerated in a jail as a condition of their probation or community control pursuant to s. 948.03 (1) (f), F.S.

The Example of Manatee County for Recovery of Meal Costs From Jail Inmates

In Manatee County, it costs \$2.10 per day to provide meals to the prisoners in its local detention facility. Currently, the sheriff is collecting some of this cost for meals from prisoners, which would be covered by this CS. The Manatee County Jail charges \$1.00 per day against each prisoner, if the prisoner can afford it. As a result, between December 1, 1995, and February 22, 1996, the Manatee County Jail collected approximately \$38,000 from prisoners. Based on a cost recovery of \$38,000 per quarter by the Manatee County Jail, it collects approximately \$152,000 per year as a cost savings to the county taxpayers to offset the approximate annual cost of approximately \$320,000 to feed prisoners in the Manatee County Jail. For those prisoners that cannot afford to

pay for their meal costs, the prisoners are still fed and the monies are taken from the canteen fund to offset the cost to the jail.

Local Jails May Seek Reimbursement for the Cost of Incarceration

In 1996, the Legislature passed CS/HB 1411, which authorized local governments to seek reimbursement from local jail inmates for the cost of incarceration. Each person who is detained or serving a sentence in a county detention facility is required to pay all or a fair portion of the prisoner's daily subsistence costs, based on the prisoner's ability to pay, the prisoner's liability or potential liability to a victim or a victim's guardian or estate, and the prisoner's responsibility to a dependent. Chief correctional officers of county detention facilities are authorized to deduct a prisoner's daily subsistence costs from the prisoner's cash account on deposit.

The chief correctional officer of a facility is also authorized to file a petition with the court to place a lien on the prisoner's cash account or on other personal assets or property of the prisoner, which may continue for up to 3 years and apply to the cash account of a prisoner who is reincarcerated within the county in which the lien originated. In a different statutory provision to recover costs of incarceration, "local subdivisions" under the Civil Restitution Lien Act includes counties that do not directly operate its county jails to be authorized to seek recovery of the costs of incarceration from inmates.

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

Since 1994, the Florida Statutes have authorized counties to recover the costs of incarceration from offenders who are convicted of a criminal offense. *See*, Ch. 94-342, ss. 1-8, 1994 *Fla. Laws* 2456; *see also*, ss. 960.29-.297 (the Florida Civil Restitution Lien and Crime Victim's Remedy Act). Specifically, under s. 960.293(b), F.S., upon conviction of an offender, the offender is liable to the state and its local subdivisions for damages and losses for incarceration costs and other correctional costs.

The Civil Restitution Lien Act (Act) provides that if the conviction is for an offense other than a capital or life felony, a liquidated damage amount of \$50 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the state or its local subdivisions through a civil restitution lien. s. 960.293, F.S. (There is some question whether this would include charter counties.) The liquidated damages for incarceration costs and other correctional costs for a conviction for an offense that is a capital or life felony is \$250,000. *Id.* To enforce a civil restitution lien, there must be a civil restitution lien *order*. s. 960.292, F.S. Upon conviction of the offender, and upon motion of the state or petition of a local subdivision, the court in which the convicted offender is convicted must enter civil restitution lien orders in favor of crime victims, the state, and its local subdivisions. *Id.* A civil restitution lien is a lien upon any real or personal property of the convicted offender and real or personal property the convicted offender comes to possess subsequent to conviction until the full amount of the lien is satisfied. *See*, s. 960.294, F.S. A civil restitution lien order may be recorded in the public records and may

be enforced by the state and its local subdivisions as named in the civil restitution lien order in the same manner as a judgement in a civil action, including levy against personal property by sheriffs and foreclosure against non-exempt real property. *Id.*

The Act also authorizes the state and its local subdivisions to seek recovery of the damages and losses set forth in s. 960.293, F.S., in a separate civil action or as a counterclaim in any civil action. The Act retroactively applies this authority for the state or its local subdivisions to pursue a separate civil action for convicted offenders who were convicted prior to July 1, 1994, which was the effective date of the Act. *See*, s. 960.297, F.S.

For the purposes of ch. 960, F.S., “local subdivisions” is defined as local subdivisions of the state which maintain correctional facilities such as counties which maintain county correctional facilities. A question has been raised by Hillsborough county officials concerning whether Hillsborough county falls under the definition of “local subdivision” for ch. 960, F.S., since the county does not maintain the county jail. In Hillsborough County, it is the county sheriff who is responsible for the operation and maintenance of the jails, although the county is responsible for the sheriff’s budget and for funding the construction of jails.

III. Effect of Proposed Changes:

The CS/SB 1216 amends ch. 944, F.S., which previously authorized the DOC to collect subsistence fees from prisoners to reiterate the state’s policy on seeking reimbursement from inmates for the cost of incarceration.

Individual state correctional institutions, or the DOC acting on their behalf, would be authorized to seek reimbursement for the costs of incarceration, including expenses incurred, such as medical and dental services and transportation. The DOC would be responsible for seeking reimbursement costs for all inmates in the state system, including those housed in private correctional facilities under contract with the Correctional Privatization Commission.

The CS would present an order of recovery for the costs of medical care, dental care, and other costs associated with incarceration. It would place insurance as the first source of recovery before the inmate’s cash account. It would also provide that the state’s claim against an inmate for cost of incarceration is insubordinate to any judgement for restitution or any judgment for child support against an inmate.

Secondly, reimbursement could be obtained from deducting the amount from the prisoner’s cash account on deposit with the state correctional institution. If there are insufficient funds to cover the costs of incarceration, the institution or the department is authorized to place a lien against the inmate’s cash account in excess of \$50, *or other personal property*, to provide payment in the event sufficient funds become available at a later time. Any time a prisoner’s cash account exceeds \$50 with subsequent deposits, the amount in excess may be withheld until the total amount is paid. Liens would be allowed to carry over to future incarceration of the same prisoner.

Thirdly, the department may recover costs from other sources available, except where income from such sources is exempt under federal or state law.

The department perceivably has the discretion to determine the details as to how to implement the provisions of this CS *if* it decides to seek reimbursement from inmates. Depending on how this is implemented by the department, it is likely to be placing an extraordinary number of liens on bank accounts and personal property because inmates are allowed by rule to have a maximum of \$45 in their bank accounts, which is a great security issue of the Department's.

The institution may place a lien on an inmate's cash account in the event an inmate does not "cooperate" with the state correctional institution and the department in the efforts to seek reimbursement for costs.

If an inmate "wilfully refuses" to "cooperate" with the state correctional institution or the DOC in seeking reimbursement for the cost of incarceration, an inmate could be prohibited from earning gain-time as provided by s. 944.275, F.S.

The CS would create a task force within the department for the 1998-99 fiscal year to investigate strategies to use in seeking prisoner reimbursement specifically related to health care costs. The task force would have to be created out of existing resources within the DOC. The task force would be required to consult with the Department of Insurance, Correctional Medical Authority, and the Agency for Health Care Administration to identify the extent of available assets or health insurance coverage of inmates in the state prison system. The task force would have to submit its findings and recommendations to the Senate President and House Speaker by January 1, 1999.

This CS 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 facility thereafter.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The CS would require that an inmate cooperate with the efforts of the entity seeking reimbursement or the inmate could have a lien placed upon his or her bank account and receiving gain-time credits would be prohibited. Requiring “cooperation” may be somewhat vague as to what is required of the inmate to comply with the requirements of this CS. There is no provision relating to an inmate’s ability to pay for the costs assessed by the correctional institution.

Although arguably not as persuasive, another issue that could possibly be raised if an inmate is prohibited from earning gain-time for “wilfully refusing to cooperate” with the state’s efforts to seek reimbursement for costs is a lack of due process. If the determination is made *by the DOC* that an inmate is “wilfully refusing to cooperate” and the inmate is not allowed to receive gain-time that he or she may have earned as provided in statute, insufficient notice to the inmate as to what is expected for “cooperation” or inadequacy of the process may be found because of the vagueness or subjectivity involved in determining there was a willful refusal to cooperate. If there is not an adequate process in place to guarantee that an inmate would be placed on notice as to what is expected and to protect against arbitrariness or varying determinations it could infringe upon the fundamental right of due process. Clearly, if an inmate may not receive gain-time he or she may have earned, such action would result in lengthening the sentence of the inmate, thus it disadvantages the inmate, and according to the litany of cases in Florida on various gain-time awards and provisional credits such state action would be prohibited.

However, it should be noted that the ability of the state to not award an inmate gain-time because he or she refuses to cooperate, is purely discretionary on the part of the state. The CS does not mandate that the ability to earn gain-time be summarily taken away. The act of refusing to cooperate by the inmate is a future act that is dependant solely on the defendant; however, as pointed out earlier, it may be difficult for an inmate to know what “refusing to cooperate” really means.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Inmates who are housed in a state correctional institution would experience a negative fiscal impact because they would be required to pay the cost of their own incarceration. If, during the time they are incarcerated, inmates do not have the sufficient funds to reimburse the state for the costs incurred during incarceration, a lien may be placed upon the inmate’s bank account, which could be “carried over” to future incarceration of the same inmate.

C. Government Sector Impact:

The state could experience an indeterminate positive fiscal impact if state costs for incarceration could be recouped from inmates. In order to process this information and to inquire and monitor inmates' insurance coverage for possible benefits that could be obtained by the state, the DOC would have to expend money for computer equipment and personnel to accomplish these duties. However, the negative fiscal impact upon the department is indeterminate.

VI. Technical Deficiencies:

Since costs would be incurred on a daily basis, it is unclear from the CS as to how often an inmate is to be assessed the amount of cost incurred by the institution.

VII. Related Issues:

If an inmate is required to "cooperate" with reimbursement efforts, there could be a right to privacy violation issue or self-incrimination issue with requiring cooperation and disclosure by the inmate. *See, Campbell v. Wainwright, supra.*

VIII. Amendments:

None.