

Department of Finance and Administration

Legislative Impact Statement

Bill: SB269

Amendment Number: S1

Bill Subtitle: CONCERNING THE COLLECTION OF PROBATION OR PAROLE SUPERVISION FEES; CONCERNING THE DUTIES OF AN EMPLOYEE OF THE DEPARTMENT OF COMMUNITY CORRECTION; AND CONCERNING THE DEPARTMENT OF FINANCE AND ADMINISTRATION.

Basic Change :

Sponsor: Senator J. Hutchinson

SB269 (as Engrossed on 2-13-17) adds a new Arkansas Code section, § 16-93-111, to require the Arkansas Department of Finance and Administration (DFA) to collect restitution payments from parolees. The bill amends Arkansas law that currently requires restitution payments be made through the Department of Community Correction (DCC). DFA will keep an accounting of the person's payments of restitution and provide an accounting of each parolee's payments of restitution that complies with the Arkansas Rules of Evidence. DFA must provide a representative to testify in court concerning the nature and data in an accounting of a person's payments of restitution.

Revenue Impact :

No impact to General Revenues, but see Resources Required below needed for implementation.

Taxpayer Impact :

Parolees would be required to make restitution payments to DFA rather than to DCC. The bill proposes that parolees who are behind more than three months on restitution payments may have their income tax refunds or lottery winnings seized to satisfy restitution payment obligations.

Resources Required :

Additional Staffing

- **\$2,521,378** in the first year of implementation
- **\$2,458,378** in the second and following years.

There will be 57 new positions required across the state located in our local revenue offices. New computers will need to be purchased for these positions to access the DFA accounting software to be developed for this project. Each position will have a phone and ordinary office supplies to carry daily job duties.

Additional Technology Costs

- **\$1,500,000** Total Estimated Project Cost
- **\$300,000** Annual Maintenance Ongoing Cost

Time Required :

The current bill as written is effective 90 days after adjournment. Estimated time to create and implement the required processes is one year from the passage of this bill.

Procedural Changes :

Computer applications, forms, training and procedures would need to be implemented.

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Other Comments :

To date, 184 parole offenders currently under supervision with DCC have open restitution accounts with a balance of \$1,522,350.62. It is unclear if there are more restitution accounts at the offices of the circuit clerks throughout the state that are paid by parolees.

Legal Analysis :

As amended, SB269 presents significant administrative difficulties for DFA. SB269-S1 amends SB269 as originally introduced to continue DCC's existing collection authority for court orders for costs, specific program fees, and monthly supervision fees imposed by DCC. SB269's provision that removes DCC's collection duty for restitution remains in the bill. The collection of restitution is transferred to the DFA but the amendment provides for this collection authority only after the offender goes on parole. The amendment does not provide a mechanism for DFA to receive notice when an offender is paroled. This failure will create problems with DFA's ability to administer the bill because DCC is in possession of parolee information, not DFA. Parole information varies greatly as offenders are paroled or have their parole revoked.

The amendment retains DCC's authority to collect costs, specific program fees, and monthly supervision fees but no longer provides that those fees be included in the current tax refund offset program. For purposes of the lottery winnings setoff program, DCC is a claimant agency so it is currently able to utilize that program without need of a change to Arkansas law.

The amendment to the bill does not make necessary changes to DFA's setoff program under § 26-36-301, et seq. to authorize DFA to use any legal means including the intercept of state income tax refunds to collect unpaid restitution that is more than three (3) months in arrears. If DFA is made the collector of restitution when an offender goes on parole, it would have to be added as a claimant agency for inclusion in the income tax refund setoff program. As a claimant agency, it would be required to provide the debtor with a hearing to contest the validity of the debt in accord with the Administrative Procedures Act (APA), 25-15-201, et seq. Moreover, DFA has no information about the validity of the underlying debt. DFA would have to employ attorneys and hearing officers and work with the court which issued the restitution order to provide due process to the debtor.

DFA does not administer lottery collections or disbursements, thus it does not have authority to make the lottery winnings offset contemplated by the bill. Under the lottery winnings setoff program at § 23-115-1002, DFA is defined as a "claimant agency." As such, DFA currently provides the lottery commission with a list of delinquent taxpayers so that lottery winnings can be offset for tax debts. Circuit, county, district, and city courts are not defined as "claimant agencies" for purposes of lottery winnings setoffs. However, courts are defined as claimant agencies for purposes of income tax refund setoffs for restitution. Thus, it is not clear whether DFA would be acting on behalf of the courts to obtain lottery winnings. For the bill to provide proper collection authority to DFA to obtain lottery winnings for restitution, §§ 23-115-1001, et seq. and 26-36-301 et seq. would need to be amended to clarify the procedure.

The bill provides that restitution delinquencies are eligible for offset after three (3) months in arrears. This arrangement would place parolee restitution claims above other court orders for restitution, fines,

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and costs, which are currently eligible for setoff after six (6) months of delinquency. Under existing law determining setoff priority under § 26-36-314 of DFA's setoff process, setoff claims are processed in order of time filed by a claimant agency, which includes circuit, county, district, and city courts and other specified agencies. Thus, parolee restitution claims would take priority over all other types of debts owed to courts and specified agencies.

A correction to § 16-93-111 (b) to replace the word "return" with "refund" is required because only refunds as defined in § 26-36-303(5) are eligible for the setoff program. A "return" is not a funding source for the offset.