

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1434

As Engrossed: 3/19/2015

Bill Subtitle: CONCERNING THE SATISFACTION OF COURT-ORDERED RESTITUTION IN A CRIMINAL CASE THROUGH INTERCEPTION OF STATE INCOME TAX REFUNDS.

Basic Change : Sponsor: Rep. Ballinger, Gossage, Senator Stubblefield

The bill allows a victim who has a criminal restitution order to request a hearing to have the defendant's income tax refund seized to help satisfy the restitution order. This would allow individuals to participate in the income tax refund setoff program via prosecuting attorneys. The bill allows DFA to promulgate rules to implement the program.

Amendment No. 1

- Adds and clarifies the definition of "restitution order" to mean a judgment and commitment order, judgment and disposition order, or other order that imposes a duty on a defendant to pay restitution.
- Adds that it shall be noted on the restitution order that the restitution may be collected through an interception of the defendant's state income tax return if the defendant has failed to comply with the terms and conditions of the restitution order.
- Removes time requirements required to file the petition.

Revenue Impact :

Estimate revenue neutral.

Taxpayer Impact :

Defendants would be subject to having refunds seized in their entirety to satisfy a restitution debt.

Resources Required :

Computer program changes.

Time Required :

Adequate time is provided.

Procedural Changes :

Claimant agency will need to register with income tax setoff program.

Legal Analysis :

HB1434, as engrossed following Amendment 1, provides if a victim of crime who is to receive compensation under a restitution order informs the prosecuting attorney that he or she has not been paid then the prosecutor may file a petition to request the interception of the defendant's state income tax return. The amendment does not change the defendant's right to the hearing contemplated under HB1434 as originally drafted. After the court orders that the state income tax refund be intercepted, the prosecutor or any other county official or entity with a duty to collect restitution may proceed under DFA's income tax setoff program.

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Under current law related to the state income tax refund setoff, circuit, county, district, and city courts are defined as "claimant agencies" that use DFA's procedure to collect for restitution orders that are not under appeal through income tax refund setoff provisions. Claimant agencies submit debtor names each year before income tax refunds begin to be issued. HB1434 provides the defendant with an opportunity to contest the setoff before the prosecutor may refer the debt to DFA. The defendant debtor is provided with notice and an opportunity to contest the validity of the claim before the claimant agency.

Under HB1434 as written, a defendant who has been ordered to pay restitution will have two opportunities to contest a setoff. Under the amendment as written, a prosecutor has discretion whether to ask the court to enforce the restitution order.