



Senate

File No. 841

General Assembly

January Session, 2001

(Reprint of File No. 24)

Substitute Senate Bill No. 1048
As Amended by Senate Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 31, 2001

AN ACT CONCERNING COSTS OF INCARCERATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) In the case of causes of action of any person
2 obligated to pay the costs of such person's incarceration under section
3 18-85a of the general statutes and regulations adopted in accordance
4 with said section, the claim of the state shall be a lien against the
5 proceeds therefrom in the amount of the costs of incarceration or fifty
6 per cent of the proceeds received by such person after payment of all
7 expenses connected with the cause of action, whichever is less, for
8 repayment under said section, and shall have priority over all other
9 claims including any lien of the state for repayment of public
10 assistance except (1) attorney's fees for said causes, (2) expenses of suit,
11 (3) costs of hospitalization connected with the cause of action by
12 whomever paid over and above hospital insurance or other such
13 benefits, and, for such period of hospitalization as was not paid for by
14 the state, physicians' fees for services during any such period as are
15 connected with the cause of action over and above medical insurance
16 or other such benefits, (4) child support obligations pursuant to
17 subsection (d) of section 17b-93 of the general statutes, (5) restitution or

18 payment of compensation to a crime victim ordered by a court of
19 competent jurisdiction, and (6) payment of a civil judgment rendered
20 in favor of a crime victim by a court of competent jurisdiction; and
21 such claim shall consist of the total amount of the costs of incarceration
22 under section 18-85a of the general statutes. The proceeds of such
23 causes of action shall be assignable to the state for payment of the
24 amount due under section 18-85a of the general statutes, irrespective of
25 any other provision of law. The state's lien shall constitute an
26 irrevocable direction to the attorney for the inmate to pay the
27 Commissioner of Correction or the commissioner's designee in
28 accordance with its terms, except if, after written notice from the
29 attorney for the inmate informing the commissioner or the
30 commissioner's designee of the settlement of the cause of action or
31 judgment thereon and requesting the amount of the lien to be paid to
32 the commissioner or the commissioner's designee, the commissioner or
33 the commissioner's designee does not inform such attorney of the
34 amount of the state's lien within forty-five days of receipt of the
35 written request of such attorney for such information, such attorney
36 may distribute such proceeds to such inmate and shall not be liable for
37 any loss the state may sustain thereby.

38 (b) In the case of an inheritance of an estate by any person who is
39 obligated to pay the costs of such person's incarceration in accordance
40 with section 18-85a of the general statutes and the regulations adopted
41 under said section, the claim of the state shall be a lien against such
42 inheritance in the amount of the costs of incarceration or fifty per cent
43 of the assets of the estate payable to the inmate, whichever is less. The
44 Court of Probate shall accept any such lien notice filed by the
45 commissioner or the commissioner's designee with the court prior to
46 the distribution of such inheritance, and to the extent of such
47 inheritance not already distributed, the court shall order distribution in
48 accordance therewith.

49 Sec. 2. (NEW) Upon the death of any person obligated to pay the
50 costs of such person's incarceration under section 18-85a of the general
51 statutes and regulations adopted in accordance with said section, the

52 state shall have a claim against such person's estate for all costs of
53 incarceration under the provisions of said section and regulations for
54 which the state has not been reimbursed, to the extent that the amount
55 which the surviving spouse, parent or dependent children of the
56 decedent would otherwise take from such estate is not needed for their
57 support. Such claim shall have priority over all other unsecured claims
58 against such estate, including any lien of the state for repayment of
59 public assistance, except (1) expenses of last sickness not to exceed
60 three hundred seventy-five dollars, (2) funeral and burial expenses in
61 accordance with that allowed under section 17b-84 of the general
62 statutes upon the death of a beneficiary of aid, (3) child support
63 obligations pursuant to subsection (d) of section 17b-93 of the general
64 statutes, (4) restitution or payment of compensation to a crime victim
65 ordered by a court of competent jurisdiction, (5) payment of a civil
66 judgment rendered in favor of a crime victim by a court of competent
67 jurisdiction, and (6) administrative expenses, including probate fees
68 and taxes, and including fiduciary fees not exceeding the following
69 commissions on the value of the whole estates accounted for by such
70 fiduciaries: On the first two thousand dollars or portion thereof, five
71 per cent; on the next eight thousand dollars or portion thereof, four per
72 cent; on the excess over ten thousand dollars, three per cent. Upon
73 petition by any fiduciary, the Court of Probate, after a hearing thereon,
74 may authorize compensation in excess of the above schedule for
75 extraordinary services. Notice of any such petition and hearing shall be
76 given to the Commissioner of Correction at least ten days in advance
77 of such hearing. The allowable funeral and burial payment authorized
78 by this section shall be reduced by the amount of any prepaid funeral
79 arrangement. Any amount paid from the estate under this section to
80 any person that exceeds the limits provided in this section shall be
81 repaid to the estate by such person, and such amount may be
82 recovered in a civil action with interest at the legal rate from the date
83 of demand.

84 Sec. 3. This act shall take effect from its passage.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Revenue Gain, Minimal Cost

Affected Agencies: Departments of Correction and Administrative Services

Municipal Impact: None

Explanation

State Impact:

Under C.G.S. Section 18-85a, the Department of Correction (DOC) currently assesses inmates of correctional facilities for the costs of their incarceration. Furthermore, under C.G.S. 18-101, DOC collects all inmate compensation and disburses these funds according to a priority list, which includes taxes, payments to victims, dependent support, travel and incidental expenses, and board costs. The bill as amended allows DOC to collect money owed by an inmate for the cost of incarceration from an inmate's estate, inheritance, or lawsuit proceeds.

Passage of the bill as amended would result in a potential revenue gain. The bill indicates that an incarceration lien would take priority over any public assistance lien; but because the number of incarceration liens is indeterminate, it is unknown how the passage of this bill as amended would impact public assistance liens.

DOC currently charges inmates for the costs of certain services and programs such as sick calls, dental procedures, eyeglasses, elective and vocational educational programs, extended family visits, and lab tests

for detecting illegal drugs. These charges have amounted to annual revenues of approximately \$100,000 in FY 98, FY 99, and FY 00. It is not projected that there will be any significant changes in FY 01. The annual cost to incarcerate an individual is approximately \$25,000. The cost per day is \$70.

Finally, the bill indicates that the DOC commissioner or his designee is responsible for filing such liens. It should be noted that the Department of Administrative Services (DAS) would probably serve as the commissioner's designee. This would result in minimal costs to DAS that would be absorbed within existing appropriations.

Senate Amendment "A" proposes to include child support obligations in this list of liens and does not change the fiscal impact of the original bill. However, as the number of claims that take priority over costs of incarceration claims increases, potential revenue to cover these costs decreases.

OLR Amended Bill Analysis

sSB 1048 (File 24, as amended by Senate "A" and "B")*

AN ACT CONCERNING COSTS OF INCARCERATION**SUMMARY:**

This bill allows the state to collect money owed by certain inmates for the cost of their incarceration from their estates after their deaths or from money or property they obtain through lawsuits or inheritance. The bill makes the state's claim a lien against lawsuit or inheritance money or property and allows the state to collect up to the total cost of the incarceration or 50% of the property or money obtained, whichever is less. It gives the lien against lawsuit proceeds and the state's claim against a deceased person's estate priority over other claims with certain exceptions.

The bill also prohibits a public agency from disclosing under the Freedom of Information Act the residential address of a Public Defender Services Division social worker or Judicial Branch employee.

*Senate Amendment "A" includes the provision on child support obligations.

*Senate Amendment "B" prohibits disclosure of residential addresses of Public Defender Services Division social workers and Judicial Branch employees.

EFFECTIVE DATE: Upon passage

LAWSUIT PROCEEDS

Under the bill, whenever a person who owes the state money for the cost of his incarceration wins a lawsuit judgment, the state's claim is a lien against the proceeds. The maximum amount of the claim is the full cost of the inmate's incarceration or 50% of the proceeds, minus certain expenses, whichever is less.

The incarceration lien has priority over all other claims, including any state lien for repayment of public assistance, except:

1. child support obligations the state can collect in public assistance repayments from a person's lawsuit proceeds (by law these funds must first reimburse Medicaid for coverage related to injuries that were the basis of the lawsuit);
2. expenses of the lawsuit, including attorney's fees;
3. hospitalization costs connected with the lawsuit not paid by insurance or other benefits;
4. physicians' fees associated with the hospitalization period that the state has not paid for and that insurance or other benefits do not cover;
5. court-ordered restitution or compensation to a crime victim; and
6. payment of a civil judgment to a crime victim.

The bill makes the proceeds assignable to the state and the lien requires the inmate's attorney to pay the Department of Correction (DOC) commissioner from the proceeds. But, if the attorney gives the commissioner written notice of a settlement or judgment that requests the lien amount and the commissioner does not respond within 45 days with the lien amount, the attorney can distribute the proceeds to the inmate and is not liable to the state.

INHERITANCE

When an inmate inherits property or money, his obligation is the total cost of his incarceration or 50% of the inheritance, whichever is less. There is no reduction in this amount. The bill directs the probate court to accept any lien notice that the DOC commissioner or his designee files and, to the extent the estate has not already been paid out, order the estate distributed accordingly.

DEATH OF PERSON OWING COSTS OF INCARCERATION

Under the bill, when someone dies who owes the state money for the cost of his incarceration, the state has a lien against his estate. The amount of the lien is up to the total cost of his incarceration to the extent the estate is not needed to support his surviving spouse, parent,

or dependent children. The bill gives the lien priority over all other unsecured claims, including public assistance liens, except for (1) child support obligations the state can collect in public assistance repayments; (2) up to \$375 for the expenses of his last sickness; (3) up to \$1,200 for funeral and burial expenses; (4) court-ordered restitution or compensation to a crime victim; (5) payment of a civil judgment to a crime victim; and (6) administrative expenses, including probate taxes and fees and fiduciary fees up to certain limits. If the person has a prepaid funeral arrangement, the funeral and burial exception amount must be reduced by the amount of the arrangement.

The bill limits fiduciary fees, based on the value of the estate, to 5% for the first \$2,000; 4% for the next \$8,000; and 3% for the remainder. The bill authorizes the probate court, after a hearing with a 10-day notice to the DOC commissioner, to authorize payment above these levels for extraordinary services.

If any amount exceeding these limits has been paid from the estate, the bill requires the person who received it to repay the estate and allows the state to recover the amount, with interest at the legal rate (8%), by civil suit.

BACKGROUND

Inmate Liability for Costs of Incarceration

By statute, the DOC commissioner must adopt regulations concerning assessing inmates for the costs of their incarceration. The regulations require the commissioner, as of October 1, 1997, to charge inmates for the costs of their use of various services and programs. An inmate is a person confined or formerly confined in a correctional facility under a sentence imposed by a Connecticut state court. The regulations define the per-inmate, per-day cost of incarceration at DOC facilities to be the amount computed using the same accounting procedures the comptroller uses to calculate such costs for state humane institutions. The regulations also make inmates responsible for the costs of certain services and programs such as sick calls; dental procedures; eyeglasses; elective and vocational educational programs; extended family visits; and lab tests to detect illegal drugs, if the results are positive.

Legislative History

On April 11, the Senate referred the bill to the Government Administration and Elections Committee. The committee favorably reported the bill on April 19.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0

Government Administration and Elections Committee

Joint Favorable Report

Yea 18 Nay 0