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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2013-14

(session year)

Assembly

(Assembly, Senate, or Joint)

**Committee on ...
Corrections
(AC-Co)**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (December/2014)

Assembly

Record of Committee Proceedings

Committee on Corrections

Assembly Bill 33

Relating to: extending the time period for counties to seek reimbursement from prisoners for expenses associated with confinement in jail.

By Representatives Endsley, Kestell, Knodl, T. Larson, A. Ott, Bies, Nass, Stone, Ballweg, Kleefisch, LeMahieu, Stroebel and Marklein; cosponsored by Senators Leibham, Kedzie, Gudex and Schultz.

February 18, 02013 Referred to Committee on Corrections

April 04, 2013 **Public Hearing Held**

Present: (7) Representative Bies; Representatives Schraa, Brooks, Thiesfeldt, Doyle, Pasch and Zamarripa.

Absent: (0) None.

Excused: (2) Representatives Krug and Kleefisch.

Appearances For

- Mike Endsley - State Representative - 26th Assembly District
- Steve Michek - Badger Sheriffs Association
- David Callender - Wisconsin Counties Association

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Carl Buesing - Sheboygan County Corp Counsel
- Joan Ballweg - State Representative - 41st Assembly District
- Joe Liebham - State Senator - 9th Senate District

Registrations Against

- None.

Registrations for Information Only

- None.

May 30, 2013

Executive Session Held

Present: (7) Representative Bies; Representatives Schraa,
Brooks, Krug, Thiesfeldt, Pasch and Zamarripa.
Absent: (0) None.
Excused: (2) Representatives Kleefisch and Doyle.

Moved by Representative Thiesfeldt, seconded by Representative
Brooks that **Assembly Substitute Amendment 1** be recommended
for introduction and adoption.

Ayes: (5) Representative Bies; Representatives
Schraa, Brooks, Krug and Thiesfeldt.

Noes: (2) Representatives Pasch and Zamarripa.
Absent: (2) Representatives Kleefisch and Doyle.

ASSEMBLY SUBSTITUTE AMENDMENT 1 INTRODUCTION
AND ADOPTION RECOMMENDED, Ayes 5, Noes 2

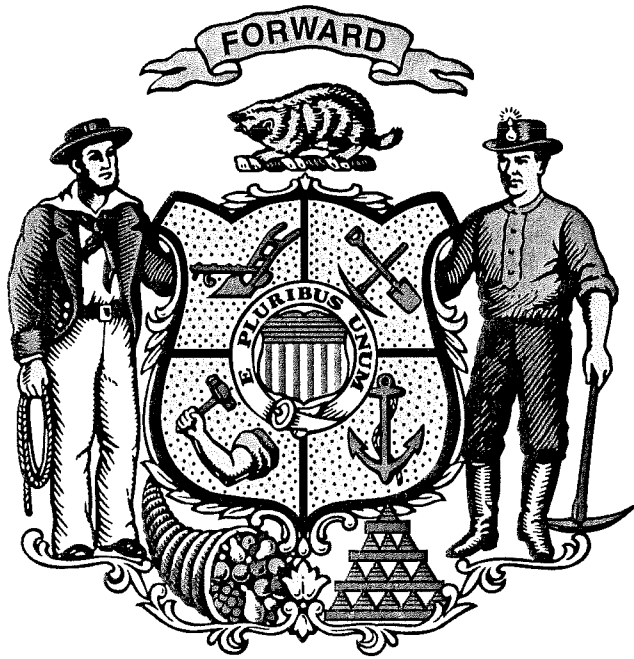
Moved by Representative Thiesfeldt, seconded by Representative
Brooks that **Assembly Bill 33** be recommended for passage as
amended.

Ayes: (5) Representative Bies; Representatives
Schraa, Brooks, Krug and Thiesfeldt.

Noes: (2) Representatives Pasch and Zamarripa.
Absent: (2) Representatives Kleefisch and Doyle.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 2

Cory Bruce
Committee Clerk



Vote Record Committee on Corrections

Date: 6/30/13
 Moved by: Thiesfeldt Seconded by: BROOKS
 AB 33 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt 1
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Garey Bies, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michael Schraa, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Edward Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Scott Krug	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jeremy Thiesfeldt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Steve Doyle	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Sandy Pasch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative JoCasta Zamarripa	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>2</u>	<u>2</u>	<u>0</u>

Motion Carried Motion Failed

Vote Record Committee on Corrections

Date: 5/30/13

Moved by: Thiesfeldt

Seconded by: BROOKS

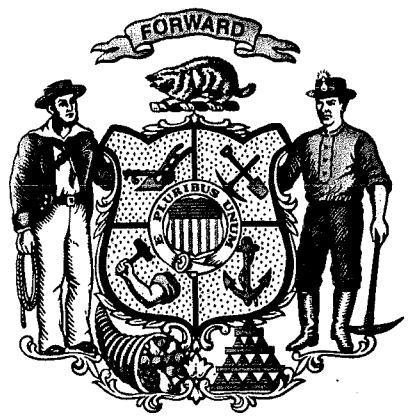
AB 33 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Garey Bies, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michael Schraa, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Edward Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Scott Krug	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jeremy Thiesfeldt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Steve Doyle	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Sandy Pasch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative JoCasta Zamarripa	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>2</u>	<u>2</u>	_____

Motion Carried Motion Failed



STATEMENT OF SHEBOYGAN COUNTY CORPORATION COUNSEL ON SB 24
March 28, 2013

AB 33
folder

My name is Carl Buesing and I serve as Sheboygan County's Corporation Counsel.

Thank you for giving me the opportunity to testify on Senate Bill 24.

In 1996, the Legislature created Wis. Stat. § 302.373 which provided a mechanism under which county jail inmates may be required to reimburse counties for the expense of their incarceration. In 2001, the Sheboygan County Board enacted an ordinance to implement this inmate reimbursement law. I'd like to tell you about Sheboygan County's experience with this law and how it can be tweaked to make it work a little better.

Under Sheboygan County's ordinance, convicted persons who serve sentences in the Sheboygan County Jail are assessed the cost of maintenance in the amount of \$20 a day if they are on Huber work-release, \$23 a day if they are on the electronic monitoring program, and \$20 a day if they are confined to ordinary confinement. If the inmate is engaged in voluntary non-court ordered community service, at the discretion of the sheriff, the daily fee may be waived. We do not charge detainees awaiting trial, probation holds, or persons awaiting transport to other institutions.

Currently, the revenues received by the Sheriff from inmate reimbursement comes to something over \$200,000 of the annual departmental budget. That means \$200,000 less that Sheboygan County property tax payers must pay to support the Sheriff Department. The lion's share of the \$200,000 is collected while the inmate is working and is out on the bracelet or Huber. It is much harder to collect after the person is released from jail.

The statute of limitations for collection is currently 12 months. If we are unable to collect against the inmate within the 12 months after release from jail, we are barred from ever collecting from the inmate.

Many inmates are uncollectible for a variety of reasons including but not limited to subsequent long-term incarceration, mental health issues, chronic unemployment, family support obligations, fines and restitution obligations, or bankruptcy. For these persons, extending the statute of limitations will not make a difference. In many instances, however, persons might be most uncollectible within the first 12 months after they are released from jail but become much more collectible later on after they get back on their feet. Unfortunately, the 12-month statute of limitations precludes us from capturing this opportunity unless we commence a collection action within the 12-month period, something we are disinclined to do since it requires that we advance \$94.50 per small claims filing with no certainty that even the costs will be recouped. It should also be noted that inmates are familiar with the fact that they only need to wait us out for 12-months and then they can walk away from the liability.

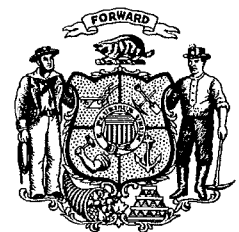
A simple improvement would be to double the statute of limitations from 12 months to 24 months as proposed in Senate Bill 24. We collect about \$3,000 to \$4,000 a year through the TRIP tax intercept program through the Department of Revenue and net another \$2,000 to \$3,000 a year through the judgments we take in small claims court. If the tax intercepts remain viable for an extra 12 months and we sue some more people who are collectable one year out, we estimate that we could bring in at least \$5,000 to \$7,000 more a year.

I am aware that many other corporation counsels and sheriffs throughout the state utilize the statutory authority to collect fees from county jail inmates. If each of the 72 counties could get \$5,000 a year more in revenue as result of this modest statutory change, it would yield over \$350,000. That doesn't seem like a bad day's work on your part if you can make it happen.

For further information, please contact Attorney Carl K. Buesing, Hopp Neumann Humke LLP, 2124 Kohler Memorial Drive, Suite 110, Sheboygan, WI 53081 920-459-3093.



WISCONSIN STATE LEGISLATURE





571 County Road A • PO Box 586 • Green Lake, WI 54941-0586
Ph. 920-294-4000 • Fax. 920-294-3850

March 29, 2013

Representative Joan Ballweg
Room 210 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Assembly Bill 33
Senate Bill 24

Dear Representative Ballweg,

With this letter I would like to take the opportunity to thank you for all of the help and support your office has given not only to our office, but all of the Sheriff's Offices throughout the State of Wisconsin, in sponsoring AB 33 which will extend collection times and clarify the way collections for inmate accounts are handled.

I am in full support of both SB 24 and AB 33. I also support, that through the Committee process, the bills be amended to include some language that would make the time limits for collecting inmate debts through the Wisconsin Department of Revenue Tax Intercept Program the same as collecting the debts through a judgment by the Circuit Court System, which at this time is 20 years.

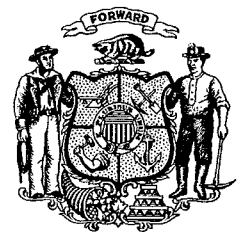
There is Public Hearing before the Committee on Corrections regarding this matter on Thursday, April 4, 2013. Any support you can give this bill through the process and passage would be greatly appreciated.

Sincerely,

Mark A. Podoll
Green Lake County Sheriff

CC: Senator Luther Olsen

Sheriff Mark A. Podoll



Bruce, Cory

From: Bruce, Cory
Sent: Thursday, April 04, 2013 2:32 PM
To: Berg, Jessica; Berkowitz, Margie; 'Braun, Rick'; Bruce, Cory; Domer, Chelsea; Griffiths, Terri; Janssen, Andy; Ludwig, Frederic; Matthews, Meagan; Posca, Dan; Rep.Bies; Rep.Brooks; Rep.Doyle; Rep.Kleefisch; Rep.Krug; Rep.Pasch; Rep.Schraa; Rep.Thiesfeldt; Rep.Zamarripa; Schraa, Michael; Schultz, Jeff; Sivret, Tyler; Thiesfeldt, Jeremy; Thorson, Randy; VanDenHeuvel, Mike; VerVelde, Brandon; Whitmore, Lori
Subject: Follow up from Hearing - Question on seeking reimbursement from Innocent persons

Committee Members,

At today's hearing there was a question about seeking reimbursement for expenses from those who are found innocent. We asked Leg. Council to clarify that for us and I've attached her response below. If anyone has any questions on this or anything else discussed at the hearing, please let me know.

Also, for planning purposes we aren't planning to meet on April 18. The next hearing date would likely be May 2nd.

Thanks,
Cory

From: Bender-Olson, Katherine
Sent: Thursday, April 04, 2013 2:18 PM
To: Bruce, Cory
Subject: RE: follow up from hearing

Cory,

Per your request, I am providing an explanation relating to 2013 Assembly Bill 33 and a question that was asked today at the Assembly Corrections hearing. Please feel free to share this information with the entire committee.

A question was asked about the ability of a county to charge a person for jail expenses if that person is ultimately found to be innocent. The answer is "No" and is explained below.

The relevant statute, s. 302.372, Stats., does not specifically distinguish between those found guilty and those found to be innocent; however, the only expenses for which a county can seek reimbursement are those incurred in relation to the "crime for which a person was *sentenced*." [s. 302.372 (2) (a), Stats.] (emphasis added). If a person is determined to be innocent, the individual will never be convicted and sentenced. If a person is never sentenced, the person cannot have expenses related to the crime for which he was sentenced. Therefore, a county cannot charge an innocent person for jail expenses under s. 302.372, Stats.

As I mentioned at the hearing, the statute allows a county to seek reimbursement for the entire period that the person is confined in jail, "including any period of pretrial detention." [s. 302.372 (2) (a) 1., Stats.] These expenses must still be related to the crime for which the person was *sentenced* to jail, however. A county may charge an offender for time he or she spent in jail prior to conviction, but only if that offender is ultimately found guilty and sentenced.

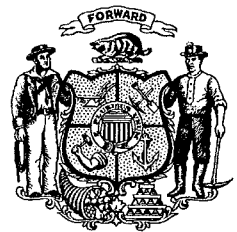
As a final note, AB 33 makes no change to the type of offenders from whom a county may seek reimbursement. A county may charge the same individuals for jail expenses under AB 33 that it may charge under current law. AB 33 simply changes the time period within which a county may file a civil action to seek reimbursement for jail expenses from an individual.

I hope this is a helpful clarification. Please let me know if you have further questions.
Take care,
Katie

Katie Bender-Olson
Wisconsin Legislative Council
(608) 266-2988
katie.bender-olson@legis.wisconsin.gov



WISCONSIN STATE LEGISLATURE





Joe Leibham

STATE SENATOR

April 4, 2013

Dear Chairman Bies and Members of the Assembly Corrections Committee,

Thank you for holding this hearing today and for providing me the opportunity to submit written testimony in support of Assembly Bill (AB) 33.

This proposal, which was suggested by the leadership of Sheboygan County, would make a simple change to current law in regard to how long they are able to seek reimbursement from an individual who has spent time in a county jail.

Presently, counties have 12 months after an inmate is released from jail to commence a civil action in circuit court or enter judgments into the Tax Refund Intercept Program (TRIP). AB 33 extends the 12 month time limit to 24 months. The county maintains their discretion as to which individuals they will pursue.

Individuals who break the law should cover the costs of their jail time - not general taxpayers. AB 33 provides a more reasonable amount of time to allow counties to seek ensure reimbursement for these costs.

In our continuing efforts to promote individual responsibility and ease the burden on taxpayers, I encourage you to support AB 33.

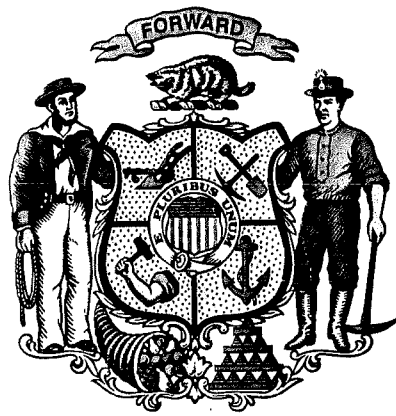
Thank you for considering my testimony today.

Sincerely,

Joe Leibham
State Senator
9th Senate District

"On-Line" Office of the 9th Senate District
www.leibhamsenate.com

State Capitol: P.O. Box 7882 • Madison, WI 53707-7882
(608) 266-2056 • Toll-Free: (888) 295-8750 • Fax: (608) 267-6796 • E-Mail: Sen.Leibham@legis.state.wi.us
9th District: 3618 River Ridge Drive • Sheboygan, WI 53083 • Phone: (920) 457-7367



Bruce, Cory

From: Rep.Ballweg
Sent: Wednesday, April 03, 2013 3:23 PM
To: Bruce, Cory
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

From: Evans, Lori [mailto:levans@co.green-lake.wi.us]
Sent: Monday, March 25, 2013 3:58 PM
To: Williams, Vincent
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Vince,
I'm glad everyone is working on this as it is a serious concern for Sheriff's Offices throughout the State.

We understand that the threshold to commence an action into TRIP is now 12 months with an anticipated extension to 24 months with SB 24 as Alex states below.

We also agree with Mike's response to question 1 that it can go to TRIP instead of having a Judgment in Circuit Court.

Questions 2 and 3 need to be addressed:

It appears that in layman's terms to Mike's response of question 2 is that we must recall the debt back out of TRIP within 12 months of the date the inmate is released because it is no longer legally collectable. I fully agree that the way the laws read now, it could be subject to that interpretation. That is why we are requesting the wording or something similar to it be added to Senate Bill 24 as Mike recommends in his response to question 3.

This is the wording we are proposing:

Within 24 months after the release of a prisoner from jail, the county where the jail is located shall commence a civil action in circuit court to obtain a judgment for the expenses under sub. (2)(a) or commence collection action through the State of Wisconsin Department of Revenue, Tax Intercept Program or be barred. Collection action on debts may be taken for up to seven years from the date of the entry of Judgment of the debt in the Circuit Court or the certification of the Debt through the Wisconsin Department of Revenue. The jailer shall provide any assistance that the county requests related to an action under this subsection.

Can you please see if this can be added, otherwise we will all be in the same boat as before and have to remove our collection attempts after 24 months instead of 12 months. After we go through all of the work of putting them into TRIP it would be nice if they could stay there for at least 7 years instead of just 2 years.

Thanks again for the help!

Lori L. Evans
Administrative Assistant
Green Lake County Sheriff's Office
P.O. Box 586
Green Lake, WI 54941

920-294-4134, Ext. 6
Fax 920-294-3850

From: Williams, Vincent [<mailto:Vincent.Williams@legis.wisconsin.gov>]
Sent: Monday, March 25, 2013 3:01 PM
To: Evans, Lori
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

From: Hansen, Alex
Sent: Monday, March 25, 2013 2:24 PM
To: Williams, Vincent
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Vince,

I had been out of the office last week and found this e-mail from Tuesday. Basically, by extending the court collection commencement time threshold to 24 months, the length of time to enter the judgement into TRIP (under this bill) will also be extended to 24 months. I think all of this info should answer your questions. Let me know if there is anything else we can provide.

We appreciate Rep Ballweg's support of this legislation.

Alex Hansen
Office of Senator Joe Leibham
Phone: (608) 266-2056
Room 15 South, State Capitol
www.leibhamsenate.com

From: Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]
Sent: Tuesday, March 19, 2013 10:51 PM
To: Queensland, Michael
Cc: Hansen, Alex; Sappenfield, Anne
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mike and Alex,

Thanks for your patience while we worked on your inquiry. Both our legal counsel and compliance division reviewed your inquiry and provided answers to your questions below:

1. If a county has not commenced a civil action under s. 302.372 (6), Stats., at what point is it too late to certify debt to the DOR under s. 71.935? It appears that it is 12 months after the release of a prisoner from jail.

Sec. 71.935 does not require a judgment before the debt is referred to DOR for refund setoff, as long as the debtor received notice of the debt and had the opportunity to be heard. However, sec. 302.372 seems to impose a statute of limits of 12 months on collections of the debt without a judgment.

2. If a county has certified debt to the DOR, but does not file a claim under s. 302.372 (6), Stats., is the DOR required to set off any debt owed to the county after the 12 month statute of limitations to file a claim under s. 302.372 (6), Stats. has expired?

The DOR is required to set off any debt referred under sec. 71.935. The referring county has the obligation to only refer debt that is legally collectable. If there is a 12 month statute of limitations on collection of the debt (without commencing a civil action), then the county must recall the debt at 12 months because it is no longer legally collectable. Note that 71.935(3)(a) indicates legal action contesting a setoff shall be brought against the county, not DOR.

3. If the answer to question number 2 is "no," do you have any suggested language that would allow counties to pursue a set off of prisoner related debts beyond the statute of limitations to file a claim for such debt under s. 302.372 (6), Stats. as long as the debt was certified under s. 71.935, Stats. prior to the statute of limitations expiring?

If the county's intent is to be able to collect under 71.935 for a longer period of time without a judgment, they could request a modification to 302.372(6) extending (or making unlimited) the period of time a debt may be collected under 71.935 without commencing a civil action.

Please let me know if you have any further questions. We appreciate the opportunity to provide feedback.

Regards,

Mike Wagner
Legislative Advisor, Dept. of Revenue
(608) 266-7817

From: Queensland, Michael [<mailto:Michael.Queensland@legis.wisconsin.gov>]
Sent: Tuesday, March 19, 2013 9:21 AM
To: Wagner, Michael W - DOR
Cc: Hansen, Alex - LEGIS; Sappenfield, Anne - LEGIS
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Mike,

I spoke to Jim Harnett earlier this morning and he indicated that my previous email to DOR was forwarded on to you. Please contact me at your earliest convenience.

Mike Queensland
266-3810

From: Hansen, Alex
Sent: Monday, March 18, 2013 4:05 PM
To: Queensland, Michael
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mike,

Has Mr. Harnett responded to this e-mail yet, by chance?

Thanks.

Alex Hansen

Office of Senator Joe Leibham

Phone: (608) 266-2056

Room 15 South, State Capitol

www.leibhamsenate.com

From: Queensland, Michael

Sent: Thursday, March 07, 2013 4:03 PM

To: Harnett, James D - DOR

Cc: Hansen, Alex

Subject: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mr. Harnett,

I am a staff attorney for Legislative Council and I am contacting you in regards to 2013 Senate Bill 24. This bill would extend the time period for counties to commence a civil action seeking reimbursement from prisoners for expenses associated with confinement in jail. I should note that I have copied Alex Hansen of Senator Leibham's office on this email. Senator Leibham is the senate author of Senate Bill 24.

Here is a link to 2013 Senate Bill 24:

<https://docs.legis.wisconsin.gov/2013/related/proposals/sb24.pdf>

It has been brought to my attention that some counties pursue reimbursement from prisoners through the Tax Intercept Program, established by s. 71.935, Stats., instead of filing a civil action under s. 302.372 (6), Stats. It is my understanding that this is because unpaid prisoner expenses owed to the county fall under the definition of "debt." [s. 71.935 (1) (a), Stats.] The Tax Intercept Program requires the Department of Revenue (DOR) to set off any certified debt owed to the county against any refund that is owed to the debtor (after any setoff required under s. 71.93, Stats. to satisfy debts to state agencies). [s. 71.935 (2) and (3), Stats.]

My questions center around the time period that the DOR is required to set off money owed to a county under s. 302.372, Stats.

1. If a county has not commenced a civil action under s. 302.372 (6), Stats., at what point is it too late to certify debt to the DOR under s. 71.935? It appears that it is 12 months after the release of a prisoner from jail.

2. If a county has certified debt to the DOR, but does not file a claim under s. 302.372 (6), Stats., is the DOR required to set off any debt owed to the county after the 12 month statute of limitations to file a claim under s. 302.372 (6), Stats. has expired?

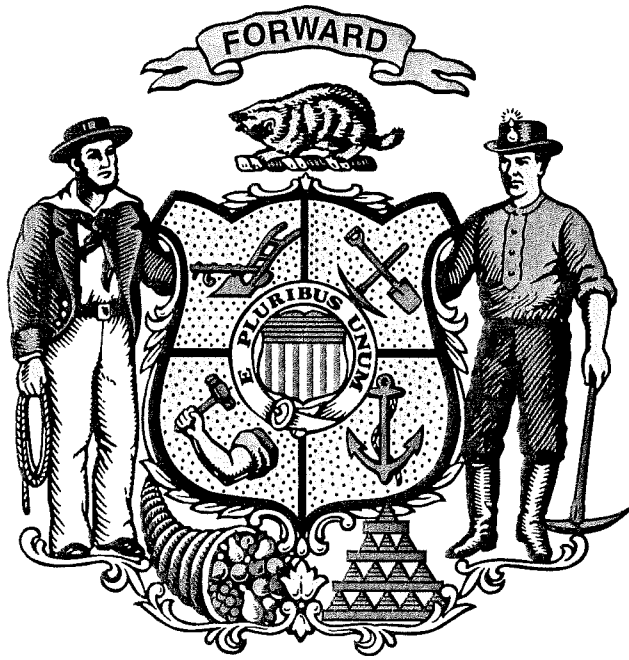
3. If the answer to question number 2 is “no,” do you have any suggested language that would allow counties to pursue a set off of prisoner related debts beyond the statute of limitations to file a claim for such debt under s. 302.372 (6), Stats. as long as the debt was certified under s. 71.935, Stats. prior to the statute of limitations expiring?

I would appreciate your thoughts in regards to these questions and any other issues that you think are pertinent. If you need me to further clarify my questions, please feel free to contact me. Thank you in advance for your assistance.

Sincerely,

Mike Queensland
Staff Attorney
Wisconsin Legislative Council
(608) 266-3810
michael.queensland@legis.wisconsin.gov

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AB 33
folder

Clark, Lauren

From: Hansen, Alex
Sent: Wednesday, April 03, 2013 5:19 PM
To: Clark, Lauren
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

FYI

From: Wagner, Michael W - DOR [mailto:MichaelW.Wagner@revenue.wi.gov]
Sent: Tuesday, March 19, 2013 10:51 PM
To: Queensland, Michael
Cc: Hansen, Alex; Sappenfield, Anne
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mike and Alex,

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Sec. 71.935 does not require a judgment before the debt is referred to DOR for refund setoff, as long as the debtor received notice of the debt and had the opportunity to be heard. However, sec. 302.372 seems to impose a statute of limits of 12 months on collections of the debt without a judgment.

2. If a county has certified debt to the DOR, but does not file a claim under s. 302.372 (6), Stats., is the DOR required to set off any debt owed to the county after the 12 month statute of limitations to file a claim under s. 302.372 (6), Stats. has expired?

The DOR is required to set off any debt referred under sec. 71.935. The referring county has the obligation to only refer debt that is legally collectable. If there is a 12 month statute of limitations on collection of the debt (without commencing a civil action), then the county must recall the debt at 12 months because it is no longer legally collectable. Note that 71.935(3)(a) indicates legal action contesting a setoff shall be brought against the county, not DOR.

3. If the answer to question number 2 is "no," do you have any suggested language that would allow counties to pursue a set off of prisoner related debts beyond the statute of limitations to file a claim for such debt under s. 302.372 (6), Stats. as long as the debt was certified under s. 71.935, Stats. prior to the statute of limitations expiring?

If the county's intent is to be able to collect under 71.935 for a longer period of time without a judgment, they could request a modification to 302.372(6) extending (or making unlimited) the period of time a debt may be collected under 71.935 without commencing a civil action.

Please let me know if you have any further questions. We appreciate the opportunity to provide feedback.

Regards,

Mike Wagner
Legislative Advisor, Dept. of Revenue
(608) 266-7817

From: Queensland, Michael [<mailto:Michael.Queensland@legis.wisconsin.gov>]
Sent: Tuesday, March 19, 2013 9:21 AM
To: Wagner, Michael W - DOR
Cc: Hansen, Alex - LEGIS; Sappenfield, Anne - LEGIS
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Mike,

I spoke to Jim Harnett earlier this morning and he indicated that my previous email to DOR was forwarded on to you. Please contact me at your earliest convenience.

Mike Queensland
266-3810

From: Hansen, Alex
Sent: Monday, March 18, 2013 4:05 PM
To: Queensland, Michael
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mike,

Has Mr. Harnett responded to this e-mail yet, by chance?

Thanks.

Alex Hansen
Office of Senator Joe Leibham
Phone: (608) 266-2056
Room 15 South, State Capitol
www.leibhamsenate.com

From: Queensland, Michael
Sent: Thursday, March 07, 2013 4:03 PM
To: Harnett, James D - DOR
Cc: Hansen, Alex
Subject: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Mr. Harnett,

I am a staff attorney for Legislative Council and I am contacting you in regards to 2013 Senate Bill 24. This bill would extend the time period for counties to commence a civil action seeking reimbursement from prisoners for expenses

associated with confinement in jail. I should note that I have copied Alex Hansen of Senator Leibham's office on this email. Senator Leibham is the senate author of Senate Bill 24.

Here is a link to 2013 Senate Bill 24:

<https://docs.legis.wisconsin.gov/2013/related/proposals/sb24.pdf>

It has been brought to my attention that some counties pursue reimbursement from prisoners through the Tax Intercept Program, established by s. 71.935, Stats., instead of filing a civil action under s. 302.372 (6), Stats. It is my understanding that this is because unpaid prisoner expenses owed to the county fall under the definition of "debt." [s. 71.935 (1) (a), Stats.] The Tax Intercept Program requires the Department of Revenue (DOR) to set off any certified debt owed to the county against any refund that is owed to the debtor (after any setoff required under s. 71.93, Stats. to satisfy debts to state agencies). [s. 71.935 (2) and (3), Stats.]

My questions center around the time period that the DOR is required to set off money owed to a county under s. 302.372, Stats.

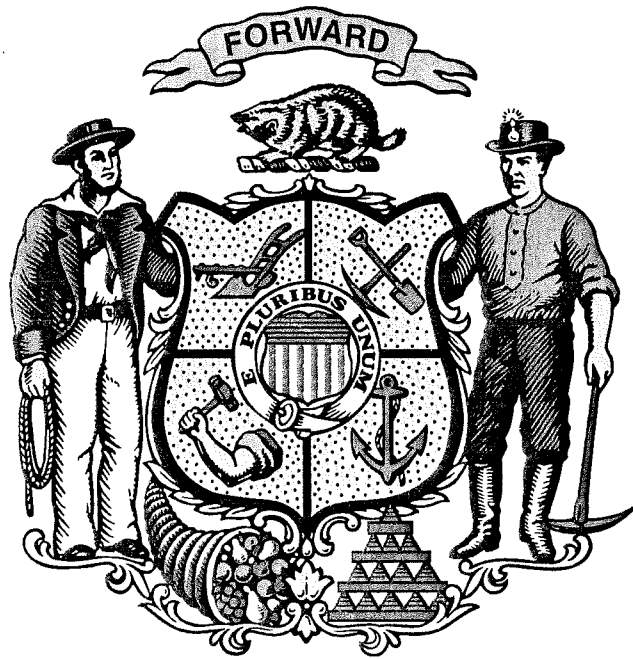
1. If a county has not commenced a civil action under s. 302.372 (6), Stats., at what point is it too late to certify debt to the DOR under s. 71.935? It appears that it is 12 months after the release of a prisoner from jail.
2. If a county has certified debt to the DOR, but does not file a claim under s. 302.372 (6), Stats., is the DOR required to set off any debt owed to the county after the 12 month statute of limitations to file a claim under s. 302.372 (6), Stats. has expired?
3. If the answer to question number 2 is "no," do you have any suggested language that would allow counties to pursue a set off of prisoner related debts beyond the statute of limitations to file a claim for such debt under s. 302.372 (6), Stats. as long as the debt was certified under s. 71.935, Stats. prior to the statute of limitations expiring?

I would appreciate your thoughts in regards to these questions and any other issues that you think are pertinent. If you need me to further clarify my questions, please feel free to contact me. Thank you in advance for your assistance.

Sincerely,

Mike Queensland
Staff Attorney
Wisconsin Legislative Council
(608) 266-3810
michael.queensland@legis.wisconsin.gov

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON CORRECTIONS

FROM: Katie Bender-Olson, Staff Attorney

RE: Substitute Amendment 1 to 2013 Assembly Bill 33, Relating to Reimbursement From Prisoners for County Jail Expenses

DATE: May 29, 2013

This memorandum summarizes Assembly Substitute Amendment 1 ("the substitute amendment") to 2013 Assembly Bill 33 ("the bill"), relating to reimbursement from prisoners for county jail expenses. As provided in the bill, the substitute amendment extends the time period for a county to seek reimbursement from a prisoner for the county's costs in maintaining that prisoner from 12 months to 24 months after the prisoner is released. In addition, ~~the substitute amendment addresses use of the Department of Revenue (DOR) tax intercept program for seeking reimbursement from a prisoner, and provides that either the jailer or the county may choose the method used to seek reimbursement from a prisoner.~~

CURRENT LAW

Current law allows a county to seek reimbursement from a prisoner for certain expenses related to the crime for which the prisoner was sentenced and confined in jail. Specifically, a county may seek reimbursement for the following expenses: (a) actual per-day cost of maintaining the prisoner during the time the prisoner was confined in jail; (b) investigation of the individual's financial status; and (c) any other expenses incurred by the county to collect reimbursement payments. [s. 302.372 (2) (a), Stats.]

Section 302.372, Stats., *Prisoner reimbursement to a county*, provides two methods by which a county may seek reimbursement from a prisoner. First, a prisoner may be charged while in jail through deductions to the prisoner's institutional account. Second, a prisoner may be charged after he or she is released from jail through commencement of a civil action in circuit court. The county must file such a court action within 12 months after the prisoner's release from jail. [s. 302.372 (5) and (6), Stats.]

Current law provides that "the jailer," which includes a sheriff or superintendent of a jail, chooses whether to seek reimbursement from a prisoner under s. 302.372, Stats., or whether to seek reimbursement as otherwise provided in state corrections and prison labor statutes. Current law also provides that "the jailer" may select the particular method under s. 302.372, Stats., for seeking reimbursement from prisoners by choosing to deduct from the prisoner's institutional account, commencing a civil action in circuit court, or using a combination of the two methods. [s. 302.372 (2) (d), Stats.]

ASSEMBLY BILL 33

The bill extends the time period during which a county may seek reimbursement from a prisoner by commencing a civil action in circuit court from 12 months to 24 months after the prisoner's release from jail. The bill substitutes the number "24" for the number "12," but makes no other change to current law.

SUBSTITUTE AMENDMENT 1

The substitute amendment changes current law in the same way as the bill. ~~The amendment extends the time for commencing a civil action from 12 months to 24 months after a prisoner is released from jail.~~ The substitute amendment also provides two additional provisions that are not contained in the bill.

First, ~~the substitute amendment specifies that a county may seek reimbursement from a prisoner through the tax intercept program under s. 71.935, Stats. Section 71.935, *Setoffs for municipalities and counties*, allows a county to certify an individual's debt to DOR and requires the agency to set off the debt against any state tax refund the individual is owed.~~ The substitute amendment provides that a county may seek reimbursement through tax intercept if the county certifies the prisoner's debt to DOR within 24 months after the prisoner is released from jail.

Second, ~~the substitute amendment grants "the county" authority to determine the method for seeking reimbursement, in addition to "the jailer." The substitute amendment provides that the jailer or the county may choose whether to seek reimbursement by deducting from the prisoner's institutional account, by commencing a civil action, by certifying the expenses to DOR as a debt, or by using a combination of methods.~~ The substitute amendment also provides that the jailer or the county may choose whether to seek reimbursement under s. 302.372, Stats., or whether to seek reimbursement as otherwise provided in chs. 301 to 303.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:ksm