

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB24)

Received: **5/10/2013** Received By: **phurley**
Wanted: **As time permits** Same as LRB:
For: **Joseph Leibham (608) 266-2056** By/Representing:
May Contact: Drafter: **phurley**
Subject: **Correctional System - jails** Addl. Drafters:
Local Gov't - counties Extra Copies:

Submit via email: **YES**
Requester's email: **Sen.Leibham@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Allow 24 months for counties to seek reimbursement via civil judgment or tax intercept

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 5/10/2013			_____			
/1		wjackson 5/13/2013	jmurphy 5/13/2013	_____	lparisi 5/13/2013	lparisi 5/13/2013	

FE Sent For:

<END>

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Senate Substitute Amendment (SSA-SB24)

Received: **5/10/2013** Received By: **phurley**
 Wanted: **As time permits** Same as LRB:
 For: **Joseph Leibham (608) 266-2056** By/Representing:
 May Contact: Drafter: **phurley**
 Subject: **Correctional System - jails** Addl. Drafters:
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Submit via email: **YES**
 Requester's email: **Sen.Leibham@legis.wisconsin.gov**
 Carbon copy (CC) to:

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No specific pre topic given

Topic:

Allow 24 months for counties to seek reimbursement via civil judgment or tax intercept

Instructions:

See attached

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/?	phurley 5/10/2013	/IWJ 5/13		_____			
/1		wjackson 5/13/2013	jmurphy 5/13/2013	_____			

FE Sent For:

<END>

Hurley, Peggy

From: Hansen, Alex
Sent: Thursday, May 02, 2013 1:54 PM
To: Hurley, Peggy
Subject: Amdt to LRB 0750

Hi Peggy,

Could we please get an amendment to LRB 0750 that would state the following in yellow below?

"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 under sec. 71.935 or be barred. Collection action on debts may be taken up for up to seven years from the date of the entry of the Judgment of the debt in the Circuit Court or the initial certification of the debt for collection under sec. 71.935. The jailer shall provide any assistance that the county requests related to an action under this subsection."

Thank you.

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

Rep

Is intent
to limit action to certify
debt pursuant to
71.395 to 24
mos?
Collection actions = 7 years?
Does that mean settlements
can only be for 1 year?
and 71.395

302.372 Prisoner reimbursement to a county.

(1) (intro.) DEFINITIONS. In this section:

(a) "Jail" includes a house of correction, Huber facility under s. 303.09 or a work camp under s. 303.10.

(b) "Jailer" includes a sheriff, superintendent or other keeper of a jail.

(2) REIMBURSEMENT OF EXPENSES; COUNTY OPTION.

(a) (intro.) Except as provided in pars. (c) and (d), a county may seek reimbursement for any expenses incurred by the county in relation to the crime for which a person was sentenced to a county jail, or for which the person was placed on probation and confined in jail, as follows:

1. From each person who is or was a prisoner, not more than the actual per-day cost of maintaining that prisoner, as set by the county board by ordinance, for the entire period of time that the person is or was confined in the jail, including any period of pretrial detention.

2. To investigate the financial status of the person.

3. Any other expenses incurred by the county in order to collect payments under this section.

(b) Before seeking any reimbursement under this section, the county shall provide a form to be used for determining the financial status of prisoners. The form shall provide for obtaining the social security number of the prisoner, the age and marital status of a prisoner, the number and ages of children of a prisoner, the number and ages of other dependents of a prisoner, the income of a prisoner, type and value of real estate owned by a prisoner, type and value of personal property owned by a prisoner, the prisoner's cash and financial institution accounts, type and value of the prisoner's investments, pensions and annuities and any other personalty of significant cash value owned by a prisoner. The county shall use the form whenever investigating the financial status of prisoners. The information on a completed form is confidential and not open to public inspection or copying under s. 19.35 (1), except that the county shall provide the name and address of an individual, the name and address of the individual's employer and financial information related to the individual from a form completed under this paragraph in response to a request for information under s. 49.22 (2m) made by the department of children and families or a county child support agency under s. 59.53 (5).

(c) This section applies to expenses incurred on or after May 9, 1996.

(d) The jailer shall choose, for each prisoner, whether to seek reimbursement under this section or as otherwise provided in chs. 301 to 303, but may not collect for the same expenses twice. The jailer may choose to seek reimbursement for the expenses under sub. (2) (a) using the method under sub. (5), the method under sub. (6) or a combination of both methods, but may not seek reimbursement for the same expenses twice.

(3) LIST OF PRISONERS; INFORMATION; REPORTS. Upon request of the district attorney or the corporation counsel for the county, the jailer shall provide the district attorney or corporation counsel with a list containing the name of each sentenced prisoner or prisoner confined as a condition of probation, the term of sentence or confinement, and the date of admission, together with information regarding the financial

status of each prisoner to enable the county to obtain reimbursement under this section.

(4) PRISONER COOPERATION. A prisoner in a jail shall cooperate with the county in seeking reimbursement under this section for expenses incurred by the county for that prisoner. A prisoner who intentionally refuses to cooperate under this subsection may not earn good time credit under s. 302.43 or diminution of sentence under s. 303.19 (3). If the prisoner is confined as a condition of probation, refusal to cooperate is a ground for revocation of probation.

(5) CHARGE TO OBTAIN REIMBURSEMENT. The jailer may charge a prisoner for the expenses under sub. (2) (a) while he or she is a prisoner. If the jailer maintains an institutional account for a prisoner's use for payment for items from canteen, vending or similar services, the jailer may make deductions from the account to pay for the expenses under sub. (2) (a). Any money collected under this subsection shall be deposited in the county treasury.

(6) ACTION TO OBTAIN REIMBURSEMENT.

(a) Within 12 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} be barred. The jailer shall provide any assistance that the county requests related to an action under this subsection.

(b) An action commenced under this subsection shall be commenced in the county where the jail is located or in the county where the defendant resides.

(c) The complaint in an action commenced under this subsection shall include the date and place of the sentence, the length of time of the sentence, the length of time actually served in the jail and the amount of expenses incurred by the county under sub. (2) (a).

(d) Before entering a judgment for the county, the court shall consider any legal obligations of the defendant for support or maintenance under ch. 767 and any moral obligation of the defendant to support dependents and may reduce the amount of the judgment entered for the county based on those obligations.

(e) Any money obtained as the result of an action commenced under this subsection shall be deposited in the county treasury.

History: 1995 a. 281; 1997 a. 191; 1999 a. 32; 2007 a. 20.

Hurley, Peggy

From: Hansen, Alex
Sent: Friday, May 03, 2013 2:16 PM
To: Hurley, Peggy
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Next week is fine. Thanks!

From: Hurley, Peggy
Sent: Friday, May 03, 2013 2:14 PM
To: Hansen, Alex
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Thanks, Alex. I'll read through it and let you know what I come up with. Will next week be okay, or do you need something by the end of the day today?

From: Hansen, Alex
Sent: Friday, May 03, 2013 2:13 PM
To: Hurley, Peggy
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Peggy,

This is the chain of correspondence between leg council and DOR in which we came up with the language. Also, I have attached a letter from Rep. Ballweg's constituents in Green Lake County.

Thank you for your assistance with this.

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

From: Williams, Vincent
Sent: Thursday, March 28, 2013 11:23 AM
To: Wagner, Michael W - DOR; Queensland, Michael; Sappenfield, Anne; Hansen, Alex
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hello,

I have been corresponding with one of Rep. Ballweg's constituents regarding SB 24 & AB 33. She said that the County Sheriffs would like some additional time to collect these debts and she referred to the following point from Mr. Wagner's letter:

"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."

If you look at the highlighted text below, can you tell me whether that language would address their concern?

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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2013 SENATE BILL 24

February 15, 2013 – Introduced by Senators LEIBHAM, KEDZIE, GUDEX and SCHULTZ, cosponsored by Representatives ENDSLEY, KESTELL, KNODL, T. LARSON, A. OTT, BIES, NASS, STONE, BALLWEG, KLEEFISCH, LEMAHIEU, STROEBEL, SCHRAA and MARKLEIN. Referred to Committee on Judiciary and Labor.

1 **AN ACT to amend** 302.372 (6) (a) of the statutes; **relating to:** extending the time
2 period for counties to seek reimbursement from prisoners for expenses
3 associated with confinement in jail.

Analysis by the Legislative Reference Bureau

Under current law, a county may seek, from a person who is sentenced to a county jail or placed on probation and confined in jail, reimbursement for certain expenses it incurs in relation to the crime for which the person was sentenced to or confined in jail. These expenses include the daily cost of maintaining the person in jail, costs incurred to investigate the person's financial status, and other moneys the county spends in order to collect payment of those expenses from the person. Current law allows the county 12 months after the person is released from jail to commence a civil action in circuit court for reimbursement of the expenses.

This law extends, from 12 months to 24 months, the time in which a county may commence a civil action for reimbursement of its expenses from a person who is released from jail.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Hurley, Peggy

From: Williams, Vincent
Sent: Thursday, May 09, 2013 4:04 PM
To: Hurley, Peggy; Hansen, Alex
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

I trust your judgment Peggy. Let's go with your suggested language:

So, I propose amendment SB 24 to insert, on p. 2, line 4, after "obtain a judgment for" the words ", or shall certify pursuant to s. 71.395 (2), that the prisoner owes a debt to the county equal to,"

From: Hurley, Peggy
Sent: Thursday, May 09, 2013 3:53 PM
To: Williams, Vincent; Hansen, Alex
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Vince and Alex,

My suggested language hinges on whether my reading of DOR's opinion is correct.

My reading is that the only reason DOR cannot intercept after 12 months is because, absent a case being filed (not a judgment, but a case being filed) within 12 months, claims for reimbursement are barred. (Frankly, I think intercepting for those 12 months absent a case being filed is a bit on thin ice, but that's beside the point now, I suppose).

If the statute is changed to say that a county can get reimbursed if it files a case OR if it certifies the debt to DOR within 12 months (24 under the bill), then I would suggest NOT putting in any collection language, but only adding that another way to collect the reimbursement is via certification to DOR. Collection on a certified debt (filed by the deadline) would then be identical to collection on a debt that is a result of a court case being filed.

If we were to also add in a 7-year limit on interceptions, that would leave the counties in a worse position, in my opinion, than they would be in without the language. That's because there isn't, as far as I can tell, a 7-year limit on interceptions that are based on a county filing a case in circuit court to collect reimbursement. Adding that language would, in my opinion, be more limiting to counties than leaving it out.

Of course, if my interpretation of the DOR's position is incorrect, then I'd have to take a fresh look at the suggested language. I certainly agree that a clarifying message from DOR would help. If you think it would be helpful, I am always available if you want to meet or call and talk this over, too.

Peggy

From: Williams, Vincent
Sent: Thursday, May 09, 2013 3:37 PM
To: Hansen, Alex; Hurley, Peggy
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Peggy,

Can you respond to our constituent's comments below?

Alex,

Could we get a letter from DOR?

Thanks,

Vince

From: Evans, Lori [<mailto:levans@co.green-lake.wi.us>]

Sent: Thursday, May 09, 2013 9:55 AM

To: Williams, Vincent

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

Vince,

Peggy did a good job of analyzing the problem, she has the problem down pat. But with her recommended wording, I don't know that it will be interpreted any differently by TRIP, except that it clarifies we can use TRIP instead of getting a Judgment and that the time for certification increased from 12 months to 24 months.

I would suggest that someone get something in writing from TRIP that their understanding of this amendment would be that the debt would not have to be taken out of TRIP after 24 months, collection action on it could be taken for 20 years (that's the right amount of collection time now correct?). That way when Corp. Counsels need clarification, that letter would be available.

Better yet, I still would highly recommend adding a line to the bill such as "Collection action on debts may be taken for up to X years from the date of entry of the Judgment in Circuit Court or from the date of initial certification of debt through DOR." That makes it pretty black and white with no interpretation needed. That will end all questions about how you can collect and how long you can collect.

Thank you again for all of the help.

Please keep me posted on the progress of this. Our meeting is May 22 here in Green Lake.

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: Wednesday, May 08, 2013 5:21 PM

To: Evans, Lori

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

Lori,

Do you want to look at the second email below, and see if the suggested amendment will result in your desired change?

Thanks,

Vince

From: Hansen, Alex
Sent: Wednesday, May 08, 2013 4:52 PM
To: Hurley, Peggy; Williams, Vincent
Cc: Clark, Lauren
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Peggy,

Thank you for your attention to this amendment.

Vince- can you verify Peggy's analysis in points 1-4? It seems to perfectly encapsulate how I am interpreting the Green Lake County Sheriff Department's request.

Also, I have highlighted her suggested amendment. Please offer your thoughts.

Thank you.

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

From: Hurley, Peggy
Sent: Monday, May 06, 2013 1:52 PM
To: Hansen, Alex
Subject: RE: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hi Alex,

Looking more closely, I think that some of the recommended language is necessary to accomplish the intent, but not all of it. Here's my analysis of the issues presented:

1. Under current law, after a prisoner leaves jail, a county has 12 months (24 months under SB24) under s. 302.372 (6) (a) to file an action to recoup costs from the prisoner. If the county has not filed a suit within those 12 months, the county is barred from seeking to recoup those costs.
2. Some counties have not been filing actions pursuant to s. 302.372 in order to recoup those costs. Instead, they have been certifying with DOR the amount owed by the prisoner. The DOR has been treating these debts as certified and valid because, even though the debt was not established via a judgment, the prisoner has the opportunity to object to a setoff.
3. Given that the DOR can only act to setoff valid, collectible debts owed to a county, it is DOR's position that s. 302.372 (6) bars a county from recouping jail costs after 12 months if the county did not file a civil action to recoup those costs. Therefore, even though a judgment is not necessary for a setoff during the 12 months after a prisoner leaves jail, there is no collectible debt AFTER the 12 months have run unless the county has filed a suit, and DOR setoff/collection efforts must cease at that time.
4. Counties want to be able to continue to certify the debt as an alternative to filing an action against a prisoner, but they do not want collection/setoff to cease after 12 months (or 24 months under the bill) if they do not file an action.

In my opinion, to accomplish this intent it is necessary to amend s. 302.372 to include certification of the debt pursuant to s. 71.395 in s. 302.372 (6). This will ensure that so long as the county either files an action or certifies the debt to DOR within those 24 months, a valid, certifiable and enforceable debts exists for DOR purposes.

However, once s. 302.372 is amended to state that a county has 24 months to either file suit OR certify the debt under s. 71.395, I don't think it's necessary to mention a limit on collecting the debt. The only reason, in my opinion, that DOR placed a 12 month limit on setoffs is because after 12 months, s. 302.372 (6) barred recovery *absent a suit being filed*. If the suit HAD been filed, s. 71.395 doesn't limit how long DOR can collect – presumably, it collects until the debt is paid.

By amending s. 302.372 (6) to say that, so long as the county either files suit *or* certifies within 24 months after the prisoner leaves, DOR will be free to setoff because the debt is a valid, certifiable, collectible debt.

So, I propose amendment SB 24 to insert, on p. 2, line 4, after “obtain a judgment for” the words “, or shall certify pursuant to s. 71.395 (2), that the prisoner owes a debt to the county equal to,”

I believe that this will eliminate the problem of a limited collection period by DOR absent a civil action against the prisoner. However, it will impose a 24 month deadline on counties to certify the debt with DOR.

Please let me know your thoughts.

Peggy Hurley
Legislative Reference Bureau
608 266 8906

From: Hansen, Alex
Sent: Friday, May 03, 2013 2:13 PM
To: Hurley, Peggy
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Peggy,

This is the chain of correspondence between leg council and DOR in which we came up with the language. Also, I have attached a letter from Rep. Ballweg's constituents in Green Lake County.

Thank you for your assistance with this.

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

From: Williams, Vincent
Sent: Thursday, March 28, 2013 11:23 AM
To: Wagner, Michael W - DOR; Queensland, Michael; Sappenfield, Anne; Hansen, Alex
Subject: FW: Use of the Tax Intercept Program by Counties to Recover Expenses from Prisoners

Hello,

I have been corresponding with one of Rep. Ballweg's constituents regarding SB 24 & AB 33. She said that the County Sheriffs would like some additional time to collect these debts and she referred to the following point from Mr. Wagner's letter:

"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."

If you look at the highlighted text below, can you tell me whether that language would address their concern?

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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WJ

SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL 24

51
5-14
D-note

1 AN ACT ^{Gen Cat} ...; relating to: extending the time ^{XXXX} ~~period~~ for counties to seek ^{STEF}
2 reimbursement from prisoners for expenses associated with confinement in
3 jail.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 302.372 (2) (d) of the statutes is amended to read:

5 302.372 (2) (d) The jailer or the county shall choose, for each prisoner, whether
6 to seek reimbursement under this section or as otherwise provided in chs. 301 to 303,
7 but may not collect for the same expenses twice. The jailer ^{or the county} may choose to seek
8 reimbursement for the expenses under sub. (2) (a) using the method under sub. (5),
9 ^{using} the method under sub. (6), ^{or} certifying the expenses as a debt pursuant to ⁵⁰ 71.935 (2)
10 [^] under sub. (7), [^] or a combination of both methods, but may not seek reimbursement
11 for the same expenses twice.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0053/?dn

PJH:f:...

Wlj

Date

Senator Leibham

Please review this substitute amendment to ensure that it is consistent with your intent. This substitute amendment makes it clear that a county may obtain reimbursement for expenses incurred for housing inmates in three ways: by charging an inmate while he or she is in jail, by filing a civil action in court against the former inmate, or, by certifying as a debt the amount owed by the prisoner for tax intercept purposes.

The substitute amendment changes, from 12 months to 24 months, the time period in which a county must file a civil action against a former inmate for these charges and imposes the same 24 month time limit for a county to certify the debt for tax intercept purposes.

As we discussed, with the change to authorize either a civil action or a debt certification to get reimbursed, there is no need to amend the law regarding how long these debts can be collected. The same time limits for collection that now operate for any other certified debt will apply here.

Please let me know if you have any questions or concerns about this substitute amendment.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0053/1dn
PJH:wlj:jm

May 13, 2013

Senator Leibham:

Please review this substitute amendment to ensure that it is consistent with your intent. This substitute amendment makes it clear that a county may obtain reimbursement for expenses incurred for housing inmates in three ways: by charging an inmate while he or she is in jail, by filing a civil action in court against the former inmate, or by certifying as a debt the amount owed by the prisoner for tax intercept purposes.

The substitute amendment changes, from 12 months to 24 months, the time period in which a county must file a civil action against a former inmate for these charges and imposes the same 24-month time limit for a county to certify the debt for tax intercept purposes.

As we discussed, with the change to authorize either a civil action or a debt certification to get reimbursed, there is no need to amend the law regarding how long these debts can be collected. The same time limits for collection that now operate for any other certified debt will apply here.

Please let me know if you have any questions or concerns about this substitute amendment.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov