

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1365 (Chair, Judiciary Committee)(By Request - Departmental
 - Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Department of Juvenile Services - Restitution - Referral to the Central Collection Unit

This departmental bill authorizes the Department of Juvenile Services (DJS) to refer all restitution accounts to the Central Collection Unit (CCU) of the Department of Budget and Management (DBM) for collection. CCU is provided authorization to make all cited collections and to certify arrearages, as specified.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Assuming an increase in actual collections of DJS restitution accounts covered under the bill, special fund revenues increase by \$16,800 in FY 2013. Future year revenues increase by 2% a year. Special fund expenditures are not directly affected. The proposed FY 2013 State budget accounts for these increases in revenues.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$16,800	\$17,100	\$17,500	\$17,800	\$18,200
Expenditure	0	0	0	0	0
Net Effect	\$16,800	\$17,100	\$17,500	\$17,800	\$18,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The Central Collection Unit (CCU) collects all delinquent debts, claims, and accounts against the State except for taxes, child support, unemployment insurance contributions and overpayments, and overdue court orders for restitution. CCU charges a collection fee of 2% of the obligation.

DPP and DJS may refer an overdue restitution account for collection to CCU and, if probation or other supervision is terminated and restitution is still owed, must refer the overdue restitution account for collection to CCU.

CCU may collect overdue restitution and certify a restitution obligor who is in arrears on payments exceeding \$30 to the Comptroller for income tax refund interception and the State Lottery Agency for State lottery prize interception. CCU may not compromise and settle a judgment of restitution unless DPP or DJS obtains the consent of the victim or the court orders otherwise because a victim cannot be located. DPP or DJS must contact the victim to determine whether the victim consents to compromise and settle a judgment of restitution.

If complete restitution and interest have been paid or a judgment of restitution has been compromised and settled, DPP, DJS, or CCU must immediately notify the court that issued the judgment (in a specified manner) that the judgment has been satisfied and the last known employer of a restitution obligor to terminate a earnings withholding order issued under these provisions.

Restitution is overdue if the restitution or a restitution payment is not paid by the date that the court orders or if no date is ordered, by the later of: (1) the date DPP or DJS directs the restitution obligor to make payment; or (2) 30 days after the court enters a judgment of restitution. If restitution is overdue, the amount of the arrearage is the amount of restitution ordered and any legally allowed interest, less any amount previously paid or received under the judgment of restitution.

A certification of arrearage on restitution payments that CCU sends to the State Lottery Agency must contain: (1) the full name of the restitution obligor and any other name known to be used by the restitution obligor; (2) the obligor's Social Security number; and (3) the amount of the arrearage.

If a restitution obligor who is overdue in restitution payments wins a lottery prize to be paid by check directly by the State Lottery Agency, the agency must send a notice to the obligor that: (1) the restitution obligor has won a prize to be paid by the State Lottery Agency; (2) the State Lottery Agency has received notice from CCU of the obligor's restitution arrearage in the specified amount; (3) State law requires the withholding of the

prize and to pay it towards the obligor's restitution arrearage; (4) the obligor may appeal to CCU if the existence or the amount of the arrearage is disputed; and (5) if an appeal is not filed within 15 days after the date of the notice, the State Lottery Agency will transfer the prize or the part of the prize that equals the restitution arrearage to CCU.

The State Lottery Agency must withhold all or part of the prize up to the amount of the arrearage until CCU notifies the State Lottery Agency as to whom the withheld prize money is to be paid.

The State Lottery Agency is required to honor lottery prize interception requests in the following order:

- child support under specified provisions of the Family Law Article;
- overdue restitution as cited above under specified provisions of the Criminal Procedure Article; and
- any other delinquent debts, claims, and accounts against the State except for taxes or unemployment insurance contributions and overpayments under specified provisions of the State Finance and Procurement Article.

If the restitution obligor appeals the proposed transfer, after a hearing CCU must notify the State Lottery Agency that the withheld prize be paid to the obligor, transferred to CCU, or in specified amounts, partly paid to the obligor and partly transferred to CCU.

Legislation adopted in 1991 mandated the imposition of monthly supervision fees for offenders supervised by DPP. Until 2005, the monthly fees of \$40 for parolees and mandatory supervision releases and \$25 for probationers had remained unchanged since their inception. Chapter 444 of 2005 (Budget Reconciliation and Financing Act of 2005) increased the supervision fee charged to probationers to \$40 per month for five years, making the monthly fee consistent for all supervisees. The supervision fees collected are paid into the general fund. Probationers under supervision before 2005, continued to pay the \$25 monthly fee. However, Chapter 397 of 2011 (Budget Reconciliation and Financing Act of 2011) increased the supervision fee for probationers from \$25 to \$50 per month.

Background: DPP and CCU are currently developing a memorandum of understanding (MOU) to have CCU assume responsibility for collecting all restitution, fines, and fees that offenders are ordered to pay either by the courts or by statute. The anticipation is that all current accounts will be transferred to CCU by April 2012, with the exception of accounts involving current restitution or monthly supervision fees. As of September 2011, approximately 10.4% of DPP cases had restitution requirements. This bill codifies some provisions of the MOU relating to DJS and is necessary to allow CCU to collect

restitution. If enacted, CCU will assume restitution collection for additional DJS accounts by July 2012.

DPP assesses a 2% fee for restitution collection, as required by statute, to help offset the cost of collection. If an offender's account is delinquent at the time of case closing, the account is referred to CCU for collection, and CCU assesses a 17% fee. With the transfer of all current and past due restitution accounts, the 17% fee for delinquent accounts at the time of case closing will remain. CCU will also continue to assess the 2% fee for restitution collection.

The expectation is that collections will increase significantly under CCU, in part because CCU already has a variety of collections tools in place. This includes the Tax Intercept Program, which garnishes wages and/or tax returns to ensure that restitution is paid.

The proposed fiscal 2013 State budget transfers three vacant positions from DPP to CCU to assume responsibility for collection for all offender-owed restitution, fines, and fees. The current DPP collection rate on all related debts is at 9%, which is well below the current CCU collection rate of 42.5% collections. DBM anticipates an increase of about \$16,800 in special funds to the agency's budget totals as a result of current DJS restitution collections previously done by DPP being transferred to CCU.

In fiscal 2011, the State Lottery Agency intercepted and transferred about \$1.6 million in prize winnings for criminal restitution interceptions as well as for other State debts or claims owed by obligors.

State Fiscal Effect: DBM advises that special fund revenues increase by \$16,800 in fiscal 2013 from the 2% collection fee on current DJS restitution accounts. The anticipated annual growth rate for these collections is 2%. All of the new special fund revenue will be used to offset collection costs for CCU. All of the restitution collected goes to victims. The proposed fiscal 2013 State budget accounts for these increases in revenues (see Additional Comments below).

Additional Comments: The proposed fiscal 2013 State budget anticipates that all of the nearly 78,000 current accounts of DPP with \$183.8 million in receivables will be added to the CCU book of business. However, that was based on an assumption that this bill would specifically transfer statutory responsibilities for the collection of all adult and juvenile restitution, as well as all fines, court costs, and fees – which includes current monthly supervision fee accounts. Transferring all collection responsibilities to CCU was expected to increase State collections on all accounts by \$3.5 million in fiscal 2013 and grow by 6% annually. The proposed fiscal 2013 State budget provides for \$748,000 in CCU special fund expenditures for operations, but is predicated on \$868,200 in new

special fund revenues to cover those expenditures derived from the broader application of new CCU collection efforts.

DBM and DPSCS advise that, while the current MOU administratively transfers collection responsibilities to CCU for other fines, fees, and costs now handled by DPP, new statutory authority is necessary for CCU to assume the responsibilities for current adult and juvenile restitution accounts and monthly supervision fees. This bill provides this authority to CCU for only the DJS restitution accounts.

In addition, because of a September 2010 audit findings by the Office of Legislative Audits (OLA), DJS has been submitting quarterly reports to OLA that provide progress updates on a variety of outstanding items. Included was a finding that access to the automated restitution accounts receivable system was not adequately controlled and adequate internal controls and record keeping procedures had not been established. Access has been restricted to two employees; however, necessary information technology adjustments are proving difficult. This bill is expected resolve this issue because collection responsibilities are transferred to CCU.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services, Department of Juvenile Services, Department of Budget and Management, State Lottery Agency, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - March 19, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure - Restitution and Other Payments – Referral to the Central Collection Unit

BILL NUMBER: HB 1365

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.