

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1568
Judiciary III Committee Substitute Adopted 7/5/90

Short Title: Inmates Pay for Incarceration.

(Public)

Sponsors:

Referred to:

June 6, 1990

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PRISONERS INCARCERATED IN THE STATE PRISON SYSTEM SHALL BE REQUIRED TO REIMBURSE THE STATE FOR THE COST OF THEIR INCARCERATION.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 148 of the General Statutes is amended by adding two new sections to read:

"§ 148-2.1. Reimbursement by prisoners.

(a) Adult prisoners in the custody of the Department of Correction are required to reimburse the State for the cost of their incarceration. For purposes of this Article, any inmate age 18 or older shall be considered an adult prisoner. This reimbursement shall be collected by the Department of Correction and shall be in the amount of ten dollars (\$10.00) per day. Prisoners who are required to reimburse the State under this section and who are granted work-release privileges may be required to make this reimbursement in addition to the amounts deducted from their work-release earnings under G.S. 148-33.1(f). The Secretary of Correction, in regulations adopted pursuant to G.S. 148-11, may exempt a portion of prisoners' trust funds from the reimbursement obligation established by this section.

(b) If a prisoner has not made the reimbursement required by subsection (a) at the time of his release or the termination of his parole, the Department of Correction shall calculate the amount of reimbursement that is outstanding and give a verified statement of that amount to the prisoner, and any reimbursement that remains unpaid on that date shall be a 'debt' within the meaning of G.S. 105A-2(3), and may be set off against any

1 North Carolina income tax refund due the prisoner, as provided in Chapter 105A of the
2 General Statutes. The Department of Revenue shall pursue collection of the debt
3 through setoff for at least 10 years from the time of the prisoner's release or termination
4 of parole, or until the debt is satisfied.

5 **"§ 148-2.2. Lien on property for unpaid balance of cost of incarceration.**

6 (a) There is created a general lien on both the real and personal property of any
7 person who has been in the custody of the Department of Correction and owes any
8 reimbursement under G.S. 148-2.1 to the extent of the total amount of the unpaid
9 balance shown on the verified statement of account for charges from and after October
10 1, 1990.

11 (b) Such general lien for the unpaid balance of reimbursement for the cost of
12 incarceration shall apply to the property, both real and personal, of the prisoner or
13 former prisoner whether held by him or by his trustee or guardian.

14 (c) At the time deemed suitable in the discretion of the Department of
15 Correction, there may be filed a notice of lien and verified statement of account
16 containing the following:

17 (1) The name of the prisoner or former prisoner;

18 (2) The last known address of the prisoner or former prisoner;

19 (3) The social security number of the prisoner or former prisoner;

20 (4) The inclusive dates of incarceration; and

21 (5) The amount of the unpaid balance.

22 The notice of lien and verified statement of account may be filed in the office of
23 clerk of superior court in the county of residence of the prisoner or former prisoner and
24 in each county or counties where real property in which the prisoner or former prisoner
25 owns an interest is found. The notice of lien and statement of account shall be docketed
26 and indexed by the clerk.

27 (d) From the time of docketing, the notice of lien and statement of account shall
28 be and constitute due notice of a lien against the real property lying in such county and
29 then owned or thereafter acquired by the prisoner or former prisoner, to the extent of the
30 total amount of the unpaid balance of the cost of the person's incarceration as evidenced
31 by the verified statement of account for charges from and after October 1, 1990.

32 (e) The lien thus established shall take priority over all other liens subsequently
33 acquired and shall continue from the date of filing until satisfied. No action to enforce
34 such lien may be brought more than 10 years from the last date of filing of such lien nor
35 more than three years after the death of any such prisoner or former prisoner. The
36 failure to bring such action or the failure of the Department of Correction to file said
37 notice of lien and statement of account shall not be a complete bar against recovery but
38 shall only extinguish the lien and priority established by it.

39 (f) Upon receipt of the full unpaid balance by the Department of Correction or
40 upon agreement of compromise of such unpaid balance, the Department of Correction
41 shall notify the clerks of superior court in the counties where the lien has been docketed
42 that the unpaid balance has been paid, and the clerks shall cancel the lien of record.

1 (g) Upon the death of the prisoner or former prisoner, any remaining proceeds of
2 a judgment or settlement under this subsection in the hands of the deceased shall
3 become a general asset of the estate and subject to any lien of the State."

4 Sec. 2. G.S. 15A-1374 is amended by adding two new subsections to read:

5 "(d) The Commission may also require as a condition of parole that the parolee
6 make reimbursement payments to the State for the cost of his incarceration as required
7 under G.S 148-2.1 and may set up a payment schedule for the reimbursement.

8 "(e) Each payment made by a parolee to satisfy any condition of his parole shall
9 be credited against the amounts required to satisfy all such conditions, to the extent that
10 they have accrued and remain unpaid as of the date of the payment, and shall be
11 disbursed, in the following order of priority:

12 (1) The parole supervision fee under subsection (c) of this section;

13 (2) Family support payments required under subsection (b)(4) of this
14 section;

15 (3) Restitution payments required under subdivision (11a) of subsection
16 (b) of this section and G.S. 148-57.1;

17 (4) Reimbursement payments required under subsection (d) of this
18 section; and

19 (5) All payments required to satisfy any other conditions of parole or
20 otherwise, pro rata."

21 Sec. 3. G.S. 15A-1380.2(d) reads as rewritten:

22 "(d) The provisions of G.S. 15A-1373, 15A-1375, and 15A-1376 regarding incidents
23 of parole, commencement of parole, and arrest and hearing on parole violation, shall be
24 applicable to reentry parole of felons, except that G.S. 15A-1373(d) regarding the effect
25 of violation shall not apply. The only conditions of reentry parole shall be those
26 provided by G.S. 15A-1374(b)(6), (7), (8), (9), and (10) and G.S. ~~15A-1374(e)~~ 15A-
27 1374(c) and (d). However, if it appears to the Parole Commission that the prisoner's
28 return to the community poses a threat or danger to the health or safety of the public or
29 the prisoner, the Parole Commission may require as additional conditions of reentry
30 parole those provided by G.S. 15A-1374(b)(2) and (12). Provided, that where the
31 Commission feels that supervision is appropriate for a person eligible for parole under
32 the terms of G.S. 148-4.1 of the North Carolina General Statutes, the conditions
33 applicable to such early parole shall be those provided for by G.S. 15A-1374(b) as
34 specified by the Parole Commission."

35 Sec. 4. G.S. 105A-2 reads as rewritten:

36 "**§ 105A-2. Definitions.**

37 As used in this Article:

38 (1) 'Claimant agency' means and includes:

39 a. The State Education Assistance Authority as enabled by Article
40 23 of Chapter 116 of the General Statutes;

41 b. The North Carolina Department of Human Resources when in
42 the exercise of its authority to collect health profession student
43 loans made pursuant to G.S. 131-121;

- 1 c. The North Carolina Department of Human Resources when in
2 the performance of its duties under the Medical Assistance
3 Program enabled by Chapter 108A, Article 2, Part 6, and any
4 county operating the same Program at the local level, when and
5 only to the extent such a county is in the performance of
6 Medical Assistance Program collection functions;
- 7 d. The North Carolina Department of Human Resources when in
8 the performance of its duties, under the Child Support
9 Enforcement Program as enabled by Chapter 110, Article 9 and
10 Title IV, Part D of the Social Security Act to obtain
11 indemnification for past paid public assistance or to collect
12 child support arrearages owed to an individual receiving
13 program services and any county operating the program at the
14 local level, when and only to the extent that the county is
15 engaged in the performance of those same duties;
- 16 e. The University of North Carolina, including its constituent
17 institutions as specified by G.S. 116-2(4);
- 18 f. The University of North Carolina Hospitals at Chapel
19 Hill in the conduct of its financial affairs and operations
20 pursuant to G.S. 116-37;
- 21 g. The Board of Governors of the University of North Carolina
22 and the State Board of Education through the College
23 Scholarship Loan Committee when in the performance of its
24 duties of administering the Scholarship Loan Fund for
25 Prospective College Teachers enabled by Chapter 116, Article
26 5;
- 27 h. The Office of the North Carolina Attorney General on behalf of
28 any State agency when the claim has been reduced to a
29 judgment;
- 30 i. The State Board of Community Colleges through community
31 colleges as enabled by Chapter 115D in the conduct of their
32 financial affairs and operations;
- 33 j. State facilities as listed in G.S. 122C-181(a), School for the
34 Deaf at Morganton, North Carolina Sanatorium at McCain,
35 Western Carolina Sanatorium at Black Mountain, Eastern North
36 Carolina Sanatorium at Wilson, and Gravelly Sanatorium at
37 Chapel Hill under Chapter 143, Article 7; Governor Morehead
38 School under Chapter 115, Article 40; Central North Carolina
39 School for the Deaf under Chapter 115, Article 41; Wright
40 School for Treatment and Education of Emotionally Disturbed
41 Children under Chapter 122C; and these same institutions by
42 any other names by which they may be known in the future;
- 43 k. The North Carolina Department of Revenue;
- 44 l. The Administrative Office of the Courts;

- 1 m. The Division of Forest Resources of the Department of
2 Environment, Health, and Natural Resources;
- 3 n. The Administrator of the Teachers' and State Employees'
4 Comprehensive Major Medical Plan, established in Article 3 of
5 General Statutes Chapter 135;
- 6 o. The State Board of Education through the Superintendent of
7 Public Instruction when in the performance of his duties of
8 administering the Scholarship Loan Fund for Prospective
9 Teachers enabled by Chapter 115C, Article 32A and the
10 scholarship loan and grant programs enabled by Chapter 115C,
11 Article 24C, Part 1;
- 12 p. The Board of Trustees of the Teachers' and State Employees'
13 Retirement System and the Board of Trustees of the Local
14 Governmental Employees' Retirement System in the
15 performance of their duties pursuant to Chapters 120, 128, 135
16 and 143 of the General Statutes;
- 17 q. The North Carolina Teaching Fellows Commission in the
18 performance of its duties pursuant to Chapter 115C, Article
19 24C, Part 2;
- 20 r. The North Carolina Department of Human Resources when in
21 the performance of its intentional program violation collection
22 duties under the Food Stamp Program enabled by Chapter
23 108A, Article 2, Part 5, and any county operating the same
24 Program at the local level, when and only to the extent such a
25 county is in the performance of Food Stamp Program
26 intentional program violation collection functions.
27 The North Carolina Department of Human Resources when,
28 in the performance of its duties under the Aid to Families with
29 Dependent Children Program or the Aid to Families with
30 Dependent Children - Emergency Assistance Program provided
31 in Part 2 of Article 2 of Chapter 108A or under the State-
32 County Special Assistance for Adults Program provided in Part
33 3 of Article 2 of Chapter 108A, it seeks to collect public
34 assistance payments obtained through an intentional false
35 statement, intentional misrepresentation, or intentional failure to
36 disclose a material fact.
- 37 s. The Employment Security Commission of North Carolina.
- 38 t. The North Carolina Department of Correction, when it seeks to
39 collect any reimbursement required from a prisoner under G.S.
40 148-2.1.
- 41 (2) 'Debtor' means any individual owing money to or having a delinquent
42 account with any claimant agency which obligation has not been
43 adjudicated satisfied by court order, set aside by court order, or
44 discharged in bankruptcy.

- 1 (3) 'Debt' means any liquidated sum due and owing any claimant agency
2 which has accrued through contract, subrogation, tort, operation of
3 law, or any other legal theory regardless of whether there is an
4 outstanding judgment for that sum.
- 5 (4) 'Department' means the North Carolina Department of Revenue.
- 6 (5) 'Refund' means any individual's North Carolina income tax refund.
- 7 (6) 'Net proceeds collected' means gross proceeds collected through final
8 setoff against a debtor's refund minus any collection assistance fee
9 charged by the Department." ♦

10 Sec. 5. G.S. 150B-1(d) reads as rewritten:

- 11 "(d) (1) The following are specifically exempted from the provisions
12 of this Chapter:
- 13 a. The Administrative Rules Review Commission;
 - 14 b. The Employment Security Commission;
 - 15 c. The Industrial Commission;
 - 16 d. The Occupational Safety and Health Review Board in all
17 actions that do not involve agricultural employers; and
 - 18 e. The Utilities Commission.
- 19 (2) The North Carolina National Guard is exempt from the provisions of
20 this Chapter in exercising its court-martial jurisdiction.
- 21 (3) The Department of Human Resources is exempt from this Chapter in
22 exercising its authority over the Camp Butner reservation granted in
23 Article 6 of Chapter 122C of the General Statutes. The Department of
24 Human Resources is also exempt from Article 3 of this Chapter in
25 complying with the procedural safeguards mandated by the Section
26 680 of Part H of P.L. 99-457 as amended (Education of the
27 Handicapped Act Amendments of 1986).
- 28 (4) The Department of Correction is exempt from the provisions of this
29 Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which
30 shall ~~apply~~ apply generally, and except with respect to hearings under
31 Article 3 of this Chapter on any contested claim to which G.S. 105A-8
32 applies.
- 33 (5) Articles 2 and 3 of this Chapter shall not apply to the Department of
34 Revenue.
- 35 (6) Except as provided in Chapter 136 of the General Statutes, Articles 2
36 and 3 of this Chapter do not apply to the Department of
37 Transportation.
- 38 (7) Article 4 of this Chapter, governing judicial review of final
39 administrative decisions, shall apply to The University of North
40 Carolina and its constituent or affiliated boards, agencies, and
41 institutions, but The University of North Carolina and its constituent or
42 affiliated boards, agencies, and institutions are specifically exempted
43 from the remaining provisions of this Chapter.

- 1 (8) Article 4 of this Chapter shall not apply to the State Banking
2 Commission, the Commissioner of Banks, the Savings Institutions
3 Division of the Department of Economic and Community
4 Development, and the Credit Union Division of the Department of
5 Economic and Community Development.
- 6 (9) Article 3 of this Chapter shall not apply to agencies governed by the
7 provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).
- 8 (10) Articles 3 and 3A of this Chapter shall not apply to the Governor's
9 Waste Management Board in administering the provisions of G.S.
10 104E-6.2 and G.S. 130A-293.
- 11 (11) Article 2 of this Chapter shall not apply to the North Carolina Low-
12 Level Radioactive Waste Management Authority in administering the
13 provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of
14 this Chapter shall not apply to the North Carolina Low-Level
15 Radioactive Waste Management Authority in administering the
16 provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 17 (12) Article 2 of this Chapter shall not apply to the North Carolina
18 Hazardous Waste Management Commission in administering the
19 provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of
20 this Chapter shall not apply to the North Carolina Hazardous Waste
21 Management Commission in administering the provisions of G.S.
22 130B-11, 130B-13, and 130B-14.
- 23 (13) Article 3 and G.S. 150B-51(a) of this Chapter shall not apply to
24 hearings required pursuant to the Rehabilitation Act of 1973, (Public
25 Law 93-122), as amended and federal regulations promulgated
26 thereunder."

27 Sec. 6. This act shall become effective October 1, 1990, and shall apply to
28 incarceration for criminal offenses committed on or after that date.