

SUBJECT: Garnishment of funds in inmate trust fund account

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Hightower, Allen, Alexander, Farrar, Gray, Hupp, Marchant
0 nays
2 absent — Edwards, Serna

SENATE VOTE: On final passage, Local and Uncontested Calendar, March 20 — 31-0

WITNESSES: For — None
Against — Linda Marin, Texas Citizens United for Rehabilitation of Errants
On — Wayne Scott, Texas Department of Criminal Justice; Carl Reynolds, Texas Board of Criminal Justice

BACKGROUND : The Texas Department of Criminal Justice (TDCJ) holds money for prison inmates in inmate trust fund accounts. Inmates use money in the accounts to purchase items in the prison commissary.

TDCJ is allowed to withdraw funds from an inmate trust account for specified reasons, as required by court orders. The reasons and priority of withdrawal are:

- child support;
- restitution;
- fines; and
- court costs.

DIGEST: CSSB 673 would allow writs of garnishment to be issued against an inmate's trust fund accounts held by TDCJ. The state's sovereign immunity to lawsuits would be waived only to the extent necessary to authorize a garnishment.

TDCJ would be authorized to withdraw from an inmate's trust fund account any amount the inmate was ordered to pay under any court order, judgment or writ. Payments for this purpose would be fifth in the priority order of what could be withdrawn by TDCJ from an inmate's account.

CSSB 673 also would change the order of other items that could be withdrawn from an inmate's account, moving court fees and costs from fourth to third and placing fines fourth in the priority list.

In addition to current authority for TDCJ to place a hold on inmate trust funds, the department would be able to withdraw funds for reasons currently specified in the Government Code, such as to correct accounting errors and to make restitution for wrongful withdrawals. CSSB 673 would add authority for TDCJ to transfer funds deposited in the account in violation of the law or department policy.

CSSB 673 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSSB 673 is needed to allow money from inmate trust fund accounts to be withdrawn if ordered by a court without the person who has been awarded the money having to get permission to sue the state. A recent court decision found that for a person to recover money from an inmate trust account awarded as part of a lawsuit, the state's sovereign immunity would have to be waived because a state agency, TDCJ, was holding the money. This means a person awarded money would have to get permission to sue the state before TDCJ could withdraw money to pay the court order. This is an unnecessary, burdensome restriction since inmate funds are not state funds. Inmate's money should be as vulnerable to lawsuits as other persons.

CSSB 673 would place garnishment for a court order fifth in line behind other, already established reasons for withdrawal from inmate accounts. These other uses of money, including child support and restitution, would retain top priority for the use of inmate funds.

CSSB 673 would allow money from inmate's accounts to be garnished only upon a court order and would waive the state's sovereign immunity only as it relates to garnishment of money from inmate accounts.

The reordering of payments on the priority list would place court fees and costs third, instead of fourth, to better reflect the priority that these payments should have and to allow quicker access to inmate funds to pay court costs and fees since inmates are sometimes charged these costs when they file lawsuits.

**OPPONENTS
SAY:**

It would be unfair to add yet another item to the list of reasons that inmate trust funds can be appropriated. About 65 percent of inmates have less than \$5 in their trust accounts, and this money is often used for necessities such as toothpaste, soap, underwear or shaving cream. Inmates should be able to retain some spending money, especially since most of it is supplied by inmates' families and loved ones.

NOTES:

The committee added provisions placing garnishment in the priority list of withdrawals from trust accounts, reordering the priority of court fees and costs, and allowing TDCJ to withdraw funds for the reasons specified in the Government Code.