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## **Legal Issues Pertaining to Inmate Funds**

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### **1. Introduction.**

This article reviews a variety of issues concerning inmate funds, including what charges may legitimately be made against inmate funds—whether these funds are possessed by the prisoner at the time of incarceration, sent to them by their families, or earned in the course of prison work assignments.

Under the Fourteenth Amendment of the U.S. Constitution, no one may be deprived of property, including funds without "due process of law." Even though prisoners, under the terms of the Thirteenth Amendment, can, once properly convicted, be compelled to work without compensation, once a prison system does make the decision to pay wages in exchange for prison work assignments, the prisoner cannot be deprived of wages earned without due process of law.

A prior article in this publication, [Legal Issues Pertaining to Inmate Property](#), 2008 (3) Mo. L. J. 301 (March 2008), explored, in some detail, the general legal standards developed by the U.S. Supreme Court concerning due process requirements for depriving prisoners of property. Those legal standards apply to inmate property in the form of funds, and the section of that article concerning those standards should be read together with this article. At the conclusion of the article, links are given to several useful resources on the topic of inmate funds.

## 2. Deducting inmate funds for prisoner expenses.

Most deductions by prison officials from inmate fund accounts are both intentional and authorized. In the case of prisoner funds, the issue increasingly arises of what expenses of the prisoner may legitimately be charged against inmate fund accounts. Case law has addressed issues such as restitution to crime victims, co-payments for medical expenses, payment for the part of the cost of incarceration, and similar charges.

In [Wright v. Riveland](#), No. 97-36074, 219 F.3d 905 (9th Cir. 2000), a federal appeals court held that a Washington state statute properly authorized the deduction, from inmates' outside income, including pension plan income, of up to 35% of incoming funds to pay for crime victim restitution and the cost of incarceration. The court rejected arguments by plaintiff prisoners that a federal statute regulating pensions and qualified retirement plans, the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Sec. 1001 et seq. somehow barred the state from seizing a portion of prisoner retirement income.

The statute in question, Wash. Rev. Code Sec. 72.09.111(1)(a), authorizes correctional officials to deduct from such incoming funds 5% to the public safety and education account for the purpose of crime victims' compensation, 10% to a department personal inmate savings account, and 20% to the correctional department "to contribute to the cost of incarceration."

The appeals court upheld the trial court's rejection of the plaintiffs' arguments that the deduction of these funds violated their due process rights or constituted an "excessive fine."

All that constitutional due process prohibits is the deprivation of property "without due process of law." Plainly, where there is a specific court order requiring the payment of the amount, enforcement of the order does not violate the prisoner's rights, so long as the prisoner had a full and fair opportunity to litigate any issues involved in the case. Such a court order, for instance, may be part of the criminal trial court's sentence. In [White-Bey v. Corrections Dept.](#), #213395, 608 N.W.2d 833 (Mich. App. 1999), a Michigan prisoner was serving a sentence for breaking and entering. As part of his sentence, he was ordered to pay \$140 in restitution to the victim of his crime. The state department of corrections began to enforce the order for restitution by removing funds from the prisoner's account on a monthly basis. An intermediate Michigan appeals court upheld the deductions. It noted that the restitution order did not specify a clear period for payment, and was therefore "collectible immediately" in the absence of any "language to the contrary."

Restitution obligations do not necessarily have to be part of a court's sentence to be imposed on an inmate, but can be imposed by state statute or in other ways. In [Ellibee v. Simmons](#), No. 05-3479, 2006 U.S. App. Lexis 26169 (10th Cir.), the court found that deduction of 5% of an inmate's monthly prison wages under a Kansas state statute directing the payment of such an amount to a crime victims' compensation fund did not violate his constitutional rights, despite the absence of a court order requiring the inmate to pay restitution to his victim. A prison policy requiring such payments satisfied constitutional due process, and the prisoner was not entitled to a hearing prior to the deduction of the money.

Another court held that the Federal [Bureau of Prison's](#) use of the Inmate Financial Responsibility Program (IFRP) to increase the quarterly payments that a prisoner was required to make for special assessments and restitution stemming from his conviction did not violate his constitutional rights. The BOP's setting of an individual payment schedule for prisoners for court-ordered restitution did not violate due process. The BOP's use of inducements or withholding of benefits when a prisoner refused to participate in the IFRP did not alter the result. [Davis v. Wiley](#), No. 07-1303, 2008 U.S. App. Lexis 42 (10th Cir.).

In [Abbott v. State of Michigan](#), No. 06-1434, 474 F.3d 324 (6th Cir. 2007). Four prisoners whose pension benefits were seized by the state of Michigan under a state statute to partially reimburse the state for the cost of their incarceration did not show that they did not have a full and fair opportunity to challenge the seizure in state courts which had issued orders for the seizures. The prisoners, therefore, could not challenge in federal court the constitutionality of the seizures under the due process clause of the 14th Amendment or its legality under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. Sec. 1001 et seq.

Prisoners may sometimes receive inheritances, life insurance proceeds, or other relatively large sums of money. In [People Ex. Rel. Director of Corrections v. Ruckman](#), No. 5-05-0132, 843 N.E.2d 882 (Ill. App. 5th Dist. 2006), the court held that Illinois correctional officials could properly recover, under a state statute, \$124,191.22 as reimbursement for the cost of a prisoner's incarceration from the value of an annuity he bought with the proceeds of an insurance policy on the life of his mother, less a \$2,000 statutory exemption. The fact that the annuity was bought with the proceeds of a life insurance policy did not make the annuity exempt from collection efforts.

See also [State ex rel. Nixon v. Powell](#), No. SC 86453, 167 S.W.3d 702 (Mo. En bank 2005), finding that the seizure of an inmate's disability pension benefits to pay for the cost of his care while incarcerated, pursuant to Missouri state statute, did not violate his right to substantive due process. The statute was not

unconstitutionally vague as to specification of which of an inmate's assets could be considered in determining whether a prisoner had sufficient assets to support an assessment of costs of incarceration.

Similarly in [Higgins v. Beyer](#), #99-5556, 293 F.3d 683 (3rd Cir. 2002), a federal appeals court ruled that seizure of funds in prisoner's account derived from his veteran's disability benefit check to pay a court-ordered fine violated his rights under a federal statute. The court also ruled that doing so without a pre-deprivation hearing could violate due process and that the prisoner's rights were enforceable under a federal civil rights statute

### **3. Wages from inmate employment.**

Under a federal statute, 18 U.S.C. Secs. 1761-62, some prisoners are paid a "prevailing wage" when employed manufacturing goods for sale in interstate commerce. In [Murray v. Minncor](#), No. C3-99-376, 506 N.W.2d 702 (Minn. App. 1999), a court had to interpret an agreement signed by the inmate as a condition of participation in the program, when the prisoner challenged the exercise of discretion by correctional authorities as to which funds of his to charge for a court filing fee.

The prisoner voluntarily agreed to be in the program, and agreed to have certain deductions made from his wages. He signed the required agreement, under which taxes, reasonable charges for the cost of his confinement, family support obligations, contributions to a crime victims' fund, restitution, and other deductions set forth in state statutes could be made.

Costs of confinement were set at 65% of his gross wages. When he became a party to an appeal in a federal lawsuit, prison officials, over his objections, deducted the \$105 court filing fee from his inmate fund account. He argued that the deduction should instead have been taken from his gross compensation, reducing the amount available for the cost of confinement, but leaving his inmate account intact. He also challenged a \$3 deduction for a medical co-payment.

A Minnesota trial court rejected the prisoner's lawsuit challenging these inmate fund deductions as somehow a breach of his "contract" with the prison. Upholding this result, an intermediate Minnesota appeals court found that the agreement the prisoner signed, which was required by federal law for him to participate in the work program, was not a "contract." It did not obligate the Department of Corrections in any way to continue his employment "or to limit its authority to make deductions from his account." Since state law allows the deduction of court filing fees and medical payments from either wages or inmate accounts, the prisoner did not have a viable claim.

In some instances, state law may limit the percentage of inmate wages that can be applied to costs of incarceration or other charges. In [Skinner v. Govorchin](#), No. 05-2458, 463 F.3d 518 (6th Cir. 2006), for instance, in a prisoner's lawsuit challenging garnishment of his prison account to pay appeals court costs, a Michigan state statute did not allow the deduction of 100% of the inmate's monthly income from his account for such costs, but rather limited the deduction to 20%. Accordingly, while costs were properly assessed against the prisoner, he could proceed with aspects of his lawsuit challenging the manner of collection of the costs.

#### **4. Inmate funds, medical care, and costs of confinement.**

Under the Eighth Amendment to the U.S. Constitution, prohibiting cruel and unusual punishments, prisoners may not be deprived of basic necessities, such as adequate food or necessary treatment for serious medical needs. And this is the case even if, as in many or most cases, the prisoner is indigent and unable to pay any portion of the cost. This means that correctional facilities must supply these necessities, usually at government expense.

At the same time, if the prisoner has financial resources, whether from pre-incarceration or post-incarceration wages, government benefits, inheritances, lottery winnings, or whatever source, the mere fact that the prisoner with resources is incarcerated does not entitle them to a "free ride"--to free food, housing, and medical care that they would otherwise have to pay for in the outside world. An increasing number of correctional facilities, facing tighter budgets, the demands of providing for larger inmate populations, and the understandable wish of the tax-paying public for adoption of any policies which will lessen the burden on the law-abiding citizenry of paying for the care of incarcerated lawbreakers, are adopting policies, rules and regulations providing for such cost-recovery devices as required "co-payments" for certain expenses when prisoners have available financial resources. While a good number of prisoner challenges to the constitutionality of such plans have been filed, courts have usually upheld such plans, so long as they do not result in unacceptable deprivation of essential services to prisoners who actually are unable to pay.

In [Christiansen v. Clarke](#), #97-1511, 147 F.3d 655 (8th Cir. 1998), a Nebraska prisoner was placed on work release approximately nine months prior to the completion of his sentence. Before placement in the work release program, he was required to sign a statement acknowledging that costs for room and board would be deducted from his inmate account for the duration of the work-release period. He signed the statement "under protest" and the prison withdrew \$2,790 from his account when his sentence was completed.

The prisoner filed a federal civil rights lawsuit claiming that this constituted deprivation of property in violation of due process of law. A federal appeals court has upheld a trial court dismissal of the prisoner's lawsuit.

A state statute gives prison officials authority to collect from work-release inmates "such costs incident to the person's confinement" as they deem "appropriate and reasonable." Prison officials have discretion to grant or not grant work release, the court noted, and the prisoner had no right to work release and "thus he did not have a right to the full amount of his salary." The prisoner participated in the work-release program voluntarily, and "exchanged a portion of his otherwise protected salary for participation in that program," so he had no constitutionally protected property right to the full amount of his salary.

The costs of providing medical care, whether significant major surgery or routine minor care, from providing of aspirins on up to transplant operations, can constitutionally result in charges against inmate fund accounts. In Scott v. Angelone, #CV-N-90-589, 771 F. Supp. 1064 (D. Nev. 1991), the court held that a policy of deducting charges from inmate trust account to pay for non-emergency medical visit did not violate prisoner's rights and that no "pre-deprivation hearing" was required before freezing an inmate account or deducting medical charges.

Under the Nevada Department of Prisons' policy, the court noted, an inmate is only charged for a medical visit that is of a self-initiated, non-emergency type. They are not charged for medical visits initiated by medical personnel, follow-up visits for visits initiated by medical personnel, or for emergency treatment. Therefore, they are not charged for their "basic medical needs." No pre-deprivation hearing was constitutionally required because the inmate authorized the medical charge prior to treatment by signing a form, and the prisoner was notified of the billing system through a posted directive.

If funds are improperly withheld from inmate accounts for payment of medical or similar expenses, the availability of an adequate post-deprivation remedy may eliminate the possibility of a federal civil rights claim on the basis of the deduction. In Myers v. Klevenhagen, #95-20435, 97 F.3d 91 (5th Cir. 1996), for instance, two prisoners' claim that jail improperly debited their inmate trust accounts for payment for medical services and prescription drugs, despite their indigence, did not state a constitutional due process claim when an adequate post-deprivation remedy existed under Texas state law to seek reimbursement of the funds.

The fact that certain services were previously provided free does not mean that a correctional institution cannot change its rules to impose charges on inmates for

such things as medical services. The retroactive application of newly adopted administrative code regulations and correctional policies to charge inmates co-payments for certain medical services, when they previously received those services for free, a court held, did not violate their due process rights or their plea agreements. [Ridenour v. Wilkinson](#), No. 07AP-200, 2007 Ohio App. Lexis 5238 (Ohio App. 10th Dist.).

Another case of interest is [Wheeler v. Gardner](#), No. 20050166, 708 N.W.2d 908 (N.D. 2006), finding that, under North Dakota law correctional officials had statutory authority to charge a prisoner's account for the full cost of dental services he received, including an "after hours" fee of \$78 billed by the dentist.

In [State v. Abrahamson](#), No. 03-1907, 696 N.W.2d 589 (Iowa 2005), the court held that an Iowa statute allowing county sheriff to charge a convicted prisoner for room and board while in custody was not a violation of due process, equal protection, or the constitutional separation of powers, and courts had "inherent discretionary powers" to review whether an order for such charges was appropriate, despite the lack of an express provision in the statute providing for judicial scrutiny.

Also see, [Elliott v. Simmons](#), No. 03-3280, 100 Fed. Appx. 777, 2004 U.S. App, Lexis 11168 (10th Cir. 2004), finding that a state statute authorizing Kansas correctional officials to adopt a regulatory scheme for assessing fees against inmates did not violate a prisoner's due process or equal protection rights and was not an invalid retroactive enhancement of his punishment. The legislation was supported by legitimate goals such as teaching fiscal responsibility and reimbursing the state for the costs of incarcerating the prisoners rationally related to the scheme adopted

## **5. Inmate funds from outside family & friends.**

Illustrating the fact that this ability to recoup costs is not limited to instances where the prisoner has earned the money through employment is [Robinson v. Fauver](#), #96-1808, 932 F. Supp. 639 (D.N.J. 1996), in which the court ruled that a regulation that classified inmates with access to funds from outside family and friends as "non-indigent," and required them to pay fees for legal photocopying and medical co-payments, did not violate their equal protection or due process rights.

New Jersey correctional regulations do not classify a prisoner as indigent in circumstances where, although he has "no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances," he does have a verified "outside source from which to obtain

funds." Accordingly, prisoners who can obtain money from family and friends were required to use such outside funds for payment of legal photocopying and for co-payments for medical care.

In [Sickles v. Campbell County, Kentucky](#), No. 06-6055, 501 F.3d 726 (6th Cir. 2007), a court held that county policies under which money from a detainee's canteen account was withheld for booking and arraignment fees, and for room-and-board did not violate due process even though no pre-deprivation hearing was provided. A county's interests in encouraging offender accountability and sharing the costs of incarceration were substantial and outweighed the "small" private interest in a detainee retaining the money. Relatives of detainees who sent funds to be deposited in such canteen accounts voluntarily gave up any interest they previously had in the money.

Care must be taken, however, to examine any state law restrictions on the seizure of inmate funds based on their source. A state statute which allowed the garnishment of a prisoner's "monthly income" to satisfy court judgments, such as a fine and court costs assessed against the plaintiff prisoner, did not allow the seizure of "non-income" such as money received as a gift from the prisoner's family. The court prohibited the warden from seizure of gifts or other amounts from the prisoner's account which were not attributable to earnings. [State ex rel. Turner v. Eberlin](#), Case No. 07 BE 6, 2007 Ohio App. Lexis 4445.

It should also be noted that a correctional facility may legitimately restrict a prisoner's receipt of funds from unauthorized persons. See, [Steffey v. Orman](#), No. 05-7064, 461 F.3d 1228 (10th Cir. 2006), ruling that a prisoner had no legitimate property right in receiving a money order of funds from the mother of another inmate, when money sent from the family members of another inmate was considered contraband under prison rules. Failing to provide him with a pre-deprivation hearing before confiscating the money order did not violate his due process rights.

## **6. Inmate funds from lawsuit damages.**

What about when the prisoner comes into some funds as the result of a lawsuit they file, such as a federal civil rights lawsuit? A case illustrating that such funds can be utilized to provide payment for restitution to crime victims is [Beeks v. Hundley](#), #93-2754, 34 F.3d 658 (8th Cir. 1994). In that case, two Iowa prison inmates received a money judgment in a federal civil rights lawsuit. When they deposited the judgment proceeds in their prison accounts, prison officials seized all but \$50 from each inmate to satisfy their obligations under a state victim restitution act. The prisoners then asked the trial court to order the money



returned to them, claiming that the state's victim restitution act was preempted by 42 U.S.C. Sec. 1983, the federal civil rights act.

The prisoners relied on Hankins v. Finnel, #91-1299, 964 F.2d 853 (8th Cir.), cert. denied, 113 S. Ct. 635 (1992), in which a state sought to apply an inmate's damage award against a prison official to pay the costs of his incarceration. The court in that case ruled that Sec. 1983 preempted such recoupment because it is "inimical to the goals of the federal statute."

A federal appeals court ruled that this reasoning did not apply to a state victim's restitution statute. The court found that application of the Iowa state victim restitution act did not significantly affect the compensatory purpose of Sec. 1983. The "diverted payments satisfy a portion of the inmates' restitution orders--debts that constitute a judgment and lien against all their property and, significantly, are enforceable after their prison sentences have been served. Thus, from a financial standpoint, the inmates received virtually all the benefit of their Sec. 1983 money judgment when the proceeds were applied to satisfy their restitution debts."

In People ex rel. Director of Corrections v. Booth, No. 99329, 830 N.E.2d 569 (Ill. 2005), the Illinois Supreme Court held that an exemption in Illinois statutes preventing the attachment of payments of up to \$7,500 made to inmate because of personal injuries applied in an action by the state seeking to recover the cost of incarceration.

See also Gober v. Alabama Dept. of Corrections, No. 2020064, 871 So. 2d 838 (Ala. Civ. App. 2003), ruling that Alabama correctional officials did not violate prisoner's rights by withholding part of the monetary benefits paid to him for injuries suffered while participating in a work-release program, and using that money to pay for part of the cost of the prisoner's incarceration. The prisoner was not an "employee" within the meaning of the state's workers' compensation statute, so that the protections of the statute against garnishment or seizure of benefits awards did not apply.

## **7. Charging pretrial detainees for necessary expenses.**

Illustrating the fact that this ability to recoup costs is not limited to imposing charges against convicted prisoners, in Williams v. Ergle, #96-2739, 698 So. 2d 1294 (Fla. App. 1997), the court ruled that charging pre-trial detainees for medical and dental treatment, as well as for meals, did not violate any rights under state law.

"Although pre-trial detainees are generally entitled under the constitution to reasonable and adequate nourishment and medical care, it does not follow that

prison officials or the taxpayers are required to pay for them," the court stated. Further, there is a Florida state statute that allows county and municipal detention facilities to "recoup certain medical expenses from prisoners." While the term "prisoner" is not defined in that statute, the court reasoned, from other provisions of Florida law, that it included pre-trial detainees. The court found that Article I, Sec. 19 of the Florida state Constitution "only prohibits the pre-conviction assessment of costs of the prosecution."

See also, [Slade v. Hampton Roads Regional Jail](#), #04-6481, 407 F.3d 243 (4<sup>th</sup> Cir. 2005), ruling that a jail's policy of charging pre-trial detainees one dollar a day to help recover the cost of their housing did not violate their rights or constitute punishment before conviction.

## **8. Making prisoners pay for disciplinary infractions.**

Inmates who commit further infractions while incarcerated, resulting in personal injury to others or property damages, may also be assessed financial charges for the injuries they've caused. In [Payton v. Horn](#), #97-5391, 49 F. Supp. 2d 791 (E.D. Pa. 1999), a court ruled that charging an inmate for medical treatment of an officer the prisoner injured did not violate his constitutional rights when state law provided a process by which the inmate could assert his claim that this use of the funds was improper. Similarly, in [Anderson v. Horn](#), # 1526 C.D. 1998, 723 A.2d 254 (Pa. Cmwlth. 1998), a court ruled that a prisoner was properly assessed costs of medical treatment of another inmate and a correctional officer required because of his misconduct.

## **9. Resources.**

A number of federal regulations pertain to inmate funds in federal correctional facilities. See [28 C.F.R. Sec. 505](#) (Cost of incarceration fee), [Sec. 506](#) (Inmate commissary account), and [Sec. 545](#) (work and compensation). Also of interest are the Federal Bureau of Prisons (BOP) program statements [5380.06](#) (cost of incarceration fee), [5380.08](#) (inmate financial responsibility program), and [5251.05](#) (inmate work and performance pay program).

**Inmate Debts and Financial Obligations:** "Repaying Debts." (October 2007). The Council of State Governments Justice Center has released a report on the financial obligations of people released from prisons and jails, which was developed with the support of BJA. The report includes recommendations to help policymakers increase accountability among people who commit crimes, improve rates of child support collection and victim restitution, and make people's transition from prisons and jails to the community safe and successful. ([Summary](#) or [Full Report](#)).

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