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PENAL INSTITUTIONS

Jails: Provide for Recoupment of Money from Inmates for Medical Services Provided to Inmates Not Eligible for Health Insurance Benefits; Provide for Deductions from Inmate Accounts for Certain Damages and Medical Costs

CODE SECTIONS:	O.C.G.A. §§ 42-4-50 to -51, -70 to -71 (amended), 42-5-54 to -55 (new)
BILL NUMBERS:	HB 1154, SB 587 ¹
ACT NUMBERS:	1005, 951
GEORGIA LAWS:	1996 Ga. Laws 1264, 1081
SUMMARY:	Act Number 1005 allows a governing authority to file a civil action against an inmate to seek reimbursement for the costs of medical care provided to such inmate while incarcerated if the inmate is not eligible for health insurance benefits. Act Number 951 allows an officer in charge to require an inmate to furnish his or her health insurance information and allows for a reasonable deduction from money credited to an inmate account to repay the costs of willful property damage, medical treatment, attempted escapes, and quelling a riot.
EFFECTIVE DATE:	July 1, 1996

History

Sheriffs have a duty to provide inmates with medical care.² Concerned over rising medical care costs, sheriffs have sought alternative means of paying for these costs.³ In 1992, the Georgia

1. These two bills are combined into one *Peach Sheet*TM because the two bills concern similar areas of the law and according to Members of the General Assembly were written to be consistent with each other. Telephone Interview with Rep. Greg Kinnamon, House District No. 4 (May 3, 1996) [hereinafter Kinnamon Interview]. SB 587 is similar to HB 1154 in that both address the problem of taxpayers paying for inmates' medical costs. See O.C.G.A. §§ 42-4-50 to -51, -70 to -71, 42-5-54 to -55 (Supp. 1996).

2. 1990 Ga. Laws 1443, § 1, at 1444 (codified at O.C.G.A. § 42-4-4(a)(2) (Supp. 1996)).

3. *Legislative Review*, 9 GA. ST. U. L. REV. 310 (1992) (citing Gary Hendricks, *Medical Costs Rise Along With Jail Populations, Clayton Asking State if it Can Bill Prisoners*, ATLANTA CONST., Feb. 13, 1992, at G4). Clayton County spent one million dollars for inmate medical costs in 1991, while DeKalb County spent over one million

General Assembly passed an act to allow an officer in charge of a detention facility to recover medical costs from inmates' insurance carriers.⁴ In addition, sheriffs sought other alternatives for paying for medical costs, including the recovery of costs from an inmate personally and from inmate accounts.⁵

HB 1170, which allows the officer in charge to recover medical costs from inmates' insurance carriers, was passed in 1992.⁶ According to the bill's sponsor, the original intent of the 1992 legislation was to reach the inmate's insurance proceeds and personal funds.⁷ However, there was some concern in the House Committee on State Institutions that requiring an inmate to reimburse jails for medical care could work a hardship on the inmate's family.⁸ There was also some concern from prisoners' rights advocates that requiring inmates to pay for medical care while incarcerated would be unconstitutional.⁹ In response to these concerns, HB 1170 allowed the officer in charge of a detention facility to recover medical care costs only from inmates' insurance carriers, not from inmates' personal funds.¹⁰

dollars. *Id.* Fulton County was expected to spend three million dollars in 1992. *Id.*

4. 1992 Ga. Laws 2125, § 2, at 2127 (formerly found at O.C.G.A. § 42-4-51 (1994)); see also *Legislative Review*, *supra* note 3. During the same legislative session, HB 1769 was passed, which provided that certain medical and other costs may be deducted from an inmate's jail account. *Legislative Review*, *supra* note 3. In an interview, Representative Tim Perry clarified that jails would not be able to collect money from inmates personally for medical costs. *Id.* at 315 (citing Telephone Interview with Rep. Tim Perry, House District No. 5 (Apr. 8, 1992)).

5. *Legislative Review*, *supra* note 3, at 315.

6. *Id.* at 310.

7. *Id.* at 313-14.

8. *Id.* at 312. Representative Tim Perry was concerned that if a jail was allowed to recover from an inmate personally, the inmate's family could lose their home if his assets were attached. *Id.* at 312 n.17. Representative Kinnamon, the sponsor of HB 1154, stated that he heard similar concerns in the House when HB 1154 was on the floor. Kinnamon Interview, *supra* note 1. One legislator suggested exempting personal residences. *Id.* Representative Kinnamon's response was that if a non-inmate did not pay his or her medical expenses, the court could get a judgment against the non-inmate and take his house and that prisoners should not be treated more favorably than law abiding citizens. *Id.*

9. *Legislative Review*, *supra* note 3, at 312. According to Representative Kinnamon, there was no discussion about HB 1154's constitutionality in the General Assembly. Kinnamon Interview, *supra* note 1.

10. *Legislative Review*, *supra* note 3, at 313. As introduced, HB 1170 stated, in part:

[A]ny such person confined in the jail shall be required to reimburse the sheriff or county for medical aid furnished or the sheriff may provide such person access to medical aid and arrange for such person or the person's health insurance carrier to pay the health care provider for the aid rendered.

HB 1170, as introduced, 1992 Ga. Gen. Assem. The phrase "except by an inmate personally," the only phrase remaining from HB 1170 as introduced, could be

HB 1154

HB 1154 was introduced in an effort to help counties and municipalities meet the rising costs of medical treatment for jail inmates.¹¹ HB 1154 allows a county or municipality that pays for the cost of an inmate's medical treatment to recover that cost from the inmate's assets.¹²

The Act amends chapter 4 of the Penal Institutions title of the Georgia Code by changing the provisions relating to the medical services of inmates.¹³ The Act also changes certain definitions.¹⁴ A "detention facility" is defined as a municipal or county jail used for the detention of persons charged with or convicted of either a felony, a misdemeanor, or a municipal offense.¹⁵ The Act defines an "inmate" as a person charged with or convicted of a felony, misdemeanor, or municipal offense who is detained in a detention facility.¹⁶ The Act deletes language limiting the definition of inmate to one "who is insured under existing individual health insurance, group health insurance, or prepaid medical care coverage or is eligible for benefits under Article 7 of Chapter 4 of Title 49, the 'Georgia Medical Assistance Act of 1977'" to allow recovery from both insured and uninsured inmates.¹⁷ Under the previous law, if an inmate had medical insurance, a county or city could be reimbursed for the costs of medical

interpreted to impose inmate liability for medical treatment costs. *Legislative Review, supra* note 3, at 313. However, the bill's sponsor stated that inmate personal liability was not intended to be imposed except in the case in which an inmate received the insurance benefit directly. *Id.* Thus, HB 1154 now allows what HB 1170, as introduced in 1992, was intended to allow.

11. Kinnamon Interview, *supra* note 1.

12. *Id.* Representative Kinnamon stated that Scott Chipwood, sheriff in his district, approached him and asked him to introduce legislation that would allow sheriffs to recover costs of medical treatment of jail inmates from the inmates personally. *Id.* He further stated that this legislation was needed because counties are suffering from paying these medical-care costs, which must be passed on to property owners in the form of property taxes. *Id.* This Act allows governing authorities to collect the costs of medical care from inmates through instituting civil actions. *See* O.C.G.A. § 42-4-51 (Supp. 1996).

13. O.C.G.A. §§ 42-4-50 to -51 (Supp. 1996).

14. *Id.*

15. *Id.* § 42-4-50(1). The Senate committee decided to delete the words "workcamp, or other municipal or county detention facility." HB 1154 (SCS), 1996 Ga. Gen. Assem. According to Representative Kinnamon, this was done in order to be consistent with SB 587. Kinnamon Interview, *supra* note 1.

16. O.C.G.A. § 42-4-50(3) (Supp. 1996). The definition of "inmate" has been litigated in the Georgia Court of Appeals. *See, e.g.,* Macon-Bibb County Hosp. Auth. v. Houston County, 207 Ga. App. 530, 428 S.E.2d 374 (1993) (holding that pretrial detainees are "inmates" according to the plain language of the statute).

17. *Compare* O.C.G.A. § 42-4-50(3) (Supp. 1996) *with* 1992 Ga. Laws 2125, § 2, at 2126-27 (formerly found at O.C.G.A. § 42-4-50(a)(2) (1994)).

care.¹⁸ Before the Act, the law did not provide a procedure by which the county or city could seek reimbursement from a solvent inmate who did not have health insurance.¹⁹ Now all inmates, not just those with insurance, may be required to reimburse authorities for health care received while incarcerated.²⁰

The Act provides that the assets and property of an inmate may be attached under court order to satisfy the costs of medical care received while incarcerated.²¹ The Act authorizes the court to enter a money judgment against a defendant and to order that "the defendant's property is liable for reimbursement for the costs of medical care provided to the defendant as an inmate."²² However, the Act requires a court to consider the other support obligations of the defendant inmate.²³

The Act also addresses a situation in which an inmate tries to avoid paying for the medical costs out of his or her funds. The Act does the following: (1) subjects an inmate to sanctions if he or she does not cooperate with a governing authority;²⁴ (2) authorizes certain civil actions;²⁵ (3) provides for the issuance of an ex parte restraining order to restrain defendants from disposing of property pending a hearing on the issues;²⁶ and (4) authorizes appointment of receivers for property while this process is pending.²⁷

Originally, the bill did not provide for the deduction of the costs of expenses from inmate accounts.²⁸ When drafting the bill, the

18. Kinnamon Interview, *supra* note 1.

19. *Id.* Representative Kinnamon's example was as follows: if an uninsured woman was pregnant, got arrested, and had her baby while incarcerated, the county would have to pick up the tab. The county played no role in getting the woman pregnant, and thus should not have to pay for the woman to have her baby. *Id.* He further added that not being able to collect from a solvent inmate was ludicrous because "if you had some horrendous disease and needed to be cared for, you could go get arrested and the county would pick up the tab." *Id.*

20. O.C.G.A. § 42-4-50(3) (Supp. 1996).

21. *Id.* § 42-4-51(d). Representative Kinnamon stated that the decision to sue was left to the discretion of the county attorney: "[Y]ou would not sue [the inmate] everytime, because nine out of ten [inmates] would not have anything to get. But there's that one, who might have two or three houses or two or three cars who you could go after, who would have the means to pay for it." Kinnamon Interview, *supra* note 1.

22. O.C.G.A. § 42-4-51(g) (Supp. 1996).

23. *Id.* § 42-4-51(f).

24. *Id.* § 42-4-51(d). These sanctions include the withholding of a "good time allowance," or the reduction of the time to be served. *Id.*

25. *Id.* § 42-4-51(e).

26. *Id.* § 54-4-51(e)(3).

27. *Id.* § 54-4-51(e)(4).

28. See HB 1154, as introduced, 1996 Ga. Gen. Assem.; Kinnamon Interview, *supra* note 1.

legislative counsel left out that portion because they thought providing a means to recoup the costs from the inmate and allowing deductions from the inmate account might result in "double dipping."²⁹ In response to these concerns, the House Committee on State Institutions and Property amended the bill to provide for such deductions, but added a provision to prevent double recovery.³⁰ Representative Kinnamon redrafted this portion of the bill to prevent double recovery, requiring that any fees deducted from the inmate account be set off against the amount recovered from the inmate.³¹ He believed that the five-dollar fee for each visit to the doctor³² should remain in the statute in order to deter frivolous visits.³³

The Act does not relieve the governing authority having the custody of an inmate from its responsibility to pay for an inmate's medical and hospital care.³⁴ According to Representative Kinnamon, this language was added at the request of the Georgia Hospital Association because they feared that counties and cities would use the bill to avoid liability for inmates' hospital bills.³⁵

SB 587

SB 587 was introduced in an effort to help counties and municipalities recover some of the costs of damage done by inmates and costs of medical treatment for inmates by deducting these costs from inmate accounts.³⁶

29. Kinnamon Interview, *supra* note 1.

30. *See* HB 1154 (HCS), 1996 Ga. Gen. Assem.

31. Kinnamon Interview, *supra* note 1; *see* O.C.G.A. § 42-4-71 (Supp. 1996).

32. O.C.G.A. § 42-4-71 (Supp. 1996).

33. Kinnamon Interview, *supra* note 1. He added that legislation passed in recent years allowing for a \$5.00 co-payment is said to have saved Cobb County millions of dollars. *Id.*; *see* 1992 Ga. Laws 2942, § 1, at 2944 (formerly found at O.C.G.A. § 42-4-71(a)(2) (1994)). He noted that if an inmate knows that he has to pay even \$5.00, he is less likely to visit the doctor unless it is legitimate, because the inmate could use that money to buy cigarettes, snacks, etc. Kinnamon Interview, *supra* note 1.

34. O.C.G.A. § 42-4-51(j) (Supp. 1996).

35. Kinnamon Interview, *supra* note 1. Representative Kinnamon stated the language was not necessary in that the bill specified "recoupment/reimbursement" to the governing authority, and there could not be a reimbursement if the hospital bill was not paid in the first place. *Id.* Representative Kinnamon added the provision to "pacify" the Georgia Hospital Association. *Id.* He does not believe the language strengthens or weakens the bill. *Id.*

36. Telephone Interview with Rep. Nathan Dean, House District No. 31 (May 3, 1996) [hereinafter Dean Interview].

Act 951 parallels Act 1005 in its redefinition of "detention facility."³⁷ This definition was changed in Code sections 42-4-50 and -70,³⁸ and was also added to the new Code sections 42-5-54 and 42-5-55.³⁹

Act 951 adds new Code section 42-5-54, allowing an officer in charge or his or her designee to require an inmate to furnish proof of health insurance, the eligibility for benefits to which the inmate is entitled, the name and address of the third-party payor, and the policy or other identification number.⁴⁰ The Act further provides that the officer in charge must provide a sick, injured, or disabled inmate access to medical services and may arrange for the inmate's health insurance carrier to pay the health care costs.⁴¹ The Act provides that the liability for payment for medical care may not be construed as requiring payment by any person or entity, except by an inmate personally or by his or her carrier.⁴²

The Act provides in new Code section 42-5-55 that the commissioner (or the officer in charge⁴³) may establish rules for a reasonable deduction from inmate accounts to: (1) repay the costs of property willfully damaged by the inmate, the costs of medical treatment, the costs of apprehending an inmate who attempts to escape, and the costs of quelling a riot;⁴⁴ and (2) defray the costs paid by the state for medical treatment when an inmate initiates that treatment.⁴⁵

According to Representative Nathan Dean, SB 587 was an attempt to alleviate some of the costs of housing inmates, because the "threat" of liability for damages may stop inmates from causing that damage.⁴⁶ The Act imposes more serious consequences on the inmate than the withdrawal of privileges—the county or municipality may deduct costs directly from the inmate's account.⁴⁷

37. Compare O.C.G.A. § 42-4-50(1) (Supp. 1996) with *id.* § 42-4-70(a)(1). According to Representative Kinnamon, these definitions are the same because the legislators wanted the two bills to be consistent. Kinnamon Interview, *supra* note 1.

38. O.C.G.A. §§ 42-4-50(1), -70(a)(1) (Supp. 1996).

39. *Id.* §§ 42-5-54(a)(1), -55(a)(1).

40. *Id.* § 42-5-54(b).

41. *Id.* § 42-5-54(c).

42. *Id.* § 42-5-54(d).

43. The language "or, in the case of a county facility, the officer in charge" was added by the Senate Corrections, Correctional Institutions, and Property Committee. SB 587 (SCS), 1996 Ga. Gen. Assem. According to Representative Nathan Dean, this language was added because the person usually in charge at a particular unit that makes and promotes rules and regulations for that unit may not be available. Dean Interview, *supra* note 36.

44. O.C.G.A. § 42-5-55(b)(1) (Supp. 1996).

45. *Id.* § 42-5-55(b)(2).

46. Dean Interview, *supra* note 36.

47. *Id.*

The Act defines “medical treatment” as care by certain health care providers, such as physicians, physician’s assistants, nurse practitioners, dentists, optometrists, and psychiatrists.⁴⁸ The Senate Corrections Committee amended the bill to include registered nurses, licensed practical nurses, medical assistants, and dental hygienists.⁴⁹ According to Representative Dean, these professions were added in an effort to include all who were involved in the “care and cure” of inmates.⁵⁰

The House Committee on State Institutions and Property offered a substitute adding a provision making it clear that the governing authority with custody of the inmate was responsible for any medical and hospital care.⁵¹ The House committee also added a provision prohibiting deductions from inmate accounts when the account balance is ten dollars or less.⁵²

The House committee added one last provision allowing an officer in charge to assess a fee for managing the inmate accounts, which shall not exceed one dollar per month.⁵³ The House committee substitute was adopted on the floor without amendment, and approved by the Senate before being signed by the Governor.⁵⁴

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48. O.C.G.A. § 42-5-55(a)(3) (Supp. 1996).

49. *Id.*

50. Dean Interview, *supra* note 36.

51. O.C.G.A. § 42-5-54(e) (Supp. 1996). This provision mirrors the provision added in Act 1005. Compare *id. with id.* § 42-4-51(j).

52. *Id.* § 42-5-55(d) (Supp. 1996). Such low amounts would not help pay high medical costs. Dean Interview, *supra* note 36. Representative Dean stated that there was discussion about how the state may not take all of a non-inmate’s financial resources, so legislators agreed to the provision allowing inmates to keep \$10.00. *Id.*

53. O.C.G.A. § 42-5-55(e) (Supp. 1996). According to Representative Dean, this \$1.00 fee was reasonable because banks charge people to manage their money. Dean Interview, *supra* note 36.

54. Final Composite Status Sheet, Mar. 18, 1996.