Approved: April 7, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 14, 1995 in Room 313-S-of the Capitol.

All members were present except:
Representative Candy Ruff - Excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Representative Kenny Wilk
Chuck Simmons, Acting Secretary Department of Corrections
Paul Shelby, Office of Judicial Administration
Carla Dugger, American Civil Liberty Union
Representative Phill Kline
Ron Smith, Kansas Bar Association
Representative Joann Freeborn
Jim Clark, Kansas County & District Attorneys Association
Representative Andy Howell
Mark Powell, appearing on behalf of Representative Carol Beggs
David Prager, Department of Revenue
Representative Clyde Graeber

Others attending: See attached list

Hearings on **HB 2310** - Docket fees for inmates, were opened.

Representative Kenny Wilk appeared before the committee as the sponsor of the proposed bill. He stated that frivolous lawsuits continue to be a problem for the court system. The 1994 Legislature passed a bill that mandated inmates exhaust administrative remedies prior to filing a lawsuit and that judges be allowed to charge a docket fees based on the ability of the inmate to pay. The proposed bill makes it mandatory that inmates be charged a minimum of a $3 docket fee and that if the court finds that an inmate has done any of the following the Secretary of Corrections shall withhold the awarding of good time credit: file a false or malicious action or claim; bring an action primarily for delay or harassment; testify falsely or submit false evidence or information; attempt to create or obtain a false affidavit, testimony; and abuse of the discovery process. (Attachment 1)

Chuck Simmons, Acting Secretary Department of Corrections, appeared before the committee as a proponent of the bill. He commented that since the legislation was enacted last year there has only been a few instances where the courts have imposed a filing fee. The DOC believes that a $3 docket fee would be appropriate and is not so high as to deter the filings of legitimate cases. (Attachment 2)

Paul Shelby, Office of Judicial Administration, appeared before the committee and asked where the docket fee would be sent. The Chairman answered that this was a good question and that staff would look at this issue with they work the bill.

Carla Dugger, ACLU, appeared before the committee in opposition to the proposed bill. She explained that they have problems with Section 2 which would allow the Secretary to not award good time. There are already statutes against perjury and abusing the discovery process and therefore this legislation was not needed. (Attachment 3)

Hearings on **HB 2310** were closed.

Hearings on **HB 2311** - Tort claims act; maximum amount of award, were opened

Representative Kenny Wilk appeared before the committee as the sponsor of the bill. He told the committee that this proposed bill would ensure that tort claims against government entities do not exceed the $500,000 limit that is currently written in statute. (Attachment 4)

Ron Smith, Kansas Bar Association, appeared before the committee with a suggested technical amendment. The bill reads as if there is a $500,000 limit in all actions but there really isn't. Line 22 of bill should read "and the provisions of K.S.A. 75-6111 do not apply."

Hearings on **HB 2331** were closed.

Hearings on **HB 2013** - Victim of sex offenses identification not a public record, were opened

Representative Phill Kline appeared before the committee as a sponsor of the bill. He told the committee that the number one reason for not reporting a rape is the fear of exposure. This bill would allow law enforcement agencies to refuse to release the name, address and phone number of a victim of a sex crime. (Attachment 5)

Representative Joann Freeborn appeared before the committee as a sponsor of the proposed bill. She commented that this bill is a great public safety factor. (Attachment 6)

Representative Jill Grant appeared before the committee as a sponsor of the bill. She stated that this bill would protect the identity of victims of sex crimes. These crimes are the most under reported violent crimes. (Attachment 7)

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. This would give further protection of victims from becoming victimized a second time. (Attachment 8)

Patricia Bledsoe did not appear before the committee but requested that her written testimony be included in the committee minutes. (Attachment 9)

Hearings on **HB 2013** were closed.

Hearings on **HB 2012** - Restitution paid to the victim; financial records open to the victim; programs for the inmates, were opened.

Representative Andy Howell appeared before the committee as a sponsor of the proposed bill. He explained that this would turn an order of restitution into a civil judgement. (Attachment 10)

Chuck Simmons, Acting Secretary Department of Corrections, appeared before the committee in support of the proposed bill and requested several amendments. The first amendment was in Section 11 changing the word "may" back to "shall". DOC believes that programs are an important tool in preparing offenders for return to society with the best potential for living a law abiding lifestyle. The last would be to have the collection of restitution done by the courts not DOC. (Attachment 11)

Representative Phill Kline and Attorney General Carla Stovall did not appear before the committee but requested that their written testimony be included in the minutes. (Attachments 12 & 13)

Hearings on **HB 2012** were closed.

Hearings on **HB 2271** - Reimbursement of state by former prison inmates for costs of care while in prison, were opened.

Mark Powell, appeared on behalf of Representative Carol Beggs as a proponent to the bill. He told the committee that this bill tries to address the State as a victim because when the state pays for the cost of care of an inmate they are diverting money from other areas such as education and economic development. This bill was drafted after Michigan's law. It simply wouldn't allow inmates to profit from their crime. (Attachment 14)

Chuck Simmons, Acting Secretary Department of Corrections, appeared before the committee in support of the bill and with several requested amendments. (Attachment 15)

David Prager, Department of Revenue, appeared before the committee neither as a proponent nor an opponent of the bill. There is a limitation of 5% of an inmates gross income that can be collected annually, and while they're incarcerated their income will probably be zero. This limit needs to be raised so that if there are assets it would be easier to sue and collect all the assets at one time.

Hearings on **HB 2271** were closed.

Hearings on **HB 2252** - Defendant sentenced to death required to pay costs of certain appeals, were opened.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 14, 1995.

Representative Clyde Graeber appeared before the committee as the sponsor of the proposed bill. He stated that this bill would provide for all defense and court costs for accused murders through their conviction in state court and all costs for the required automatic appeal to the Kansas Supreme Court. Any other proceedings or appeals will be at the accused's own expense. (Attachment 16)

Carla Dugger, ACLU, appeared before the committee in opposition of the bill. She stated that this would be unconstitutional and unjust . (Attachment 17)

Hearings on **HB 2252** were closed.

The next meeting is scheduled for February 15, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/14/15

NAME	REPRESENTING
Ron Smith	KS Bar Assn
L Therese Bangert	KCADP
Jan Johnson	Dept of Corrections
Charles Simmons	"
Paul Shelby	OJA
Jim Clark	KCDAA
Keith Haas	Kansas Life Association
Mary Jane Stattelman	KS Farm Bureau
Tom Keefer	Self
Harry Herington	League of KS Municipalities
Pat Cleary	KDHE

State of Kansas

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TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES:
EDUCATION
K-12 SCHOOL FINANCE

Testimony for HB 2310
House Judiciary Committee
February 14, 1995

Mr. Chairman and members of the committee. Thank you for the timely consideration of HB 2310. Some of you may remember this legislation from last year. HB2310 is an attempt to fine tune the effort. Let me briefly explain.

Frivolous lawsuits filed in our court system are a problem for many counties, particularly those counties that have correctional facilities. Last year the legislature passed law requiring inmates to exhaust administrative remedies prior to filing a lawsuits, and if an inmate filed a lawsuit we allowed the judges to charge a docket fee based on the ability of the inmate to pay from their inmate trust account. HB 2310 makes two simple changes.

First it requires that an inmate be charged a minimum of a $3 docket fee, if the inmate has a zero balance, the inmates trust account will be debited $3 until such balance is made available to pay the docket fee. The Secretary of Corrections will be responsible for administering the transaction. **Secondly, if a court finds that an inmate has done any of the following, the Secretary of Corrections shall withhold the awarding of good time credit** for any period specified by the Secretary:

1. Filed a false or malicious action or claim with the court;
2. brought an action or claim with the court solely or primarily for delay or harassment;
3. testified falsely or otherwise submitted false evidence or information to the court;
4. attempted to create or obtain a false affidavit, testimony or evidence;
5. abused the discovery process in any judical action or procedding.

I believe these provisions properly implemented will make an impact on frivolous, time consuming and expensive court proceedings that are currently filed by inmates. It is not my intent, nor do I believe it would ever be the intent of the Legislature, to deny any legitimate case from being heard and served in our Kansas courts. But clearly many of the cases filed by inmates are an abuse of the system. Convicted criminals have had "their day in court." Support of HB 2310 will play a small part in assisting to keep our court system available for innocent victims waiting for justice.

Department of Corrections

Inmate Trust Fund Balances

December 31, 1994

Facility	Balance
El Dorado Correctional Facility	$ 78,234.95
Ellsworth Correctional Facility	47,973.28
Hutchinson Correctional Facility	190,627.59
Lansing Correctional Facility	346,394.10
Larned Correctional Mental Health Facility	21,649.49
Norton Correctional Facility	33,625.81
Topeka Correctional Facility	73,368.12
Winfield Correctional Facility	19,706.33
Wichita Work Release Facility	331,373.56
TOTAL	$1,142,953.23 *

* Includes amount of approximately $285,000 for savings, a significant portion of which is for mandatory savings which cannot be accessed by inmates until their release from incarceration.

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
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Bill Graves
Governor

Charles E. Simmons
Acting Secretary

MEMORANDUM

DATE: February 10, 1995

TO: House Judiciary Committee

FROM: Charles E. Simmons, Acting Secretary

SUBJECT: HB 2310

The Department of Corrections supports HB 2310.

Last session, in an effort to curb the number of frivolous lawsuits filed by inmates, provisions were enacted through which the court could determine the filing fee to be assessed an inmate for filing a civil action. The fee is to be determined by the court after receipt of a statement from the Department of Corrections regarding the balance in the inmate's trust account.

In the seven months since this law took effect, legal staff of the Department report that in only a few instances in one county have courts imposed a filing fee. HB 2310 would require a minimum filing fee for all inmate-initiated civil actions of $3. A higher fee could be determined by the court based on the balance in the inmate's trust account.

It is the Department's position that a minimum filing fee is reasonable and appropriate. A $3 filing fee is not so high as to deter the filing of meritorious cases but may be high enough to deter inmates from filing false, malicious, or harassing actions, particularly on a repetitive basis. We also believe it is consistent with the Department's philosophy that offenders should be responsible and accountable for their actions. In that respect, the Department recently implemented a regulation imposing offender fees for various services provided to offenders.

House Judiciary
2-14-95
Attachment 2

HB 2310 also provides that if a court finds that an inmate has filed a false or malicious claim, brought a claim for the purpose of harassment, provided false evidence, or abused the discovery process, the inmate shall not be awarded any good time credits for that review period. The Department believes this type of sanction is appropriate. Good time should not be considered earned if an inmate has abused the judicial process. Good time credits, to be meaningful, should only be awarded when an inmate has earned them by displaying appropriate conduct in all aspects of his or her life while incarcerated as well as fulfilling other requirements established by the Department. Again, offenders should be responsible and accountable for their actions.

CES:dja

Testimony
in Opposition to House Bill No. 2310
February 14, 1995
House Judiciary Committee
Hon. Michael O'Neal, Chair

Good afternoon, Mr. Chairman. I would like to thank you and members of the Committee for this opportunity to speak in opposition to House Bill 2310.

My name is Carla Dugger, and I am the Associate Director of the American Civil Liberties Union of Kansas and Western Missouri. We are a private, not-for-profit membership organization which supports and defends civil liberties.

We have particular problems with the new language in Section 2, subsection 2(d) which states that "An inmate shall not be awarded good time credits pursuant to this section for any review period established by the secretary of corrections in which a court finds that the inmate has done any of the following while in the custody of the secretary of corrections: (1) Filed a false or malicious action or claim with the court; (2) brought an action or claim with the court solely or primarily for delay or harassment; (3) testified falsely or otherwise submitted false evidence or information to the court; (4) attempted to create or obtain a false affidavit, testimony or evidence; (5) abused the discovery process in any judicial action or proceeding."

There already are sanctions against perjury, against abusing the discovery process, and against filing a false claim with the court. To that extent, this legislation is not needed. However, HB 2310 provides a strong disincentive to file any damage claim whatsoever, including quite legitimate ones.

It is safe to say many prisoners are not well educated, and many may not be able to ascertain the subtleties of the judicial process. Not being served ketchup with fries is spurious, but would it be legitimate to claim that a prison work assignment prevents an inmate from eating one of three daily meals over a length of time? Or what if a guard keeps a prisoner in handcuffs inside his cell? Would many prisoners keep quiet about these more serious, but possibly borderline forms of abuse so as not to risk his or her "good time?" (Keeping prisoners in handcuffs or chains inside their cells has been held to be unjustified, since the result of such punishment can be, in various cases, the infliction of scars, lack of sleep, and prolonged physicial pain. The Virginia Federal District Court invalidated this practice.)

Part of the way in which to prevent true abuse is by being sure there is an adequate outlet to the courts. Yes, it is expensive, and yes, frivolous claims are filed in addition to serious claims. However, the value of providing an adequate outlet in the long run exceeds the short-term costs by helping to ensure

that abuse cannot fester in the prison setting. Prison officials need to be able to be held accountable. In a state in which the prison population is expanding and tensions no doubt will mount between prisoners and guards anyway, prisoners need no special disincentive to petition the court for redress when they feel they are abused, and prison officials need no incentive to continue any abuse in which they may be engaged. It is our opinion that this bill does both.

Inmates do in fact have a right to petition the court for a redress of grievances such as conditions complaints, including, for example, abuse by prison guards. The US Supreme Court considered a case in recent years concerning a inmate who claimed he was taken out of his cell and beaten by guard. The Court found on behalf of the inmate's right to file a lawsuit on the basis of the abuse he had suffered, even though he experienced no lasting injuries and even though in such cases there are always problems of evidence. The Court is now considering a case in which an inmate claims he was "hushed up" by prison authorities for stating he sold marijuana to Dan Quayle. The case has been found to have enough merit to end up in the highest Court in this country. However, if Kansas passed HB 2310, would an inmate with similar information regarding a highly placed public figure, who finds himself the victim of abuse in an attempt to supress his information, decide against filing a lawsuit?

Finally, we would like to note that the denial of "good time," resulting in additional time served, is a significant punishment which should entitle the prisoner to counsel. Denial of adequate representation would, in our opinion, constitute an unacceptable violation of due process.

We ask the Committee to reject HB 2310.

State of Kansas

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House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES:
EDUCATION
K-12 SCHOOL FINANCE

Testimony for HB 2311
House Judiciary Committee
February 14, 1995

Mr. Chairman and members of the committee. Thank you for the timely consideration of HB 2311. This is an amendment to the Kansas tort claims act.

HB 2311 provides a mechanism to ensure that tort claims against government entities do not exceed the $500,000 limit that is currently written in statute. Section 1b in HB 2311 allows the court to exercise a judgement not to exceed the intended $500,000 limit.

I bring this bill to the committee because of a bad experience encountered by Leavenworth County. For Leavenworth this bill is too late, but hopefully it will clarify the issue for potential problems in other areas. Let me briefly share Leavenworth County's experience with this issue.

Leavenworth County (LC) has been involved in a case for an extended period of time. This claim dealt with an accident that occurred on a county road in Leavenworth County. The plaintiff was from New York, so the trial was held in federal court. After three trials, the plaintiff was awarded a $638,000 settlement. The County has paid $500,000, but has refused payment of the additional $138,000. The County claims defense under the tort claims act limitation. A federal judge has not accepted this defense and has ordered the county to post a $138,000 bond pending resolution of the question.

HB 2311 attempts to address this question by removing any ambiguity or doubt and by providing the mechanism for the court to apply the $500,000 cap. It is my hope that this clarification would prevent another county from encountering the same type of problem at a later date.

SPONSORS
Phill Kline
Ann Freeborn
Jill Grant
Janice Pauls
Richard Alldritt
Bill Bryant
Tim Carmody
Rochelle Chronister
Darlene Cornfield
Delbert Crabb
Carol Dawson
Les Donovan
John Edmonds
Cindy Empson
Mike Farmer
Bill Feuerborn
JoAnn Flower
Cliff Franklin
Kent Glasscock
Gary Haulmark
Gary Hayzlett
Sheila Hochhauser
Deena Horst
Andrew Howell
Joe Humerickhouse
Becky Hutchins
Phil Kline
Brenda Landwehr
Bill Mason
Doug Mays
Laura McClure
Jim Morrison
Don Myers
Melvin Neufeld
Belva Ott
Patricia Pettey
Tony Powell
Ted Powers
Bill Reardon
Ellen Samuelson
Tim Shallenburger
Sabrina Standifer
Dale Swenson
Ralph Tanner
Shari Weber
Dennis Wilson

Protecting the Identity of Victims - H.B. 2013

TESTIMONY OF REP. PHILL KLINE

Before the House Judiciary Committee
February 14, 1995

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you in support of H.B. 2013. The bill protects the identity of any victim of a sex crime and is co-sponsored by 46 representatives of both political parties. The bill passed the House and Senate last session, but was defeated in the Senate in a motion for reconsideration.

As we discuss this bill, it is important to understand three things:
(1) Why we need the bill,
(2) What the bill is; and
(3) What the bill is not.

RAPE IS THE MOST UNDER-REPORTED OF VIOLENT CRIME AND THOSE WHO RAPE WILL RAPE AGAIN

The FBI Uniform Crime Report states that 94,504 rapes *were reported* in the United States in 1989. Based on reports to police, 16 rapes are attempted and 10 women are raped in our country every hour. The FBI also reports that *only 15% of all rapes are reported.* A rape, or violent sex offense, that is not reported is a rape waiting to happen.

Fully 52% of convicted rapists will be arrested again within 3 years of their release from prison. (From the pages of *Newsweek*, July 1990 and *U.S. News and World Report*, July 1989, as provided by M.O.C.S.A.)

Our state has a compelling interest in increasing the report, prosecution and conviction of rapists. This legislation will help accomplish this goal.

RAPE IS A TRAUMATIC AND INVASIVE CRIME THAT HAS A LONG LASTING IMPACT

Rape, next to murder, is the most violating and demeaning of all crimes. It is a crime that deeply affects the victim, resulting in severe emotional trauma that must be addressed on an individual basis while considering the individual needs of each victim. In fact, studies indicate that 50% of rape victims experience post-traumatic stress disorder for years after a rape and 16% still suffer emotional problems for 15 years following the rape. (HRS Rape Awareness Program, Tallahassee, FL)

This trauma combines with an unwarranted public stigma to cause the underreporting of sex crimes. *A 1992 survey completed by the National Victim Center revealed that 97% of rape service agencies believe that laws shielding victim confidentiality by protecting the disclosure of names will be effective in increasing the report of rape.*

Rape counselors and victims' advocates indicate that one of the first questions asked by a victim is whether her name will be in the paper. They also report that many times when a rape victim is informed that her name, address and phone number are public information, they simply do not report the crime. *We must have the courage to encourage the report of rape and to do this we must support the rape victim and her personal concerns for privacy.*

THIS BILL HAS OVERWHELMING PUBLIC SUPPORT

In 1992 Kansas voters overwhelmingly approved a constitutional amendment recognizing victims' rights. Since that time, Kansans have been waiting to see what we will do to promote those rights. We have had tremendous discussion regarding the rights and lack of rights of criminals, however, we have not spent a great deal of time promoting victims' rights. This bill is an effort to address part of the publics' concerns.

People support this bill. A 1990 poll by the National Victim Center reveals that 79% of Americans support this type of law.

THIS BILL IS SIMPLE; IT SIMPLY ALLOWS LOCAL LAW ENFORCEMENT AGENCIES TO REFUSE TO RELEASE THE NAME, ADDRESS AND PHONE NUMBER OF VICTIMS' OF SEX CRIMES

Current law allows the release of the name, address and phone number of sex crime victims - to anyone. This is the law despite the fact that our laws currently protect from disclosure certain investigative materials and often, the identify of juvenile offenders. This bill simply amends the Kansas open records act to provide that any information which individually and specifically identifies the victim of a sex crime may be withheld.

The bill is constitutional. It does not prohibit publication, it does not prevent the victim from voluntarily going to the media, it does not close information relating to the crime or prevent the disclosure of general information relating to the victim. Such information may have significant public safety ramifications. This bill essentially weighs the public interest in being a voyeur against the state's interest in increasing the report of rape and victims' interest in privacy - and sides with the victim and the reporting of rape.

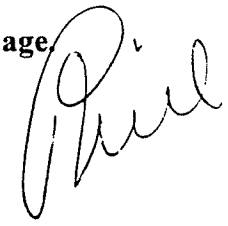
This bill offers the least restrictive method to address the privacy concerns of the sex crime victim. The choice is left to local law enforcement agencies to develop a policy that is utilized consistently.

This bill should not be viewed as an indictment of the media. Kansas media representatives have been responsible and have a voluntary policy that prevents the publication of identifying information of the victim. Voluntary compliance, however, is not sufficient to many victims attempting to overcome the trauma of rape. They deserve and need this protection.

The First Amendment can and must be cherished and protected. The First Amendment, however, simply by its existence, should not cause us to shy away from important and fundamental policy and societal questions. Simply raising the First Amendment, should not defeat this proposal. The U.S. Supreme Court and our constitution clearly recognizes the rights of states to protect certain information from disclosure when a compelling state interest is protected. We have a compelling need to increase the reporting of sex crimes - to prevent our citizens from becoming future victims.

In a perfect world, a woman would not hesitate to report a rape or hesitate to have her name in the paper because we would not have a stigma regarding rape. In a perfect world, women would not be raped. Tragically, we do not live in a perfect world. Rapes occur and the results are brutal. It is time that we side with the victim, that we recognize that action is needed to increase the report of rapes and that we empower victims to choose their own path to healing and the prosecution of the rapist.

I strongly urge you to report this bill favorably for passage.



STATE OF KANSAS

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HOUSE OF
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COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
PUBLIC HEALTH AND WELFARE
ENERGY AND NATURAL RESOURCES
JOINT COMMITTEE ON CHILDREN AND FAMILIES

In regard to House Bill 2013 February 14, 1995

For the purpose of Public Safety, it is important that victims of sex offenses feel comfortable with the reporting procedures. Legislation enabling future victims to be assured that they will not be subject to public scrutiny by the mere fact that they have reported the serious crime of RAPE will encourage the reporting process.

My opinion is that this is indeed a great public safety factor. While the victim of Rape has already suffered, the reporting of such activity in a said locality, will call attention to greater precaution by others in that community. Law enforcement can then proceed in an appropriate manner. If a victim of a sex crime is afraid to report, others can be subject to harm while being unaware of the current danger.

It is important that public education inform citizens to practice guidelines of safety regardless of whether this bill passes or not. I do encourage passage of HB2013 because I see it encourages reporting which is a public safety factor.

There are numerous other related issues supporting the importance of confidential reporting as you will hear in other testimony.

Sincerely,

Joann Freeborn

House Judiciary
2-14-95
Attachment 6

STATE OF KANSAS

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HOUSE OF
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JUDICIARY
LOCAL GOVERNMENT

HOUSE JUDICIARY COMMITTEE
TESTIMONY ON **HB 2013** **February 14, 1995**

Currently KSA 45-221 exempts from public disclosure: "...(23) Library patron and circulation records which pertain to identifiable individuals..." and "...(37) Information which would reveal the precise location of an archeological site..." Isn't it time that the victims of sex crimes be afforded the same protection given to Library patrons and archeological sites?

This bill simply protects the identity of victims of sex crimes. Sex crimes such as rape, are the most under-reported of all violent crimes in our country. It is estimated that only 10% of sexual crimes are reported each year.(Time, When is it Rape June 3, 1991). In Kansas in 1992, (the last year figures are available), there were 1,043 reported rapes. Following the 10% reporting factor, this means there were over 10,000 sexual assaults that year. The reason sex crimes are not reported can be attributed to the negative stigma attached to these crimes and unfortunately to their victims.

HB 2013 attempts to elevate the effects and attitudes by assuring the victims of sex crimes that their names will not be disclosed until the case is officially filed in the courts.

Forcible rape is perhaps the most disturbing and stressful event a human being can experience. It has been described as a "total loss of control over one's life, one's body and the course of events" (Julie A. Allison & Lawrence S. Wrightsman Rape: The Misunderstood Crime[1] (1993) p. 148). However it is also the most under-reported crime in the country. Studies have shown nearly one quarter of all women will be raped in their lifetime, yet only 10% will report the crime. (Time, *When is it Rape?* June 3, 1991).

The negative attitudes surrounding sex crimes are not a modern occurrence. For example: thousands of years ago "the only rape that was punishable was the defiling of a virgin, and that was viewed as a property crime". "In early . . . Hebrew societies, a married woman who was raped suffered the same fate as an adulteress--death . . ." Earlier in this century judges often instructed jurors "rape is a charge easily made and hard to defend against; so examine the testimony of this witness, (the victim), with caution." (Time June 3, 1991).

Today the attitudes tend to shy away from treating sexual crimes as trivial events. Rather, they are more and more directed solely at the victim: "Women cannot be raped against their will", "Women secretly wish to be raped" (Allison and Wrightsman; p. 98). Two extreme examples of this attitude have occurred in recent years:

In the first case, an accused rapist was acquitted after he allegedly kidnapped and raped his victim at knife point. The reason for the acquittal, according to the jury foreman, was "we all feel she asked for it for the way she was dressed." (Time Oct. 16, 1989). The second case involved a grand jury that refused to return an indictment against an accused rapist, (again using a knife during the attack), because the victim, fearful of catching AIDS, had offered him a condom. According to the accused, the victim "clearly must have consented to sex." (Time Nov. 9, 1992).

These cases merely illustrate the attitude of blaming the victim. "No other crime looks upon the victim with the degree of suspicion and doubt that a rape victim must face". (Allison and Wrightsman p. 105). Although "blame" in the traditional sense of the word, (i.e. intent), is generally placed at the feet of the attacker, one study showed 10% of the blame being assigned to the victim (id p. 113). Much more often the Causality and Responsibility, or fault, for the attack are assigned to the victim, (i.e. "She asked for it" or "If only she hadn't...).

The sexual assault victim, aside from dealing with the above attitudes, must contend with the effects of the attack itself. The term Rape Trauma Syndrome is used to describe the physical and psychological effects a rape victim suffers following the attack. The syndrome is divided into two phases.

Phase I is also designated the Acute Crisis Phase or the Phase of Impact. This period is estimated to last anywhere from a few days to a few weeks and can be quite severe. The reactions of the victim during this period usually consist of Anxiety and Fearfulness. These feelings can overpower the victim and effect every aspect of their lives. It can also cause the reliving of the event over and over again (id p. 152). One study which measured the reactions of rape victims 2-3 hours after the event found that 96% felt scared and worried while 92% were terrified and confused (id p. 153). Other reactions during the Acute Crisis Phase can include Denial, Shock and Disbelief, (the "this can't be real" reaction); Disruption of functions, (the victim can be unresponsive, fearful and trembling)(Allison and Wrightsman p. 152).

The victim can also exhibit feelings of Guilt, Hostility or Blame. These are displayed by thoughts such as "If only . . ." They can be so strong the victim actually believes the attack was her fault. In fact in a recent study only 56% of rape victims placed the blame for the attack on the rapist (id p. 154).

Finally in Phase I the victim may perceive they are no longer an independent person who has control over their own lives. Many endure feelings of Distorted Perceptions, often having paranoia like feelings, and believing that they will be raped again.

Phase II of Rape Trauma Syndrome is also referred to as Long Term Reactions.

This phase can last anywhere from a few months to indefinitely, depending on the circumstances of the attack and the individual victim (id p. 155). The reactions in this stage range from changes in lifestyle, Disturbances of General Functioning to Phobias.

Victims who experience some type of phobia often exert manifestations of fear and anxiety. They learn to fear anything associated with the attack, as anyone would associate bad feelings with a painful stimulus.

Perhaps more troubling is the disruption in everyday functioning. The victim may experience some type of eating disorder. One may stop eating while another may eat obsessively. The victim may also experience loss of sleep and when they are able to sleep may have frequent nightmares. Some have withdrawn from the outside world while others end up relying totally on one person for support (id p 156-57).

Every victim will undergo some level of lifestyle changes ranging from the drastic to the relatively small. While one victim may simple refuse to leave her home alone anymore, another may move away from the place the rape occurred. To make matters worse many sexual assault victims claim that these problems are exacerbated by a lack of understanding or compassion from family or friends.

The experts are in disagreement as to how long it takes for a victim to recover. One study suggests that most improvement occurs between 1 and 3 months after the attack (Allison and Wrightsman p. 159). However, this in no way implies the victim is fully recovered. Only 20 to 25% of victims have reported experiencing no symptoms 1 year after the event while some report being worse off than immediately after the rape, (caused by regression) (id). Another study reports that 25% of those studied reported no significant recovery several years following the attack (id).

HB 2013 does not and cannot protect the victim from anyone finding out their identity. It does not stop reporters from using their investigation skills to tracking down the victims name. It does not stop neighborhood busybodies from gossiping and whispering behind the victims back. Perhaps most importantly it does not place a restraint on the media by prohibiting publication of the identity if it is obtained through lawful sources.

Nor does **HB 2013** entirely tie the hands of the press from obtaining a victims identity through state or local agencies. If the press can show the identity of the victim is vital to the public interest, and the state fails to meet its burden of proof, (spelled out in KSA 45-221), the court can order the information disclosed.

I URGE YOUR SUPPORT OF HB 2013

1. Rape: The Misunderstood Crime, by Julie A. Allison and Lawrence S. Wrightsman compiles many studies concerning rape and sexual crimes. For reasons of simplicity the individual studies are not cited. The page number cited indicates where the information concerning the study can be found in the Allison and Wrightsman book.

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2013

The Kansas County and District Attorneys Association supports passage of HB 2013, which, like last year's HB 2761, gives the victims of sex crimes further protection from becoming victimized a second time by an assault on their privacy.

The bill is a further expression of concern for crime victims, which the Legislature has exhibited many times in the past. For example, while the rape shield statute, K.S.A. 21-3525, prohibits trying the reputation of the victim of a sex crime by excluding evidence of prior sexual conduct, except for certain exceptions, the sad fact was that motions and supporting documents concerning these exceptions containing such information were part of the public file, available to press and public. The solution proposed by the legislature was to close such motions, and to prohibit defendant, counsel and the prosecution from disclosing such information.

This bill is not that drastic as it does not place restrictions on a defendant or other parties in a criminal case. It merely removes information vital to a sex crime victim's privacy from the public view. A defendant in a criminal can always seek such information through a request for discovery, which will be ruled on by a trial court if it finds such information relevant to defendant's case.

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KCSDV

Kansas Coalition Against Sexual and Domestic Violence

820 SE Quincy Suite 416B Topeka, KS 66612 (913) 232-9784 FAX (913) 232-9784*51

February 14, 1995

Senator Mike O'Neal, Chair of Senate Judiciary Committee
State Senate Room 255-E
Topeka, Kansas 66612-1504

Dear Chairman O'Neal:

I am writing to you as the Executive Director of The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) in its support of HB 2013 sponsored by Representative Phill Kline and others on behalf of victims of sex crimes. In addition, I am a Licensed Clinical Masters Social Worker and have had considerable experience in working with both men and women who are victims of sex crimes.

By reading this letter, I hope that you will come away with a better understanding of the impact that sex crimes have on their victims and the extent of these crimes in our society. The United States has one of the highest, if not the highest, rate of rapes in the world. Every year in America, 683,00 women are forcibly raped - 29% of all forcible rapes occur when the victim is less than 11 years old (National Victim Center, New York, N.Y., 1993).

Even though rape is the fastest growing violent crime in our nation, it is the most underreported. Less than 10% of all rape victims report their assault. Why is this happening? Why are victims choosing not to report their painful, often life-threatening experiences? To even attempt to come up with answer, we must look at the dynamics of the act of rape itself; the impact it has on the victim and on our society as a whole; and how, far too often, the victim is revictimized by outsiders.

Executive Director
Patricia A. Bledsoe

It is important to remember that everyone is a potential sex crime victim. Rapists choose their victims without regard to age, socioeconomic status, physical appearance, race, reputation or gender. One in every 3 women will be sexually assaulted in their lifetime; 1 of every 4 girls will be sexually assaulted before their 18th birthday and 1 of every 7 boys. Young women age 16-19 have the highest rape victimization rate; 20-24 year olds have the second highest rate.

Rape is not an act of sex. Rape is a crime of violence or hate in which sex is used as a weapon to inflict pain, humiliation and control over the victim. It is an of domination and humiliation in which the survivor is absolutely powerless. For the victim, rape is a frightening and traumatic experience. Following an assault, victims may be fearful and anxious, have trouble sleeping and concentrating, and have frequent flashbacks of the assault. Victims also often have intense feelings of betrayal, loss, powerless, shame, guilt and anger.

Reporting the rape can help victims overcome the feelings of powerlessness they may experience as a result of being sexually assaulted. Reporting may also prevent other women from becoming victims, and it may help local law enforcement officials form a realistic profile of the rapists and the extent of the problem in their community.

So why are victims of sex crimes reluctant to report what has happened to them? It is my professional opinion that many victims of sex crimes do not report their assault because they feel they cannot endure any further invasion of their privacy. Disclosing this very personal violation to strangers is difficult because it exposes the victim's vulnerability. Victims who do report rape risk further victimization and powerlessness by entering a system that must necessarily be more concerned with the crime than with the individual victims. Many victims choose to struggle all alone through the physical pain, the emotional shock, the embarrassment, and the depression because they are afraid to seek help. They are afraid that they will have to testify, will see their name in print or, even more frightening, will have others see their name in print or hear it on television.

Sex crimes are among the ugliest and most psychologically devastating of crimes. It is important that victims of sex crimes be given the opportunity to seek help as a part of their healing process and to know that their right of privacy will be honored. A victim must have the power to decide what to tell and to whom to tell it.

As a representative for KCSDV, I ask for your favorable consideration of HB 2013. Thank you.

Patricia A. Bledsoe, LSCSW
Executive Director, KCSDV

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE
HEALTH AND HUMAN SERVICES
JUDICIARY

TESTIMONY ON HB 2012
BEFORE JUDICIARY COMMITTEE
FEBRUARY 14, 1995

Thank you Chairman O'Neal and members of the committee for the opportunity to speak on behalf of HB 2012.

My testimony will be brief and to the point. HB 2012 will put teeth into current law and make it easier for victims to collect for losses or damages caused by criminal acts, by turning an order of restitution into a civil judgement. This means that even after the sentence is served, criminals' wages can be garnished and property can have a lien placed against it. No jail term ever replaced stolen property or paid for a broken arm. Current law does not fully restore those harmed by criminal acts. We need this law because it will put victims back in control of our legal system. Currently, our criminal justice system is anything but justice. Our laws must begin to reflect a new emphasis on restoration of that which was taken or destroyed, before the public will have faith that government is truly doing it's job - punishing criminal behavior and rewarding good behavior.

As many of you know, I have worked as an officer for the Fort Scott Police Department for several years. I can tell you from experience, that the element of society that commits criminal acts has yet to feel an incentive to change their behavior.

There are two or three families in our town whose names, when mentioned to the police, can be translated "irresponsible trouble". Their family history is one of one criminal act followed by another. The local citizens are outraged at the ineffectiveness of our criminal justice system to help them restore their losses.

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I submit to you, that as this Government begins to demand the same accountability of our criminals that we currently demand of our taxpayers, we will see positive results. As we establish law which demands that those who are wronged be repaid, we will see a new belief among our citizens that government has focused on equally demanding responsible behavior from all its citizens.

It is for this reason I urge your support for HB 2012.

Thank you. I will stand for questions.

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
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(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Acting Secretary

MEMORANDUM

DATE: February 14, 1995

TO: House Judiciary Committee

FROM: Charles E. Simmons, Acting Secretary

SUBJECT: HB 2012

The Department of Corrections supports efforts to increase instances of offenders paying restitution to the victims of their crimes.

In most cases where restitution is imposed under current law, efforts are made as part of the parole or postrelease supervision process to require the offender to pay the restitution. Making an order of restitution enforceable as a civil judgment as provided in HB 2012 will provide additional legal remedies to crime victims to satisfy restitution orders.

Giving restitution orders enforceability as civil judgments is especially important in light of Sentencing Guidelines Act provisions which limit postrelease supervision for crimes committed after July 1, 1993 to either 12 or 24 months (plus earned good time credits). If the restitution is not paid in that time period, under current law the State has no way to enforce the restitution order. Making restitution enforceable as a civil judgment will allow the restitution order to survive the period of parole or postrelease supervision, thus enabling crime victims to have a longer period of time in which to obtain full satisfaction of the restitution order.

Restitution requirements are now imposed upon inmates participating in work release or private industry programs where they earn at least minimum wage. Collecting restitution from most other inmates is not likely since they lack the assets from which to make

payments. Even while on parole or postrelease supervision it may be difficult for offenders to fully satisfy restitution requirements; however, efforts, such as those set forth in HB 2012, should be attempted in order to maximize the amount of restitution paid to crime victims.

Section 8 of HB 2012 contains (p. 21, lines 7-9) a provision intended to make available to crime victims records of inmates' financial assets. The Department of Corrections believes specific authorization is necessary in order to release these records and suggests the following language for this purpose:

> "records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court."

We believe this language more clearly specifies the records subject to release and extends the provision to include not only inmates but all offenders in the custody of the Secretary of Corrections. This is important since most of the collection efforts regarding restitution are likely to be undertaken with respect to offenders who are on postrelease supervision.

Section 11 of HB 2012 changes "shall" to "may" regarding the establishment of programs for offenders in the custody of the Secretary of Corrections. The Department of Corrections believes that programs are an important tool in preparing offenders for return to society with the best potential for living a law abiding lifestyle. While we cannot claim that programs are successful with all inmates or that every program is successful, we believe it is important to have a variety of programs designed to meet the needs of the offender population. Measurable goals and objectives should be established for each program and whether the program is continued should be based on its performance in meeting those goals and objectives. The Department is committed to that process.

Technical Issues:

Section 1, p. 2, lines 24-25: This provision refers to installment payments for restitution with the last installment not later than five years after the end of the term of imprisonment. Postrelease supervision periods for crimes committed on or after July 1, 1993 are 12 or 24 months plus earned good time credits. As such, these individuals likely will not be under any supervision during a portion of the five-year period.

Section 1, p. 3, lines 39-41: Restitution is now paid to the court by an offender. The Department of Corrections does not actually collect any restitution. The Department believes its role in this process should be monitoring and enforcement, not collecting and dispensing restitution.

CES:dja

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Meaningful Restitution for Victims - H.B. 2012

Mr. Chairman and members of the committee. thank you for the opportunity to speak in favor of HB 2012. The bill remedies a current inequity in our criminal justice system and makes those who commit a crime, pay for their crime.

Current law allows a court to enter an order of restitution but does not allow the victim any method to collect. Under Kansas law an order of restitution is all form and no substance.

A convicted criminal can ignore court ordered restitution with impunity. Victims are fooled into thinking that justice has been served until they attempt to collect on the order. Justice takes a back seat and victims pay the price.

This bill simply makes a restitution order meaningful by converting the order to a civil judgment. This allows a crime victim the same tools to collect on a restitution order as our civil courts allow to a plaintiff in a civil judgment.

Shouldn't we provide the same mechanism for enforcement to a victim of a crime as we do for a victim of negligence?

The bill provides for an evidentiary hearing and findings of fact by the court regarding restitution. It allows the court to consider the peculiar financial concerns of the criminal when entering the order. Adequate protections are provided to the convicted criminal.

We must recognize that our criminal justice system must also be designed to insure justice to victims. This bill is a step in the right direction.

NOTE: Last year we changed the law, now allowing the court to order confinement and restitution. Victims can currently seek civil damages but must proceed through an extra court proceeding. Why not streamline the process and make it more victim friendly , especially considering the fact that the burden of proof is higher in a criminal case.

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February 13, 1995

Representative Mike O'Neal
Chairperson, House Judiciary Committee
State Capitol, Room 170-W
Topeka, Kansas 66612

RE: House Bill 2012

Dear Representative O'Neal and Members of the Committee:

This letter is in support of House Bill 2012 which would prioritize the restitution ordered to crime victims. The bill is a major step in providing laws which will assist in restoring the financial impact crime victims endure. Restitution should always be one of the primary concerns of the courts.

Crime victims too often are without any financial resources to assist in the restoring of property, medical bills, loss wages, etc., that they face after a crime. The offender should be held accountable for these losses and the courts should not only order restitution but hold the offender accountable to pay the restitution. Mandatory restitution is another tool in which offenders can learn they are personally responsible and accountable for their acts.

I urge the committee to pass House Bill 2012. It is a major step toward assisting crime victims with the financial impact they must face after a crime has been committed against them.

Sincerely,

Carla J. Stovall

Carla J. Stovall
Attorney General

cc: Rep. Phill Kline

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Attachment 13

STATE OF KANSAS

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TOPEKA

HOUSE OF
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COMMITTEE ASSIGNMENTS
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ECONOMIC DEVELOPMENT
LOCAL GOVERNMENT

Statement of Support

Office of State Representative

Carol Edward Beggs

71st District, State of Kansas

Submitted to

The House Judiciary Committee

February 14, 1995

House Bill 2271

State Corrections Reimbursement Act

House Judiciary
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Mr. Chairman and members of the committee:

I am pleased to rise in support of HB 2271, the State Corrections Reimbursement Act. Inasmuch as any law is a reasonable decision promulgated by competent authority for the common good, this bill before you addresses a variety of key questions in a crystal clear manner.

First, would the passage of this bill be reasonable? Let us consider for a moment one reason why a person steals from another person. The rise of crime might come from the desire for money. The money is used to buy a variety of material and psychological desires. The person who steals does not calculate the consequences of the cost of incarceration if that person is caught, convicted and sentenced to a state corrections facility. Indeed, the high rate of repeat offenders in the current system calls out for the need of a strong public policy statement to the next generation of potential criminals. Our statement should be: THE INNOCENT CITIZENS OF KANSAS WILL NO LONGER SUPPORT YOUR FREE WILL CHOICE FOR CRIME. House Bill 2271 if enacted will send that specific message to the criminal element in our society. This proposal is truly reasonable. Innocent citizens paying for inmate cost of care is a flaw to our current system. We have the opportunity using this legislative vehicle to drive home the point that violators of the innocent will be fully accountable for their free will actions.

In our understanding of law, we must be prudent and purposeful. The foundation of HB 2271 is found in the Michigan State Correctional Facilities Reimbursement Act. We have added language to HB 2271 that allows the executive branch to administer this law within the governor's control. The Secretary of Corrections would inform the Secretary of Revenue when an inmate was to be released. The Revenue Department would then receive the amount the inmate needed to reimburse the state for cost of care. When the felon would reach a certain income area, then the Revenue Department would file in the district court where the former inmate was sentenced or in the county where the former inmate resides a compliant for reimbursement. We believe this can be tracked in the Revenue Department since the latest annual gross income statistics would come through that department of government. We believe it is prudent to keep the administration of this law in the governor's control. As technology advances, it might be necessary for smooth tactical adjustments in administration of this law.

We believe this proposal is for the common good. We must make the notion of Justice crystal clear. HB 2271 advances the notion of civil order in our society. What civil order is there when the innocent pay for the guilty? What civil order is there when education funding, infrastructure funding and all the other pressing needs of our state are diminished because of the inmate cost of care appropriation? Our current system still has not fully recognized the breakdown of civil order in our society. This proposal seeks to initiate a new way of thinking about these serious issues.

We believe HB 2271 holds forth compassion for those who error in our Kansas family. The concept of full redemption for transgressions must be available to those who become aware of their waywardness. Therefore, we have included in the language a reasonable reimbursement percentage from gross annual income. We have also included the prospect of gubernatorial action to recognize full and vigorous felon compliance.

In closing, this proposed legislation speaks to the fundamental duty of every citizen in our society to serve the common good. It was once said, "A perfect state of society is where what is right in theory exists in fact". This day, you have the opportunity to aid in turning theory into fact. Idea into reality. Injustice for all into justice for all. While our schematic is open to your input and amendment, our common goal of providing for the common good should be the outcome of this public policy.

Mr. Chairman and members of the committee for your kindness in reviewing my testimony regarding this legislation, I thank you.

2. Damages

Fact that compelling prison inmates to work in research clinics operated inside prison by private drug manufacturers may have violated former Michigan Prison Industries Act did not deprive prisoners whose labor was so used of due process or equal protection, and, thus, prisoners were not entitled to damages based on difference between wages received and those required by law. Sims v. Parke Davis & Co. (D.C. 1971) 334 F.Supp. 774.

Any utilization of prison inmates' labor in violation of Michigan Prison Industries Act, former § 800.301 et seq. (see, now, § 800.321 et seq.), in compelling inmates to perform services for private corporate drug manufacturers, which operated research clinic inside prison, did not entitle inmates to recover reasonable value of those services under any theory of action recognized by Michigan law, since inmates had no right to their own labor, or to its fruits, at the time they were ordered to perform services. Id.

Any violation of former Michigan Prison Industries Act, § 800.301 et seq. (see, now, § 800.321 et seq.), by virtue of furnishing of prison labor to drug companies for use in their research clinics at prison pursuant to contract between manufacturers and state prison officials did not create a cause of action for money damages in favor of inmates working in clinic. Id.

Michigan Prison Industries Act, former § 800.301 et seq. (see, now, § 800.321 et seq.), which provided that labor of prisoner could not be sold, hired, leased, loaned, contracted for, or otherwise used for private or corporate profit or for any purpose other than construction of public works, was not intended to protect inmates incarcerated in Michigan prisons from being compelled to perform services for private corporate profit but rather was designed to protect the work force outside the prison walls; thus, inmates compelled to perform services for private corporate profit cannot pursue an action for damages based on violation of section. Id.

800.335 Repealed by P.A.1980, No. 245, § 2, Eff. Oct. 1

The repealed section, derived from P.A.1968, No. 15, § 15; C.L.1948, § 800.335; C.L.1970, § 800.335, repealed the Prison Industries Act, §§ 800.301 to 800.319.

THE PRISON REIMBURSEMENT ACT

Library References

M.L.P. Convicts and Prisons § 1.

P.A.1935, No. 253, Imd. Eff. June 8

AN ACT relative to the state penal institutions, and the care and maintenance of prisoners therein; and to provide for the reimbursement of the state on account thereof in certain cases.

The People of the State of Michigan enact:

800.401 Short title

Sec. 1. This act may be known and cited as "The Prison Reimbursement Act."

Historical Note

Source:

P.A.1935, No. 253, § 1, Imd. Eff. June 8. C.L.1948, § 800.401. C.L.1970, § 800.401.

Notes of Decisions

1. In general

The prison reimbursement act imposes a civil liability on all prisoners able to pay for their maintenance, whether they were sentenced before or after the effective date of the act, but such liability does not extend to any period of imprisonment prior to the effective date of the act. Auditor General v. Oleznizczak (1942) 4 N.W.2d 679, 302 Mich. 336.

A prisoner's statutory obligation under the prison reimbursement act to pay for his maintenance, if he has a sufficient estate, is "civil" rather than "criminal" in character. Id.

The same amount may be charged for transportation of all participants in the department of corrections work-pass program even though the distance may vary in individual cases. Op.Atty.Gen. 1977, No. 5237, p. 259.

The department of corrections may assess a transportation charge upon inmates who participate in a work-pass program only if the transportation is actually furnished. Id.

800.402 Reports of prisoner's financial responsibility to auditor general; forms

Sec. 2. The warden of the state prison at Jackson, the branch of the state prison at Marquette, and the house of correction and reformatory at Ionia, shall forward to the auditor general a list containing the name of each prisoner, the county from which he was sentenced, term of sentence, date of admission, together with all information available on the financial responsibility of said prisoner. Such report shall be made on blanks to be furnished by the auditor general, and shall be made on or before the tenth day of each month.

Historical Note

Source:

P.A.1935, No. 253, § 2, Imd. Eff. June 8. C.L.1948, § 800.402. C.L.1970, § 800.402.

Library References

Prisons ⚿9. C.J.S. Prisons § 11.

800.403 Reports of prisoner's financial responsibility to auditor general; investigation

Sec. 3. The auditor general shall investigate or cause to be investigated all such reports furnished by said wardens for the purpose of securing reimbursement for the expense of the state of Michigan for the care, custody and control of said prisoners.

14-5

Historical Note

Source:

P.A.1935, No. 253, § 3, Imd. Eff. June 8.	C.L.1948, § 800.403. C.L.1970, § 800.403.

800.404 Appointment of guardian; procedure; additional remedy

Sec. 4. Whenever it shall be found that any person has been admitted to any of the aforesaid state penal institutions, as a prisoner, the auditor general, or the prosecuting attorney of the county from which said person was so sentenced, shall, if such person or prisoner be possessed of any estate, or shall thereafter while he shall remain in such institution become possessed thereof, petition the circuit court of the county from which said person was sentenced, stating that such person is a prisoner in such state penal institution, and that he has good reason to believe and does believe that the said prisoner has an estate, and praying for the appointment of a guardian of such person, if a guardian has not already been so appointed, and that said estate may be subjected to the payment to the state of the expenses paid and to be paid by it on behalf of said person as a prisoner. The court shall thereupon issue a citation to show cause why the prayer of the petitioner should not be granted. If such prisoner has a guardian, it shall be served upon him. If such prisoner has no guardian, it shall be served upon such prisoner by delivering a copy thereof personally or by registered mail to the warden of the penal institution where such prisoner is being detained at least 14 days before the date of hearing. The court may appoint a guardian of such person or prisoner. At the time of the hearing, if it appear that such person or prisoner has an estate which ought to be subjected to the claim of the state, the court shall without further notice appoint a guardian of the person and estate of such prisoner if the court deems one necessary for the protection of the rights of all parties so concerned, and the court shall make an order requiring the guardian or any person or corporation so possessed of the estate belonging to said prisoner to appropriate and apply such estate to the payment of so much or such part thereof as may appear to be proper toward reimbursing the state for the expenses theretofore incurred by it on behalf of such prisoner, and such part thereof towards reimbursing the state for the future expenses which it must pay on his behalf, which reimbursement shall not be in excess of the per capita cost of maintaining prisoners in the institution in which said prisoner is an inmate, regard being had to claims of persons having a moral or legal right to maintenance out of the estate of such prisoner. If such guardian, person or corporation shall neglect or refuse to comply with such order, the court shall

cite him to appear before the court at such time as it may direct and to show cause why he should not be sentenced for contempt of court. As an additional remedy, the auditor general or prosecuting attorney may enforce payment of the sums provided in the original order, by a proper action in the name of the state. If in the opinion of the court, the estate of said prisoner is sufficient to pay the cost of such proceeds, such estate shall be made liable therefor by order of the court.

The proceedings provided for by this section may be begun at any time after admittance to said state penal institution, and recovery thereunder may be had for the expense incurred on behalf of such person or prisoner during the entire period or periods such person has been confined as a prisoner in said state penal institution.

Historical Note

Source:

P.A.1935, No. 253, § 4, Imd. Eff. June 8.

C.L.1948, § 800.404.
C.L.1970, § 800.404.

Library References

Guardian and Ward ⇐9½.
Prisons ⇐18(1).

C.J.S. Guardian and Ward §§ 9, 10.
C.J.S. Prisons § 25.

Notes of Decisions

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1. Validity

This section providing for prisoner's reimbursement of the state for expenses of keeping the prisoner, if he has sufficient estate, is not unconstitutional on ground that it is "retroactive legislation" in violation of the "due process of law" provisions of the state and federal constitutions, when applied to prisoners sentenced before the effective date of the act with respect to imprisonment after the effective date of the act, since a prisoner has no vested property or vested contract right to continue to be supported gratuitously. Auditor General v. Olezniczak (1942) 4 N.W.2d 679, 302 Mich. 336.

This section providing for prisoner's reimbursement of state for expenses of keeping prisoner if he has sufficient estate and which does not impose a personal judgment or liability against the prisoner does not violate the constitutional privilege against "double jeopardy", as applied to conviction occurring after enactment of such section. Auditor General v. Hall (1942) 1 N.W. 2d 516, 300 Mich. 215, 139 A.L.R. 1022.

This section providing for prisoner's reimbursement of state for expenses of keeping prisoner if he has sufficient estate does not violate guaranty of "equal protection of the law" by creating an unreasonable classification, though it empowers court to consider the moral and legal obligations of the prisoner. Id.

2. Construction and application

A prisoner's statutory obligation to pay for his keep and maintenance if he has a sufficient estate is "civil" rather than "criminal". Auditor General v. Olezniczak (1942) 4 N.W.2d 679, 302 Mich. 336; Auditor General v. Hall (1942) 1 N.W.2d 516, 300 Mich. 215, 139 A.L.R. 1022.

Resident of state penal institution has duty under this section to pay for cost of his incarceration. State, Michigan State Treasurer v. Turner (1981) 312 N.W.2d 418, 110 Mich.App. 228.

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Where clearly expressed legislative intent that residents of correctional institutions reimburse State for their incarceration if they are financially able to do so was involved, issuance of ex parte temporary restraining order to restrain resident of state prison from negotiating or transferring check was justified, providing that verified complaint or affidavit of State complied with statutory requirements. Id.

The prison reimbursement act imposes a civil liability on all prisoners able to pay for their maintenance, whether they were sentenced before or after the effective date of the act, but such liability does not extend to any period of imprisonment prior to the effective date of the act. Auditor General v. Olezniczak (1942) 4 N.W.2d 679, 302 Mich. 336.

This section reciting that reimbursement of state for expenses of keeping prisoner shall not exceed per capita cost, provides a rule for computation, and hence does not improperly leave amount of reimbursement to court's discretion. Auditor General v. Hall (1942) 1 N.W.2d 516, 300 Mich. 215, 139 A.L.R. 1022.

3. Estate subject to reimbursement

Savings deposits in banks, accumulated from pension and insurance payments to veteran who was a prisoner, from Veterans' Administration, were not exempt from payment under the prison reimbursement act for maintenance of prisoner, under federal statute (38 U.S.C.A. § 454a) exempting benefits due under laws relating to veterans from claims of creditors in certain instances. Auditor General v. Olezniczak (1942) 4 N.W.2d 679, 302 Mich. 336.

Adjusted compensation bonds of veteran and accrued unpaid interest thereon were exempt from payment for veteran's maintenance in prison under the prison reimbursement act, under federal statute providing that the bonds should not be subject to attachment, levy or seizure and shall be payable only to the veteran or his representative. Id.

Estate of prisoner in state penitentiary is liable for his support and maintenance notwithstanding that estate consisted of accumulation of compensation from federal government for war service. Op.Atty.Gen.1935–36, No. 143, p. 349.

800.404a Claim for future maintenance of prisoner; procedure; lien

Sec. 4–a. That upon admission to any state penal institution the attorney general may file a claim for future maintenance and support of such prisoner with the court from which said prisoner was sentenced, and thereupon the court may make an order making such prisoner's estate or property liable for such future care and support and that such claim shall constitute a lien upon all property, real and personal, of said prisoner.

All proceedings to enforce any such lien under this act against any such property shall be instituted by information in the name of the people of the state of Michigan addressed to such circuit court in chancery of the county in which such property is situated. The information shall be signed by the attorney general and need not be otherwise verified and shall be equivalent to a bill in chancery to enforce the lien against such property. Such information shall show the name of the prisoner, date and place of sentence, the length of time set forth in said sentence, description of the property against which said lien exists, and the amount due the state of Michigan for

the care, support and maintenance of said prisoner: Provided, That in no case shall any said property be sold to satisfy such claim of the state of Michigan within 60 days after the entry of such decree: And provided further, That such lien may be removed by filing a bond approved by the circuit court for payment of said claim or by payment of the claim itself. Otherwise the sale of said property shall be conducted the same as in cases of foreclosure of liens in chancery.

Historical Note

Source:

P.A.1935, No. 253, § 4–a, Imd. Eff. June 8. C.L.1948, § 800.404a. C.L.1970, § 800.404a.

Library References

Prisons ⇐18(9). C.J.S. Prisons § 29. M.L.P. Constitutional Law § 262.

800.404b Certified copy of order filed with register of deeds, lien on property; fee

Sec. 4–b. Provided further, That upon the issuance of such decree or order it shall be the duty of the auditor general of the state of Michigan or the prosecuting attorney of the county in which such decree or order was issued to record a certified copy of such decree or order in the office of the register of deeds in the county or counties wherein any of the property of such prisoner may be located, and when such decree or order is so recorded the same shall operate as a lien against said property until so removed as heretofore provided. Further, such decree or order shall be recorded without payment of any recording fee by said auditor general or prosecuting attorney.

Historical Note

Source:

P.A.1935, No. 253, § 4–b, Imd. Eff. June 8. C.L.1948, § 800.404b. C.L.1970, § 800.404b.

800.405 Assistance in securing reimbursement of state

Sec. 5. It shall be the duty of the sentencing judge, the sheriff of the county and the warden of the prison to furnish on inquiry to the auditor general or prosecuting attorney all information and assistance possible to enable said auditor general or prosecuting attorney to secure reimbursement for the state of Michigan.

Historical Note

Source:

P.A.1935, No. 253, § 5, Imd. Eff. June 8. C.L.1948, § 800.405. C.L.1970, § 800.405.

800.406 Investigation costs; reimbursements credited to general fund

Sec. 6. The costs of such investigations shall be paid from the reimbursements secured under this act, and, the balance of said reimbursements shall be credited to the general fund of the state to be available for general fund purposes. Said auditor general is hereby authorized to determine the amount due the state in such cases and render statements thereof, and such sworn statements shall be considered prima facie evidence of the account. The auditor general is further authorized to carry out this act and employ such assistance as may be necessary therefor.

Historical Note

Source:

P.A.1935, No. 253, § 6, Imd. Eff. June 8.

C.L.1948, § 800.406.
C.L.1970, § 800.406.

Library References

States ⇐126.

C.J.S. States § 228.

800.407 Construction of act relative to moneys saved from earnings

Sec. 7. The provisions of this act shall not apply to any moneys saved from earnings by the prisoner during the period of his incarceration. In enacting Act No. 253 of the Public Acts of 1935,[1] it was not the intent of the legislature to discourage thrift and good habits by the prisoner during the period of his incarceration, but to provide for reimbursement to the state in such cases where the prisoners were possessed of estates which warranted such reimbursement.

[1] Section 800.401 et seq.

Historical Note

Source:

P.A.1935, No. 253, § 7, added by P.A. 1937, No. 272, Eff. Oct. 29, 1937.

C.L.1948, § 800.407.
C.L.1970, § 800.407.

Notes of Decisions

1. In general

The same amount may be charged for transportation of all participants in the department of corrections work-pass program even though the distance may vary in individual cases. Op.Atty.Gen. 1977, No. 5237, p. 259.

The department of corrections may assess a transportation charge upon inmates who participate in a work-pass program only if the transportation is actually furnished. Id.

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REIMBURSEMENT TO COUNTIES FOR CERTAIN EXPENSES

P.A.1978, No. 16, Imd. Eff. Feb. 12

AN ACT to provide reimbursement to counties for expenses incurred by certain prosecuting attorneys, for expenses incurred by implementing special jurisdictional duties, and for expenses incurred in maintaining escapees from correctional institutions; and to require reports.

The People of the State of Michigan enact:

800.451 State correctional facility, definition

Sec. 1. As used in this act, "state correctional facility" means a facility or institution which houses an inmate population under the jurisdiction of the department of corrections. State correctional facility includes a correctional camp, community correction center, state prison, and a state reformatory.

Historical Note

Source:

P.A.1978, No. 16, § 1, Imd. Eff. Feb. 12.
C.L.1970, § 800.451.

800.452 Prosecution of felonies committed by inmates in state correctional facilities, reimbursement for costs incurred by office of prosecuting attorney of county

Sec. 2. (1) The state shall reimburse each county for the reasonable and actual costs incurred by the office of the prosecuting attorney of a county in which a state correctional facility is located in prosecuting new felony offenses committed by inmates of a state correctional facility during a period of state incarceration and new felonies committed during escape. The reimbursement shall not exceed $300.00 for each case.

(2) Each county shall submit monthly its itemized costs as described in this section to the department of corrections. After determination by the department of corrections of the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the department of corrections shall be conclusive.

Historical Note

Source:

P.A.1978, No. 16, § 2, Imd. Eff. Feb. 12.
C.L.1970, § 800.452.

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Library References

States ⇐123. C.J.S. States § 226.

800.453 Additional jurisdictional duties in the circuit court, reimbursement for costs

Sec. 3. (1) The state shall reimburse each county for the reasonable and actual costs incurred by that county for implementing additional jurisdictional duties in the circuit court imposed upon that county by law because that county is specifically named in the law as having jurisdiction.

(2) Each county shall submit quarterly its itemized costs as described in this section to the state court administrative office. After determination by the state court administrator of the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the state court administrator shall be conclusive.

Historical Note

Source:

P.A.1978, No. 16, § 3, Imd. Eff. Feb. 12.
C.L.1970, § 800.453.

800.454 Prisoners held in county jails, reimbursement for costs

Sec. 4. (1) When a state committed prisoner who was incarcerated in a state correctional facility has escaped, not returned pursuant to agreement, or violated the terms of his or her parole and has been apprehended pursuant to an order of the department of corrections and is held in a county jail awaiting disposition of his or her case, the department of corrections shall reimburse the county holding the prisoner for actual and reasonable costs not to exceed $20.00 per day. This section shall not apply to the holding of prisoners awaiting prosecution on new felony charges.

(2) Each county shall submit monthly its itemized costs as described in this section to the department of corrections. After determination of reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the department of corrections shall be conclusive.

Historical Note

Source:

P.A.1978, No. 16, § 4, Imd. Eff. Feb. 12.
C.L.1970, § 800.454.

Library References

Prisons ⇐18(7). C.J.S. Prisons § 26.

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800.402. Reports of prisoners' assets to attorney general; estimate of prisoner cost of care

Sec. 2. The director shall forward to the attorney general a report on each prisoner containing a completed form under section 1b[1] together with all other information available on the assets of the prisoner and an estimate of the total cost of care for that prisoner.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

[1] Section 800.401b.

Historical and Statutory Notes

1984 Amendment. Rewrote this section.

Notes of Decisions

In general 1

1. In general

Amending the Prison Reimbursement Act to include all current and future state penal institutions is a task for the legislature; the executive branch of government cannot exercise such legislative power. State Treasurer v. Wilson (1984) 347 N.W.2d 770, 132 Mich.App. 648, reversed on other grounds 377 N.W.2d 703, 423 Mich. 138, on remand 388 N.W.2d 312, 150 Mich.App. 78.

800.403. Investigation of reports; securing reimbursement for cost of care

Sec. 3. (1) The attorney general shall investigate or cause to be investigated all * * * reports furnished under section 2.[1]

(2) If the attorney general upon completing the investigation under subsection (1) has good cause to believe that a prisoner has sufficient assets to recover not less than 10% of the estimated cost of care of the prisoner or 10% of the estimated cost of care of the prisoner for 2 years, whichever is less, the attorney general shall seek to secure reimbursement for the expense of the state of Michigan for the cost of care of that prisoner.

(3) Not more than 90% of the value of the assets of the prisoner may be used for purposes of securing costs and reimbursement under this act.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

[1] Section 800.402.

Historical and Statutory Notes

1984 Amendment. Inserted the subsection numbering; in subsec. (1) substituted "attorney general" for "auditor general" and "under section 2" for "by said wardens for the purpose of securing reimbursement for the expense of the state of Michigan for the care, custody and control of said prisoners", and deleted "such" preceding "reports"; and added subsecs. (2) and (3).

Notes of Decisions

Construction and application 1

1. Construction and application

Prisoner had sufficient time in which to prepare for and answer state's motion for summary disposition of action to recover costs for prisoner's care while housed in state correctional facility; prisoner was on notice that he would have to show cause why his assets should not be used to reimburse state for costs of his incarceration, summary disposition motion was based on affirmative offenses that prisoner raised in his answer and trial court did not render decision until six months later. State Treasurer v. Cuellar (1991) 476 N.W.2d 644, 190 Mich.App. 464, appeal denied 486 N.W.2d 687, 440 Mich. 861, reconsideration denied 489 N.W.2d 473.

When prisoner's assets are such that recovery of not less than 10% of cost of his care while housed in state correctional facility is possible, Attorney General must seek reimbursement under State Correctional Facility Reimbursement Act; when possible recovery would be less than 10% of the cost of care, lawsuit for reimbursement is not barred, rather, Attorney General has discretion to seek reimbursement. State Treasurer v. Cuellar (1991) 476 N.W.2d 644, 190 Mich.App. 464, appeal denied 486 N.W.2d 687, 440 Mich. 861, reconsideration denied 489 N.W.2d 473.

800.403a. Prisoner cooperation; parole determination

Sec. 3a. (1) A prisoner shall fully cooperate with the state by providing complete financial information for purposes under this act.

(2) The failure of a prisoner to fully cooperate as provided in subsection (1) may be considered for purposes of a parole determination under section 35 of Act No. 232 of the Public Acts of 1953, being section 791.235 of the Michigan Compiled Laws.

P.A.1935, No. 253, § 3a, added by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20, 1984.

Library References

Convicts ⇐3.

C.J.S. Convicts §§ 2, 5.

800.404. Circuit court jurisdiction; complaint for reimbursement; procedure; amount of reimbursement; costs; commencement of proceedings

Sec. 4. (1) The circuit court shall have exclusive jurisdiction over all proceedings under this act. The attorney general may file a complaint in the circuit court for the county from which a prisoner was sentenced, stating that the person is or has been a prisoner in a state correctional facility, that there is good cause to believe * * * that the * * * prisoner has assets, and praying that the assets be used to reimburse the state for the expenses incurred or to be incurred, or both, by the state for the cost of care of the person as a prisoner.

(2) Upon the filing of the complaint under subsection (1), the court shall * * * issue an order to show cause why the prayer of the complainant should not be granted. The complaint and order shall be served upon the prisoner * * * personally or, if the prisoner is confined in a state correctional facility, by registered mail addressed to the prisoner in care of the chief administrator of the state correctional facility where the prisoner is housed, at least 30 days before the date of hearing on the complaint and order.

(3) At the time of the hearing on the complaint and order, if it appears that the prisoner has any assets which ought to be subjected to the claim of the state under this act, the court shall issue an order requiring * * * any person, corporation, or other legal entity possessed or having custody of those assets to appropriate and apply the assets or a portion thereof * * * toward reimbursing the state as provided for under this act.

(4) The amount of reimbursement under this act shall not be in excess of the per capita cost of care for maintaining prisoners in the state correctional facility in which the prisoner is housed.

(5) At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

(6) If the person, corporation, or other legal entity shall neglect or refuse to comply with an order under subsection (3), the court shall order the person, corporation, or other legal entity to appear before the court at such time as the court may direct and to show cause why the person, corporation, or other legal entity should not be considered in contempt of court.

(7) If, in the opinion of the court, the assets of the prisoner are sufficient to pay the cost of the proceedings under this act, the assets shall be * * * liable for those costs upon order of the court.

(8) The state may recover the expenses incurred or to be incurred, or both, by the state for the cost of care of the prisoner during the entire period or periods, the person is a prisoner in a state correctional facility. The state may commence proceedings under this act until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department.

Amended by P.A. 1984, No. 282, § 1, Imd. Eff. Dec. 20.

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Historical and Statutory Notes

1984 Amendment. Rewrote this section.

Notes of Decisions

1. Validity

This section authorizing state to subject prisoner's assets, to extent consistent with any support obligation prisoner might have, to claim for cost of maintaining him was not unconstitutionally vague. State Treasurer on Behalf of Dept. of Corrections v. Wilson (1986) 388 N.W.2d 312, 150 Mich.App. 78.

This section allowing state to subject prisoner's assets, to extent consistent with any support obligation prisoner might have, to claim for cost of maintaining him provided sufficient standards under which trial court could determine amount of reimbursement, so that it did not constitute unconstitutional delegation of legislative authority to courts. State Treasurer on Behalf of Dept. of Corrections v. Wilson (1986) 388 N.W.2d 312, 150 Mich.App. 78.

Prison Reimbursement Act [§ 800.401 et seq.], which gave state lien on all property of prison inmate for purposes of defraying costs of supporting inmate, applied to all inmates of state prison system, and not merely to inmates in three named prisons in existence at time of its enactment; as such, Act did not violate equal protection principles. State Treasurer v. Wilson (1985) 377 N.W.2d 703, 423 Mich. 138, on remand 388 N.W.2d 312, 150 Mich.App. 78.

2. Construction and application

Department of Corrections may not make deductions from the wages or bonuses of a prisoner working for correctional industries to reimburse the State for the cost of maintenance of the prisoner. Op.Atty.Gen. 1989, No. 6606, p. 267.

3. Estate subject to reimbursement

State's cost of maintaining a prisoner may be recovered from the estate of a prisoner consisting of property owned by the prisoner other than wages or bonuses earned while the prisoner was working for correctional industries. Op.Atty.Gen. 1989, No. 6606, p. 267.

4. Social security

Reimbursement of state pursuant to Prison Reimbursement Act from defendant prisoner's social security disability benefits was not prohibited by policies underlying Social Security Act (42 U.S.C.A. §§ 301 et seq., 407), as defendant was prisoner whose care and maintenance was provided by Department of Corrections and who thus had no need for such benefits. State Treasurer, on Behalf of Dept. of Corrections v. Brown (1983) 337 N.W.2d 23, 125 Mich.App. 620.

5. Factors considered

State Correctional Facility Reimbursement Act required trial court to actually consider prisoner's legal or moral support obligations before ordering prisoner to reimburse state for cost of incarceration, and required evidentiary hearing if state disputed prisoner's account of his obligations, despite state treasurer's claim that Act only applied to support obligations pursuant to court order or judgment. State Treasurer v. Downer (1993) 502 N.W.2d 704, 199 Mich.App. 447.

6. Release

Deputy warden's authorization to transmit portion of prisoner's federal income tax refund to prisoner's daughter for dental work was not release of state treasurer's legal claim to refund under State Correctional Facility Reimbursement Act, in light of gratuitous nature of authorization and lack of consideration. State Treasurer v. Downer (1993) 502 N.W.2d 704, 199 Mich.App. 447.

800.404a. Remedies to restrain disposition of prisoner's estate; receiver; execution against homestead

Sec. 4a. (1) Except as provided in subsection (3), in seeking to secure reimbursement under this act, the attorney general may use any remedy, interim order, or enforcement procedure allowed by law or court rule including an ex parte restraining order to restrain the prisoner or any other person or legal entity in possession or having custody of the estate of the prisoner from disposing of certain property pending a hearing on an order to show cause why the particular property should not be applied to reimburse the state as provided for under this act.

(2) To protect and maintain assets pending resolution of an action under this act, the court, upon request, may appoint a receiver.

(3) The attorney general or a prosecuting attorney shall not enforce any judgment obtained under this act by means of execution against the homestead of the prisoner.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

Historical and Statutory Notes

1984 Amendment. Rewrote this section.

800.404b. Assistance of county prosecuting attorney; work camp prisoners

Sec. 4b. (1) The attorney general of this state shall enforce the provisions of this act except that the attorney general may request the prosecuting attorney of the county in which the prisoner was sentenced or the prosecuting attorney of the county in which any asset of a prisoner is located to make an investigation or assist in legal proceedings under this act.

(2) The attorney general shall not seek reimbursement under this act for the cost of care of a prisoner in a work camp if the department is being or has been reimbursed for those costs by the prisoner pursuant to section 65c of Act No. 232 of the Public Acts of 1953, being section 791.265c of the Michigan Compiled Laws.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

Historical and Statutory Notes

1984 Amendment. Rewrote this section.

800.405. Assistance in securing reimbursement of state

Sec. 5. The sentencing judge, the sheriff of the county, the chief administrator of the state correctional facility, and the department of treasury shall furnish * * * to the attorney general or prosecuting attorney all information and assistance possible to enable the attorney general or prosecuting attorney to secure reimbursement for the state under this act.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

Historical and Statutory Notes

1984 Amendment. Deleted "It shall be the duty of" preceding "The sentencing" and "on inquiry" following "furnish"; and substituted a comma for "and" following "county", "chief administrator of the state correctional facility, and the department of treasury shall" for "warden of the prison to", "attorney general" for "auditor general" in two places, and "under this act" for "of Michigan".

800.406. Investigation costs; reimbursements credited to general fund; statement of amount due; prima facie evidence

Sec. 6. (1) The costs of any investigations under this act shall be paid from the reimbursements secured under this act, and * * * the balance of the reimbursements shall be credited to the general fund of the state to be available for general fund purposes.

(2) The department of treasury may determine the amount due the state in * * * cases under this act and render statements thereof, and such sworn statements shall be considered prima facie evidence of the amount due.

Amended by P.A.1984, No. 282, § 1, Imd. Eff. Dec. 20.

Historical and Statutory Notes

1984 Amendment. Rewrote this section.

800.407. Repealed by P.A.1984, No. 282, § 2, Imd. Eff. Dec. 20

REIMBURSEMENT TO COUNTIES FOR CERTAIN EXPENSES

P.A.1978, No. 16, Imd. Eff. Feb. 12

AN ACT to provide reimbursement to counties for expenses relating to certain felonies, for expenses incurred by implementing special jurisdictional duties and for expenses incurred in maintaining escapees from correctional institutions; and to require reports. Amended by P.A.1987, No. 272, § 1, Eff. April 1, 1988.

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800.452. Costs for prosecution of felonies committed by inmates in state correctional facilities; reimbursement; submission of costs; agency responsible; limit

Sec. 2. (1) The state shall reimburse each county in which a state correctional facility is located for the reasonable and actual costs incurred by the county for juror's fees, witness fees, fees of attorneys appointed by the court for the defendant, transcript fees, and for a proportion of the fees for the office of the prosecuting attorney as determined under subsection (3), in cases of new felony offenses committed by inmates of * * * state correctional facilities during a period of state incarceration, * * * new felonies committed during escape and cases of escape from custody as prescribed in section 65a(3) of Act No. 232 of the Public Acts of 1953, being section 791.265 of the Michigan Compiled Laws.

(2) Each county shall submit monthly its itemized costs as described in this section to the state agency designated in subsection (3). After determination by the state agency designated in subsection (3) of the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the state agency designated in subsection (3) shall be conclusive.

(3) The state agency responsible for the duties prescribed in subsections (2) and (4) shall be as follows:

(a) Before October 1, 1988, the department of corrections.

(b) On and after October 1, 1988, the department of management and budget.

(4) The amount of reimbursement for the fees of the prosecuting attorney under subsection (1) for any case, subject to the determination of reasonableness by the state agency designated in subsection (3), shall be based upon the actual time spent in prosecuting the case, and shall be calculated at a rate equal to 70% of the hourly rate or flat fee paid to court-appointed defense attorneys in the county. However, the reimbursement for a single case shall not exceed $1,000.00 unless the case is either of the following:

(a) A felony offense for which the maximum punishment is life imprisonment. In which case the reimbursement shall not exceed $10,000.00.

(b) A case that involves 12 or more hours of actual trial time, in which case the reimbursement shall not exceed $10,000.00. As used in this subdivision, "actual trial time" means the trial hours recorded on the court record beginning when juror selection begins and ending when the jury begins deliberation in the case. If there is no jury in the case, actual trial time means the trial hours recorded on the court record.

Amended by P.A.1987, No. 272, § 1, Eff. April 1, 1988.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote this section.

P.A.1987, No. 272, § 2, provides:

"This amendatory act shall take effect April 1, 1988."

P.A.1987, No. 272, was ordered to take immediate effect, and was approved Dec. 28, 1987 and filed Dec. 29, 1987.

800.454. Prisoners held in county jails, reimbursement for costs

Sec. 4. (1) When a state committed prisoner who was incarcerated in a state correctional facility has escaped, not returned pursuant to agreement, or violated the terms of his or her parole and has been apprehended pursuant to an order of the department of corrections and is held in a county jail awaiting disposition of his or her case, the department of corrections shall reimburse the county holding the prisoner for the actual and reasonable daily costs, not to exceed $35.00 per day incurred by the county in holding the prisoner. This section shall not apply to the holding of prisoners awaiting prosecution on new felony charges.

(2) Each county shall submit monthly its itemized costs as described in this section to the department of corrections. After determination of reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the department of corrections shall be conclusive.

Amended by P.A.1987, No. 272, § 1, Eff. April 1, 1988.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the first sentence of subsec. (1), substituted "the actual and reasonable daily costs, not to exceed $35.00 per day, incurred by the county in holding the prisoner" for "actual and reasonable costs not to exceed $20.00 per day".

For effective date provisions of P.A.1987, No. 272, see the note following 800.452.

800.455. Mentally ill prisoners; reimbursement of county for costs of proceedings

Sec. 5. (1) The state shall reimburse each county in which a state correctional facility is located for the reasonable and actual costs of the following expenses incurred by that county for implementing jurisdictional duties in the probate court imposed upon that county by chapter 10 of the mental health code, Act No. 258 of the Public Acts of 1974, being sections 330.2001 to 330.2050 of the Michigan Compiled Laws, with respect to proceedings for the transfer of an allegedly mentally ill prisoner who is confined in a state correctional facility in that county, to the center for forensic psychiatry program for treatment, or with respect to proceedings for the treatment of an allegedly mentally ill prisoner within a state correctional facility:

(a) The expense of legal counsel appointed to represent an indigent prisoner in the proceeding.

(b) Compensation paid to each juror who is either summoned for voir dire or impaneled on a jury, if a jury trial is demanded in the proceeding.

(c) Compensation paid to each witness subpoenaed to the proceeding by the prisoner.

(d) The expense of the preparation of a transcript of the proceeding.

(2) Each county shall submit quarterly its itemized costs as described in subsection (1) to the chief probate judge of the county. After determination by the chief probate judge of the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the chief probate judge shall be conclusive.

P.A.1978, No. 16, § 5, added by P.A.1984, No. 409, § 1, Eff. March 29, 1985.

Library References

Prisons ⇐18(7).
C.J.S. Prisons § 26.

EXECUTIVE REORGANIZATION ORDER

Caption editorially supplied

E.R.O. No. 1993–4, Eff. July 27, 1993

800.461. County escaped prisoner prosecution program; transfer of powers, duties, and functions to the department of corrections

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the County Escaped Prisoner Prosecution Program was created within the Department of Management and Budget by Act No. 272 of the Public Acts of 1987, as amended, being Section 800.452 et seq. of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the County Escaped Prisoner Prosecution Program can be more effectively organized and carried out under the supervision and direction of the head of the Department of Corrections; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

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STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Acting Secretary

MEMORANDUM

DATE: February 14, 1995

TO: House Judiciary Committee

FROM: Charles E. Simmons, Acting Secretary

SUBJECT: HB 2271

HB 2271 provides a procedure for the State to attempt to recover the costs of care for persons in the custody of the Secretary of Corrections.

The Department of Corrections certainly has no objection to the intended goal of this bill. Inmates participating in the work release program and the private industry program make room and board payments to the State while they are in those programs. These inmates earn at least minimum wage while incarcerated and, therefore, should make payments to offset some of the costs associated with their incarceration.

The Department of Corrections also recently implemented a procedure to assess inmates and parolees a fee for various services provided to them:

- $1 per month for administering their inmate account;
- $2 for an initial visit to sick call;
- Actual cost of urinalysis tests (which are positive) administered to detect use of illegal substances;
- Supervision fee for parolees of up to $25 per month.

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The use of fees is intended, in part, to offset some of the costs of incarceration and supervision. Fees are also intended to impress upon offenders that they are accountable for their actions.

The Department also supports efforts to achieve more recovery by crime victims of restitution owed to them by offenders. Making restitution enforceable as a civil judgment as proposed in HB 2012 could help achieve that objective.

The Department's experience in attempting to enforce restitution requirements is that most offenders do not have the assets or income to handle significant payments for restitution, fees, or other costs. A significant percentage will qualify as indigent. This is supported by available information which indicates that approximately 80% of offenders convicted of crimes committed since July 1, 1993 have been represented by appointed counsel.

This suggests that recovery of costs of incarceration will be limited in many cases. Many offenders are simply "judgment proof." For those with limited resources, payment of restitution requirements and supervision fees may be as far as their incomes will allow.

With respect to specific provisions of HB 2271 the Department has the following comments:

- Sec. 2, (lines 32-34, p.1): The Department transfers inmates among nine different correctional facilities. Cost of care as defined in the bill varies from facility to facility. In Section 6, (lines 10-12, p.3) the reimbursement to be sought is the cost of care for maintaining the inmate in the facility where confined. Figuring the cost of care based on the specific time an inmate was housed in a particular facility will create a significant computation task since an inmate will very likely have been housed during their incarceration in several facilities, all with different per capita costs. To simplify this calculation, the Department suggests as an alternative that the rate be the Department-wide per capita rate so that only one rate is used. This will better enable the Department of Corrections to meet its responsibilities under the bill within existing resources.

- Sec. 2, (lines 27-29, p.1): This provision makes reference to the Department of Corrections being a named defendant and having

a judgment against it by an inmate. The Department of Corrections is not by statute an agency which can sue or be sued. The Department frequently gains dismissal of lawsuits in which it is a named defendant. Accordingly, we suggest this provision be amended to refer to "officers or employees of the department" as named defendants. This will maintain the existing legal status of the Department of Corrections.

- Section 5 (lines 29-33, p. 2): This provision provides that inmates who do not cooperate in providing financial information shall not receive good time credits and the failure to cooperate shall be considered by the Kansas Parole Board in determining whether to parole an inmate. These sanctions may well be appropriate for some inmates. However, they will not reach or affect all inmates. Inmates sentenced under sentencing guidelines do not appear before the Kansas Parole Board. Other inmates have mandatory release dates, such a conditional release or maximum expiration of sentence, which are unaffected by either good time or the Kansas Parole Board. It must, therefore, be recognized that the sanctions specified in Section 5 will be limited in their ability to ensure compliance by an inmate in providing financial information.

CES:dja

TESTIMONY IN RE HB2252
Rep. Clyde Graeber

Many citizens of our state have indicated a genuine repugnance when they hear and read about the many appeals, long delays, sometimes years, before criminals on death row in other states can be executed. These same citizens read of the tremendous dollar cost to taxpayers of these many appeals and court proceedings by these convicted murderers and express concerns as to why taxpayers, should be forced to pay and bear such costs.

This legislation would provide for all defense and court costs for accused murders through their conviction in state court and all costs for the required automatic appeal to the Kansas Supreme Court.

Any further proceedings or appeals on the part of any convicted murderer would be borne by the person convicted or his family or any group that may care to provide the costs of appeals at their expense. I will stand for questions.

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In Opposition to House Bill No. 2252
February 14, 1995
House Judiciary Committee
Hon. Michael O'Neal, Chair

Good afternoon, Mr. Chairman. I would like to thank you and members of the Committee for this opportunity to speak in opposition to House Bill 2252.

My name is Carla Dugger, and I am the Associate Director of the American Civil Liberties Union of Kansas and Western Missouri. We are a private, not-for-profit membership organization which supports and defends civil liberties.

HB 2252, as proposed, states that a defendant sentenced to death shall be entitled to counsel at state expense for automatic review and appeal to the supreme court. It then states: "Thereafter, attorney fees and all other costs of appeals or other legal actions arising from the defendant's conviction or sentence shall be paid by the defendant."

We oppose this bill for several reasons. First, it is almost certainly unconstitutional in its present form. Second, even if constitutional, it is extraordinarily unjust. Indeed, in its zeal to save the state time and money, it overlooks the likelihood that it will result in the execution of individuals who may be entirely innocent of the crime against them, if they are so unfortunate as to have the evidence of their innocence surface after, rather than before, their trial. Finally, it is unlikely that the statute will have its intended effect of saving the state money. Instead, it is likely to produce chaos as individuals search for volunteer lawyers on the eve of their execution dates, and delays as those lawyers, who may be from out of state, attempt to familiarize themselves at the last minute with the pleadings and record of the case.

First, in its present form, the bill does not simply fail to set up new procedures for provision of counsel. It purports to deny the litigants any attorney fees or other costs. It therefore appears that the bill may be read to partially repeal statutes currently on the books that allow for appointment of counsel to state inmates in post-conviction actions. Under current law, inmates who file petitions pursuant to KSA 60-1507 may have counsel appointed if a motion presents "substantial questions of law or trialable issues of fact" and the defendant is indigent. Supreme Court Rule 183(i). Thereafter, if the defendant appeals, the court is obliged to appoint counsel for the appeal. Id. at 183(m). Moreover, if the court finds the movant to be indigent, the inmate is entitled to appeal *in forma pauperis* and to obtain such portions of the transcript necessary for appellate review.
Id. at 183(1).

It is true that the states have discretion to decide on the scope of appointment of counsel in post-conviction actions. However, the state, having provided counsel for inmates in cases where they raise substantial post-conviction issues, may not arbitrarily deny a class of inmates access to counsel. This bill gives no justification whatsoever for why an inmate sentenced to life imprisonment should be entitled to counsel in a post-conviction setting, while an inmate subject to capital punishment should not. If anything, it is the individual whose life is at stake who should be entitled to the greatest help from the state. In any event, we believe that the classification attempted by the State will be regarded by the court as a violation of equal protection of the law as applied to those indigent inmates who have been sentenced to death.

Not only are the provision of counsel portions of the statute probably unconstitutional, but the refusal to permit an appeal *in forma pauperis* is unconstitutional for the separate reason that it denies inmates access to the courts.

The bill is also terribly unjust. Those who wrote it may assume that defendants may raise any meritorious issue on their direct appeal and that therefore, any further proceedings are by definition repetitive. That is not so. Certain claims, such as whether counsel has been effective, may not be raised for the first time in Kansas on an appeal. Instead, the defendant must raise the claim in a post-conviction application. House Bill No. 2252 will have the effect of depriving defendants with valid constitutional challenges to their conviction of the opportunity to raise that challenge.

As troubling as the bill's desire to cut off meritorious legal challenges is its refusal to help inmates bring forth newly-discovered evidence that might demonstrate the inmate's innocence. In a perfect world, legal assistance for this purpose might not be necessary, since all evidence relevant to guilt and innocence would be available at the defendant's trial. This is not, however, a perfect world. Factual evidence of innocence may come to light after trial and appeal. It is offensive to the constitution for an individual innocent of the crime for which he is convicted to be executed, and it is regrettable, to put it mildly, that this bill seeks to make it more likely that an innocent person will be put to death by precluding that individual from the resources necessary to mount a challenge to the conviction.

Finally, this bill, if it passes, will not produce the savings that presumably motivate the author of the bill. The bill, of course, will not stop inmates who face death from trying to file petitions for post-conviction relief. It will assure that those petitions, if filed by the inmates themselves, will be more poorly written, poorly reasoned, and tardily filed, than if lawyers were appointed for the task. The bill will also not stop attorneys for Kansas and other jurisdictions from assisting inmates who pursue death penalty litigation. It will assure that whatever petitions are filed are more likely to be filed on the eve of execution. This bill will not speed executions, it will delay them. It is unlikely to save the state money. By creating more delay and complexity, it may well cost Kansas more in the long run.

We urge the Committee to reject this legislation and to focus its attention instead on orderly procedures to implement the death penalty. As you know, the ACLU opposes the death penalty, for a number of reasons. However, if we are to have the penalty, we should have it with fair and orderly procedures.