House
Legislative
Analysis
Section

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MAKE INMATES PAY CIVIL SUIT FILING FEES, COURT COSTS

House Bills 4989 and 4990 with committee amendments
First Analysis (11-19-96)

Sponsor: Rep. Beverly Bodem
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Currently, prison inmates who have grievances against the Department of Corrections (DOC), including disputes over infractions of prison rules (the DOC classifies alleged prisoner violations of prison rules as either major or minor misconduct), have several avenues through which they can seek redress.

There are a number of administrative remedies within the department, including a prisoner grievance procedure, an informal hearing process, and a formal hearing process. Prisoners are statutorily entitled to a formal hearing in matters of major misconduct, classification to administrative segregation, visitor restriction, when given a special designation by the DOC which prevents the prisoner's placement on community status, and "high (or very high) assaultive risk" designations. Formal hearings are held by special corrections officers from the DOC Hearings Division (see BACKGROUND INFORMATION). Informal hearings, which are held by designated institutional staff instead of DOC Hearings Division personnel, are available for minor misconduct matters, for rejected mail, and for situations involving confiscation of non-dangerous property where misconduct reports were not written. Finally, prisoners may grieve any matter that doesn't require a formal hearing under administrative rule, except for parole decisions, which have no administrative relief (however, a violation of parole policy or procedure is grievable). The grievance procedure is a three step process which a prisoner generally must proceed through on a step-by-step basis. The first step of the grievance process requires prisoners to discuss the problem with the staff involved (generally "line" staff, such as corrections officers) in an attempt to verbally resolve the issue. If the discussion is unsuccessful, the prisoner may move to the next step of the process, an appeal step that generally involves the prisoner filing a written grievance with the facility's grievance coordinator. If the prisoner disagrees with the step two answer, he or she may proceed to a second appeal, which is sent to the DOC director's office in Lansing. There are time limits in which prisoners must try to verbally resolve their problems and in which their written grievances must be filed, and in which the DOC must respond. Step three has no time limit in which the department must give an answer to a prisoner, though the entire three-step process is supposed to be completed within 90 calendar days unless the prisoner agrees to extensions requested by the grievance coordinator or the central office Prisoner Affairs Section. The Legislative Corrections Ombudsman (see below) will not review matters pending a third step appeal.

After all administrative appeals have been exhausted, inmates have the right to an automatic appeal to the circuit court of administrative hearings determinations, and they can send their complaint to their state legislators and ask that it be sent to the Office of Legislative Corrections Ombudsman (LCO) for review (See BACKGROUND INFORMATION). In addition to administrative procedures and appeals from administrative decisions, however, prisoners also can file civil lawsuits. When prisoners file suits against the state, they may request the court to waive the filing fees on the grounds of indigency. If the court determines that the prisoner is indigent, the filing fee is waived, though courts may order even indigent prisoners whose civil suits are unsuccessful to pay court costs from their prison ("institutional") accounts. However, even when courts order prisoners to pay court costs in such cases, filing fees are not included in the costs to be repaid. Although information is not available on the number of cases in which filing fees are waived for prisoner-initiated civil suits, inmates in Michigan prisons file over a thousand lawsuits against the state every year. (See BACKGROUND INFORMATION.)

Some people believe that the number of prisoner lawsuits should be reduced and/or that the number of frivolous prisoner-initiated lawsuits needs to be reduced. Legislation has been introduced that would address this issue.

THE CONTENT OF THE BILLS:

The bills would require prisoners generally to pay for the costs of any civil suits they initiated. House Bill 4989 would amend the Revised Judicature Act (MCL 600.2957) to add a new section requiring courts to order a prisoner under the jurisdiction of the Department of Corrections who initiated a civil action in a Michigan court to pay, from his or her institutional account, the filing fee and court costs regardless of the prisoner's claim of indigency. When a prisoner-initiated civil action was begun, depending on the amount of money the prisoner had in his or her institutional account, he or she would have to pay either the full amount of the filing fee or an amount equal to half of the average monthly deposits made to his or her account for the six months preceding the date on which the civil action was commenced. If the prisoner didn't make the required payments within 21 days after being ordered by the court to do so, his or her civil action would be dismissed by the court. When the civil action was concluded, the prisoner would be required to pay the court costs allowed by law, or the amount in his or her institutional account, whichever was less. If a balance of court costs remained unpaid, the court would order that half of all deposits subsequently made to the prisoner's institutional account be applied toward payment of the remaining court costs until they were paid in full. "Court costs" would not include attorney fees. House Bill 4990 would add a new section to the Department of Corrections act (MCL 791.268) that would require the department to comply with any court orders requiring prisoners to pay court costs at the end of prisoner-initiated civil actions by paying those amounts from the institutional account of the prisoner in question. The bills are tie-barred to each other.

BACKGROUND INFORMATION:

Similar legislation. House Bill 4989 is a reintroduction of House Bill 5683 of 1993 as passed by the House. The bill passed the House but died in the Senate. A similar bill, Senate Bill 1215, also has been introduced in the Senate this session.

The Department of Corrections formal disciplinary hearings process. In the wake of a Michigan court of appeals decision (Lawrence v. Michigan Department of Corrections) and a 1974 U.S. Supreme Court decision (Wolff v. McDonnel 418 U.S. 539), the disciplinary hearings process for Michigan prisoners was revised in 1979 legislation. Public Act 139 exempted disciplinary hearings held in prisons by the DOC from the contested case procedures in the Administrative Procedures Act, while Public Act 140 added a new chapter to the Department of Corrections enabling act to create a centralized Hearings Division within the DOC and to require that hearings officers be attorneys. After the 1981 prison riots in Jackson, at the State Prison of Southern Michigan (SPSM), a joint legislative committee determined that a major cause of prison discontent was the inadequacy of the disciplinary hearings process. The Joint Committee to Investigate the Prison Disturbances of 1981 made several recommendations for reform that were embodied in Public Acts 442 of 1982 and 155 of 1983. Public Act 442 of 1982 established a system of disciplinary credits to reward good behavior in prisoners who were denied good time by Proposal B of 1978, while Public Act 155 of 1983 required rehearings and clarified the grounds for an initial hearing and the procedure for judicial review).

Prisoners charged with major misconduct violations are entitled to formal hearings which provide the prisoners with the opportunity to refute the facts alleged in the misconduct report. Prisoners have the right to know what behavior is expected and what will be punished (that is, written rules are required); the right to know what the accusation is, so that a response can be prepared; and the right to appear and speak regarding the accusation before an independent decision-maker, namely, the hearings officer. Prisoners do not have the right to be represented by an attorney or to cross-examine witnesses at misconduct hearings. Major misconduct hearings are conducted by attorney hearing officers employed by the Hearings Division of the DOC, and although they are employees of the department, the hearings officers are required to preside as independent fact finders. The misconduct hearing is not an adversarial proceeding but a fact-finding process, at the end of which the hearing officer will make a determination of guilt or innocence, explain the decision to the prisoner, and impose a sanction if the prisoner is found to be guilty. If either the prisoner or the facility head disagrees with the results of a hearing, they may submit a request for a rehearing to the Hearings Division. If the DOC denies a request for a rehearing (or if a prisoner isn't satisfied with the results of a rehearing), the prisoner may appeal to the circuit court. Appeals must be filed within 60 days from the date the department mails its final decision on the request for rehearing. Although a request for a rehearing is the final administrative appeal in the formal hearings process, following submission of the request for rehearing, prisoners also may contact their legislator and ask him or her to request that the Legislative Corrections Ombudsman review the hearing officer's decision.

The legislative corrections ombudsman (LCO). The Office of Legislative Corrections Ombudsman was established in the wake of the prison uprising at Attica in

New York in 1971, after a bipartisan task force composed of both House and Senate members undertook a review of Michigan's correctional facilities and practices. Public Act 46 of 1975 created the office as an independent agency within the legislative branch of government to serve as the legislature's investigator of complaints concerning the state's prison system. The office is housed within the Legislative Council, which appoints the ombudsman and approves the office's budget and expenditures, employment of personnel, and its complaint and investigation procedures.

For the first 20 years of its existence, the office was able not only to respond directly to complaints from citizens -- including prisoners, DOC employees, prisoner/parolee family members, and others -- but also was able to initiate investigations upon its own initiative. Public Act 197 (enrolled Senate Bill 501) of 1995, however, restricts LCO investigations to requests from state legislators or, on its own initiative, "for significant prisoner health and safety issues and other matters for which there is no effective administrative remedy, all as determined by the council." That is, prisoners and others no longer may contact the LCO directly with complaints but must submit any complaints to their state legislators, who then have the discretion to decide whether or not to ask the LCO to investigate the complaint. The 1995 amendment also exempted LCO investigation reports and recommendations from disclosure under the Freedom of Information Act, though the LCO can forward such reports to the department, the prisoner(s) affected, or the legislator who requested the report. Legislators may refer prisoner (and other) complaints to the ombudsman for direct handling or for advice to the individual legislator on how to respond personally to the complaint.

The LCO is a fact finder whose role is to offer an objective and impartial assessment of complaints from throughout the entire state. Upon legislative request, it may investigate an administrative act which is alleged to be contrary to law, contrary to departmental policy, unaccompanied by an adequate statement of reason, or based on irrelevant, immaterial or erroneous grounds. Review of complaints (such as complaints by prisoners of a completed grievance proceeding or of a decision by a DOC hearing officer) by the LCO is an independent action, outside the actions of the DOC (since the LCO works for the legislature and not the DOC). The LCO does not have the authority to order the DOC (or any of its subunits, such as individual prisons) to resolve complaints. But upon receiving a legislative referral, the LCO conducts an analysis of the case. If it finds something on which a challenge to a decision by the DOC can be based, it will forward that information to the DOC. (If it finds no violation or other basis upon which to challenge a finding made by a DOC hearing officer, the LCO will give the prisoner an explanation for that finding also.) Thus, the LOC acts in an advisory capacity when it completes an investigation, bringing findings to the attention of the DOC, along with any recommendations it believes relevant and proper. The DOC is not required to comply with the LCO's findings or recommendations. In addition to complaint investigation and resolution efforts, the LCO acts in an advisory capacity to the legislature on matters involving corrections.

Although at one time the Office of Legislative Corrections Ombudsman had a staff of nine -- the ombudsman, a chief investigator, five field investigators, a secretary, and a staff assistant -- currently its staff is down to four people: the ombudsman, a secretary, a chief investigator, and one field investigator.

Department of Corrections 1992-1995 litigation statistics. The Michigan Department of Corrections 1995 Statistical Report lists 35 categories of litigation, ranging from "access to courts" to "visits." The total number of lawsuits has increased gradually from 1992 through 1995, as has the total prison population. In 1992, with a total prison population of 35,131, there were 1,581 lawsuits; in 1993, with 36,474 prisoners there were 1,587 lawsuits; in 1994, with 38,145 prisoners, there were 1,671 lawsuits; and in 1995, with 38,854 prisoners, there were 1,906 lawsuits. (The Department of Attorney General reports that as of November 11, 1996, 1,570 corrections lawsuits had been assigned, and estimates that there will be about another 100 cases before year's end.)

The greatest numbers of lawsuits during this time period concerned the parole release process (193 in 1992, 213 in 1993, 273 in 1994, and 583 in 1995) and "petitions for review - APA" (231, 269, 295, and 362, respectively). These two categories accounted for almost half of all lawsuits for 1995 (945 out of 1,906), as compared to less than a third of the total in each of the three preceding years.

"Disciplinary process" lawsuits decreased steadily over this time period, from 112 in 1992, to 73 in 1993, and 59 in each of the years 1994 and 1995. "Freedom of Information Act" (FOIA) lawsuits have decreased dramatically since 1994 (from 112 in 1992, 91 in 1993, and 97 in 1994, to 12 in 1995) presumably due to Public Act 134 of 1994, which excluded prisoners from rights to disclosure of public information under FOIA. The next highest categories of lawsuits include "conditions of confinement" (92, 100, 59, and 59, respectively), "harassment" (40, 67, 111, and 88, respectively), "medical" (78, 92, 78, and 79, respectively), "parole revocation process" (58, 41, 46, and 72, respectively), "security classification" (73, 71, 68, and 73, respectively), and "time computation" (94, 82, 69, and 50, respectively).

Payments by prisoners. Prisoners may have institutional accounts, administered by the DOC, which they may use to buy toiletries and personal items from prison stores. Prisoners get money for their accounts from a number of sources: deposits from prison wages or school, deposits from the prisoner's family members, and judgments against the state from successful prisoner lawsuits. (Note: According to the Institutional Program Report for the Month of December 1995, a total of 24,624 (out of a total of 38,854) prisoners were classified as "assigned" to school and/or work either full time (15,864), half time (7,133), or "half time/half time" (1,627). Another 1,188 prisoners were awaiting initial classification, 6,551 were in the employment pool, 1,901 were in segregation, 640 were "not medically clear," and 1,021 were unemployable (i.e. refusing assignment or terminated). According to testimony before the House Committee on Judiciary and Civil Rights, prisoners with prison jobs earn between $20 and $30 a month, or generally somewhat less than one dollar a day. Prisoners in school get 40-50 cents a day. Prisoners working in prison industries earn $4-5 a day, or $400-500 a month. According to DOC testimony, 2,000-2,500 [out of a total prison population of over 35,000 prisoners] have prison industry jobs.)

Prisoners may be required by law to pay money from their institutional accounts for a number of purposes, including their "cost of care." Under the State Correctional Facility Reimbursement Act, the state may recover some of the cost of caring for prisoners, where "the cost of care" is defined to mean "the cost to the Department of Corrections for providing transportation, room, board, clothing, security, medical, and other normal living expenses of prisoners under the jurisdiction of the department, as determined by the commission of corrections." Before the state tries to recover a prisoner's cost of care, the prisoner must have "recoverable assets" to pay either for at least ten percent of the estimated cost of care of that prisoner or ten percent of that cost for two years, whichever is less. In either case, however, not more than 90 percent of the value of a prisoner's assets may be used for securing costs and reimbursement under the act. Under the act, "assets" includes property ("real or intangible, real or personal") belonging to or due a prisoner or former prisoner, including social security payments, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, and retirement benefits ("or from any other source whatsoever"). Explicitly exempted from a prisoner's assets are (a) prisoners' homesteads up to $50,000 in value and (b) money and bonuses paid to the prisoner while confined to a state correctional facility. (Until Public Act 286 of 1996, money received by the prisoner from the state from a settlement or judgment involving a prisoner's successful claim against the department also had been exempted from being counted in a prisoner's "recoverable assets"; the act removed these exemptions.)

Public Act 286 of 1996 (enrolled House Bill 4955) added to the "cost of care" -- and thus allows the state to seek reimbursement for -- the cost to the Department of Corrections for providing college-level classes or programs to prisoners. Public Act 234 of 1996 (enrolled House Bill 4947) made prisoners responsible for a co-payment fee for nonemergency medical, dental, or optometric services requested by the prisoner.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, by requiring the Department of Corrections to pay filing fees and court costs from prisoners' accounts, the bills would impose administrative costs on the department. However, if the bills led to an appreciable decrease in the numbers of cases filed by prisoners, they could decrease costs for the Department of Attorney General, which defends such lawsuits. To the extent that the bills discouraged filing of suits with merit, they could decrease state costs of litigating the suits and of paying any associated awards. (11-18-96)

ARGUMENTS:

For:

Just as they would have to do if they wanted to initiate civil lawsuits outside of prison, inmates who want to initiate civil lawsuits while in prison should be made to take economic responsibility for their decisions to sue. Over the past four years, prisoners filed 6,745 lawsuits, increasing from just over 1,500 in 1992 to nearly 2,000 in 1995. The corrections division of the attorney general's office, which defends the DOC in prisoner lawsuits, currently has 23 full-time attorneys and reportedly is the largest division in the attorney general's office. Anecdotally, some of the lawsuits are obviously frivolous -- reportedly one prisoner sued because he received "crunchy" peanut butter instead of creamy, while another sued because a guard refused to save a half-eaten frozen popcicle in a freezer for the prisoner to finish later. Some prisoners also apparently file a disproportionate number of lawsuits: reportedly, over the past several years three prisoners have filed a total of 451 lawsuits.

Although as many as 90 percent of prisoner lawsuits are dismissed before going to trial, this kind of legal harassment of the DOC by prison inmates costs both the department and the attorney general both time and money to respond to, as well as adding to the burden of already overburdened judicial dockets.

While all prisoners are legitimately entitled to the protection of their constitutional rights, the fact remains that prisoners have several administrative remedies open to them as well as judicial appeals, should the prisoner disagree with an administrative decision, and access, through their legislators, to review and investigation by the Legislative Corrections Ombudsman. The taxpayers of the state are carrying the financial burden of these lawsuits, not to mention the costs of prisoners' housing, food, medical care, and even recreation. By making prisoners take financial responsibility for deciding whether to file a lawsuit -- as opposed, say, to using administrative remedies to address their complaints, or choosing to spend their money on other goods, such as snack food or clothing -- the bill would help not only to discourage frivolous claims, but also to reduce the overall number of prisoner-initiated lawsuits. People outside of prison are faced with similar economic choices all of the time, and prisoners should not be exempted simply because they are in prison.

Against:

The Department of Corrections recommends that House Bill 4989 be amended to require that prisoners be required to pay all of the filing fee before a civil action be allowed to proceed.

Response:

There may be constitutional issues of equal protection if such an amendment were to be made to the bill.

Against:

The bills would deny indigent prisoners access to the courts, which clearly would violate their constitutional rights. Prisoners who didn't have any money wouldn't be able to pay anything toward filing fees, and House Bill 4989 would explicitly say that prisoners who initiated civil actions would have to pay filing fees and court costs from their institutional accounts regardless of the prisoner's claim of indigency. The bill also would specify that if a prisoner didn't make the required payments within 21 days after being ordered by a court to do so, then the court would dismiss the suit. Since, by definition, an indigent prisoner wouldn't be able to pay anything, he or she wouldn't even be able to pay a portion of the filing fees -- in which case, his or her case would be dismissed under the bill.

Response:

House Bill 4989 would require only that prisoners pay the full filing fees if they had enough money in their institutional accounts. If they didn't have enough to pay the full filing fees, the bill would only require them to pay an amount equal to half of the average monthly deposits to the prisoner's account for the six months before the lawsuit was begun. If the average monthly deposits equaled zero, then the prisoner wouldn't be required to pay any of the filing fees before beginning a lawsuit: half of zero is zero. So the bill wouldn't deny indigent prisoners access to the courts. Currently, courts may order indigent prisoners to pay court costs in unsuccessful lawsuits initiated by prisoners. The bill would merely extend a similar provision to the payment of filing fees.

Against:

It is unclear just what problem the bill means to address. If the perceived problem is that there are too many frivolous prisoner lawsuits, then it should be pointed out that courts already have mechanisms for dealing with such suits. In addition, according to the Department of Attorney General, although certain outrageous (and clearly frivolous) cases do get featured in the news media, there in fact does not appear to be a major problem with frivolous prisoner lawsuits. And reportedly, frivolous prisoner lawsuits tend to be filed in the federal courts, which also reportedly are screening such cases more closely.

If the perceived problem is that there are too many prisoner lawsuits, then it would be useful to ascertain first whether there is an increase in prisoner lawsuits disproportionate to the startling increase in the prison population over the past decade or so. The DOC's litigation statistics for 1992-1995 don't suggest that there has been a disproportionate increase in the number of prisoner lawsuits during this time period. The number of lawsuits has risen from just over 1,500 in 1992 to nearly 2,000 in 1995, but over that same period of time, the total prison population also increased from 35,131 in 1992 to 38,145 prisoners in 1995. While, moreover, a high number of these lawsuits are dismissed before going to trial, or even to a hearing, this also is to be expected when apparently most prisoner lawsuits are filed by the prisoners themselves, whose understanding of the law is often such that they simply don't understand either what is needed to file a successful suit or that a suit isn't warranted in the first place. So-called "jail house" lawyers, who may know only a few legal terms, also may mislead people into believing that they have a case, when in fact they don't, and as one prisoner advocate pointed out, the rise in mentally ill prisoners who may feel aggrieved without understanding what kind of help they truly need also could account for some of the increase in prison lawsuits. But in these cases, the better solution to the problem would be to provide credible legal counseling and increased mental health services, rather than speaking of "economic responsibility."

Finally, a serious concern that various prisoner advocates have is that the bills represent another in a series of incremental steps that could serve to increasingly isolate prisoners and decrease outside oversight of the operations of the Department of Corrections. In fact, some argue

that the real "problem" is the almost total lack of oversight of a corrections system that has grown enormously in the past decade. Advocacy groups have consistently reported over the years that the exising in-house administrative remedies for prisoners who have complaints against the way they are treated or over their housing conditions are weak at best and "paper shams" at worst. Although legislation was enacted in 1979 in an attempt to improve the formal disciplinary hearings process in Michigan prisons (as a result of state and federal court decisions), nevertheless, by 1981 there were such serious prison disturbances that a Joint Committee to Investigate the Prison Disturbances of 1981 had to be convened and indicted, as a major source of the disturbances, an inadequate hearings process. In addition to on-going questions about the adequacy of formal hearings procedures, however, there also have been ongoing questions about the adequacy of more informal grievance procedures. Even before the 1979 and 1981 legislative revisions to the DOC hearings process, the legislature had created a Legislative Corrections Ombudsman Office in the wake of the 1971 Attica Prison riots in New York. The LCO's reports indicate serious problems with prison populations, understaffing, and the administrative procedures available to prisoners to redress their grievances. And yet, even though the total prison population has tripled since the LCO's inception, its staff has been slashed and prisoner access to its review process has been made more difficult instead of less difficult. Given the inherent difficulty of expecting the corrections system to police itself, where all of its incentives would tend to be to try to reduce the amount of "trouble" (whether in the form of litigation or prisoner access to an independent oversight agency), it is troubling to many people that these avenues of positive recourse seem to be more and more constricted. In addition to the restrictions on LCO staffing and access, the legislature also amended the law to exempt prisoners from having access to public records under the Freedom of Information Act (Public Act 197 of 1994), while the governor has indicated that the DOC doesn't have to follow Administrative Procedure Act procedures for promulgating corrections administrative rules and the legislature exempted the department from having to promulgate administrative rules under the APA if the rules affect only prisoners.

At the same time, as the prison population has burgeoned and more and more of the annual state budget goes to the prison system, there has been ever greater pressure on the legislature to decrease prison costs, which has, in part, resulted in more and more legislation aimed at requiring prisoners to pay for the costs of their imprisonment, their medical care, their education, their use of electricity for personal appliances, and now their access to legal recourse. If the bills do succeed in reducing the number of prisoner lawsuits, the possiblity exists that some precedent-setting lawsuits also could be eliminated, both to the detriment of the individual prisoner and to the system as a whole. Some people even express fears that if the pressures on prisoners in the corrections system become too great the state will once again be faced with the kinds of riots that shook the nation in 1971 and erupted in the state in 1981. If lawsuits are the responsible way of seeking to resolve problems -- as opposed to assaults or rioting -- the bills could result in prisoners seeking less desirable ways to deal with their perceived problems.

POSITIONS:

The Department of Corrections supports the bills and suggests an amendment to House Bill 4989 (see above). (11-13-96)

Prison Legal Services of Michigan opposes the bills. (11-13-96)

The Michigan Appellate Assigned Counsel opposes the bills. (11-13-96)

The American Civil Liberties Union of Michigan opposes House Bill 4989. (11-13-96)

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.