House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

LIMIT PRISONER LITIGATION

Senate Bill 419 (Substitute H-2)
Sponsor: Sen. William Van Regenmorter

Senate Bill 500 (Substitute H-1)
Sponsor: Sen. Thaddeus G. McCotter

First Analysis (9-30-99)

House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Despite legislation in the past several years to limit access to the courts by prison inmates through the imposition of filing fees and court costs (see BACKGROUND INFORMATION) lawmakers and criminal justice policy-makers are still concerned about frivolous inmate lawsuits involving complaints about some condition or practice in the institution. For example, according to a recent newspaper article, prisoners in Michigan corrections facilities have filed lawsuits against the state for failing to deliver a sweepstakes entry form before the contest entry deadline, for being served cold soup, alleging that prison food had given the prisoner gas, and for not paying for a dental implant that the prisoner alleged was necessary to make him look more attractive.

Congress passed, and President Clinton signed, the federal Prisoner Litigation Reform Act (PLRA) of 1995. Proponents of the PLRA said that the act was intended to reduce frivolous prisoner litigation over trivial matters, though opponents claimed that the act was an effort to strip federal courts of the authority to remedy unconstitutional prison conditions. State legislation modeled on the federal act has been proposed.

THE CONTENT OF THE BILLS:

Senate Bill 419 would add a new chapter to the Revised Judicature Act (Chapter 55: "Prisoner Litigation Reform") to limit the number of lawsuits a prisoner could file concerning prison conditions and to impose certain requirements and limitations on the courts with regard to prisoner lawsuits . Senate Bill 500 would amend the prison code to allow the reduction or forfeiture of "good time" credits or disciplinary (including special disciplinary) credits under the new chapter of the Revised Judicature Act proposed in Senate Bill 419. Neither bill would take effect unless both bills were enacted.

Senate Bill 419 would amend the Revised Judicature Act as follows.

Limitations on lawsuits. Section 5503 would prohibit a prisoner from filing an action concerning prison conditions until he or she had exhausted all available administrative remedies.

In addition, section 5511 would prohibit a person from bringing an action against the state or a local unit of government (or against an official, employee, or agent of the state or a local unit) for mental or emotional injury suffered while in custody unless he or she also showed physical injury arising out of the incident giving rise to the mental or emotional injury.

Prisoner disclosure of previous lawsuits. Section 5507 would require a prisoner who brought a civil action or appealed a judgment concerning prison conditions to disclose the number of civil actions and appeals he or she had previously initiated, and this disclosure would have to be made upon commencement of the action or upon initiation of the appeal.

Records of frivolous prisoner lawsuits. Section 5529 would require the State Court Administrator's Office to compile and maintain a list of the civil actions concerning prison conditions brought by a prisoner that had been dismissed as frivolous. The list would have to

include an account of the amount of unpaid fees and costs associated with each dismissed case, and be made available to the courts (for the purpose of ascertaining the existence and number of civil actions concerning prison conditions by each prisoner, and any associated unpaid fees and costs).

"Three strikes" provision. Under section 5507, if a prisoner had three or more lawsuits or appeals dismissed as frivolous, he or she would not (1) be able to claim indigency in a civil action (or an appeal of a civil action) concerning prison conditions or (2) be allowed legal representation by a lawyer paid (in whole or in part) by state funds (though the bill also, in section 5503, already prohibits the court from appointing counsel paid, in whole or in part, "at taxpayer expense to a prisoner for the purpose of filing a civil action concerning prison conditions.") The only exceptions to this prohibition would be if the prisoner had suffered or was under imminent danger of suffering "serious physical injury" or criminal sexual assault.

Indigent prisoner lawsuits. Under the act's current provisions concerning indigent prisoners, a prisoner who files any civil action and claims indigency is required to submit certain information on his or her prison account and to pay filing fees and costs. The bill would amend this section of the RJA to add, somewhat redundantly, that the act's provisions concerning indigent prisoners would apply specifically to civil actions concerning prison conditions.

The bill would prohibit indigent prisoners who failed to pay outstanding fees and costs from beginning a new civil action or appeal until the outstanding fees and costs on an existing lawsuit had been paid. The bill also would require the agency having custody of a prisoner ordered by a court to make monthly payments in order to pay the balance of filing fees or costs of a lawsuit to remove those amounts from the prisoner's institutional account and remit them as directed by the court order.

Mandatory dismissal of prisoner lawsuits. The bill contains several sets of requirements for courts to dismiss prisoner lawsuits (referred to variously as "cases," "complaints," "actions," or "civil actions").

** Section 5509 would require a court to dismiss, on review, a "complaint or a portion of the complaint" if the complaint (or portion of the complaint) either were frivolous or sought monetary relief from a defendant who was immune from the requested relief.

** Section 5503 would apply specifically to that subset of prisoner lawsuits concerning prison conditions: the court ("on its own motion or on the motion of a party") would have to dismiss "an action concerning prison conditions brought by a prisoner as to 1 or more defendants" if the court were satisfied that the action either were frivolous or sought monetary relief from a defendant immune from such relief.

** Section 5505 of the bill would require courts to dismiss "at any time" (and regardless of any filing fee that may have been paid) not only cases that were frivolous or that sought monetary relief against immune defendants, but also cases in which a prisoner's indigency claim were false or in which a prisoner failed to comply with the act's indigency provisions.

** Section 5507 also would require the court, upon review, to dismiss a civil action or appeal "at any time" (and regardless of any filing fee that had been paid) if the court found that the prisoner's claim of injury or imminent danger was false or that the prisoner had failed to make the required disclosure concerning the number of previous civil actions and appeals of a judgment concerning prison conditions. (Section 5529 would require the court to refer to the State Court Administrative Office list of frivolous prisoner lawsuits to determine "the number and existence of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs, for the purposes described in this [proposed] chapter.")

Prohibition against taxpayer-funded lawyers. Section 5503 would prohibit the court from appointing counsel paid for (in whole or in part) at taxpayer expense to a prisoner for the purpose of filing a civil action concerning prison conditions. (See also the "three strikes" provisions in section 5507, which would prohibit prisoners from being allowed "legal representation by an attorney who was directly or indirectly compensated for his or her services in whole or in part by state funds" if the prisoner had three or more lawsuits dismissed as frivolous.)

Jurisdiction. Section 5501 would require that a civil action concerning prison conditions be brought in the circuit court or the court of claims, as appropriate.

Court review. Section 5509 would require the court to review, "as soon as practicable," civil suits by prisoners against a governmental entity or officer or employee of a governmental entity. If, after the review, the court did not dismiss the complaint as frivolous or because the complaint sought monetary relief against an immune

defendant, the court would have to indicate in the record its reasons for its decision.

Defendant's right to waive replies to prisoner lawsuits, grant of relief to plaintiff. Section 5509 would allow a defendant to waive the right to reply to an action brought by a prisoner, and the waiver would not constitute an admission of the allegations contained in the complaint.

Relief could not be granted to the plaintiff unless a reply had been filed. However, the court could require a defendant to reply to a complaint in a civil action concerning prison conditions if it found that the plaintiff was likely to prevail on the merits.

Disbursement of damages. Under section 5511, any damages awarded to a prisoner in connection with a civil action brought against a prison (or an official, employee, or agent) would first be paid ("directly") toward satisfying any outstanding restitution orders pending against the prisoner, any outstanding costs and fees, and any other debts or assessments the prisoner owed to the jurisdiction housing him or her. Any remaining balance from the award after full payment of all outstanding restitution orders, costs and fees would be forwarded to the prisoner.

Crime victim notification. Before payment of any damages awarded to a prisoner, the court awarding the damages would have to make reasonable efforts to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of damages.

Revocation of good time or disciplinary credit. Under section 5513, if the court found (on its own motion or that of another) that a civil action brought by a prisoner was prohibited under section 5503 or 5505, the court could order the revocation of good time credit, disciplinary credit, or both, if any one of the following applied: (1) the claim was filed for a malicious purpose; (2) the claim was filed solely to harass the defendant; or (3) the prisoner testified falsely or otherwise knowingly presented false evidence or information to the court. (Note: Section 5503 would prohibit the filing of "an action concerning prison conditions" until the prisoner had exhausted all available administrative remedies, and although section 5505 would not actually prohibit any civil actions, it would require the court to dismiss a "case" at any time if it found that a prisoner's indigency claim were untrue or that the action or appeal were frivolous or sought monetary relief against an immune defendant.)

Use of telecommunications technology. Section 5515 would require that pretrial proceedings in an action brought by a prisoner be, to the extent practicable, conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the prison where he or she was confined. However, if the state or local official with custody over the prisoner so agreed, hearings could be conducted at the prison. To the extent practicable, the court would have to allow counsel to participate by telephone, video conference, or other communications technology in a hearing held at the prison.

Prospective relief. Section 5517 would prohibit the court from granting or approving any prospective relief in a civil action concerning prison conditions unless it found that the relief was narrowly drawn, extended no further than necessary to correct the violation of the right, and was the least intrusive means necessary to correct the violation of the right. The court further would be required to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief (presumably in making its decision regarding prospective relief) .

A court could not order prospective relief that required or permitted a government official to exceed his or her authority under state or local law or otherwise violate local law, unless all of the following conditions existed: state law permitted the relief to be ordered in violation of local law; the relief was necessary to correct the violation of a right under state or local law; and no other relief would correct the violation of the right.

The section specifically would not authorize a court to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the court.

Except as otherwise provided, section 5521 would make prospective relief ordered in a civil action concerning prison conditions terminable upon on the motion of a party or intervenor two years after the date the court granted or approved the relief; one year after the date the court entered an order denying termination of relief; or, in the case of an order issued on or before the date the provisions in this bill took effect, two years after that date of enactment.

Section 5523 would entitle a defendant or intervenor to the immediate termination of a prospective relief ordered in a civil action concerning prison conditions if the relief was ordered in the absence of a finding by the court that the relief was narrowly drawn, extended

no further than necessary to correct the violation of the state right and was the least intrusive means necessary to correct the violation of a right under state or local law.

Prospective relief would not terminate if the court made written findings based on the record that prospective relief remained necessary to correct a current or ongoing violation of the right, extended no further that was necessary to correct the violation of the right, was narrowly drawn and was the least intrusive means to correct the violation.

A party could not seek modification or termination before the relief was terminable under section 5521 to the extent that modification or termination would otherwise be legally permissible.

Section 5527 would require the court to rule "promptly" on a motion to modify or terminate prospective relief in a civil action concerning prison conditions. Any prospective relief subject to a pending motion would be automatically stayed during one of the following periods:

** Beginning on the 30th day after the motion was filed, in the case of a motion filed under sections 5521 or 5523, and ending on the date the court entered a final order ruling on the motion.

** Beginning on the 180th day after the motion was filed, in the case of a motion made under any other law, and ending on the date the court entered a final order ruling on the motion.

The court could postpone the effective date of an automatic stay specified above for good cause for not more than 60 days, where "good cause" would not include the congestion of the court's calendar.

An order staying, suspending, delaying, or barring the operation of an automatic stay, other than an order to postpone the effective date of the automatic stay, would be treated as an order denying the dissolution of or modification of an injunction and could be appealed as of right regardless of how the order was styled or whether the order was termed a preliminary or a final ruling.

Limitations on injunctive relief. Section 5519 would allow the court to enter a temporary restraining order or an order for preliminary injunctive relief in a civil action concerning prison conditions to the extent otherwise authorized by law. However, injunctive relief would have to be narrowly drawn, extend no further than necessary to correct the harm, and be the least intrusive means necessary. The court also would have to give substantial weight to the potential for an adverse effect on public safety or the operation of the criminal justice system in tailoring the preliminary relief. Preliminary injunctive relief would automatically expire 90 days after the order was entered, unless the court made the necessary findings for prospective relief and made the order final before the end of the 90-day period.

Definitions. The bill would define a number of terms, including "civil action concerning prison conditions," which would be defined as "any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or commission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison, or parole appeals or major misconduct appeals." "Frivolous" would mean that term as defined in section 2591 of the Revised Judicature Act, where it is defined to mean at least one of the following: "(1) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party; or (2) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true."

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Law and Corrections adopted a substitute (H-2) for the Senate-passed bill. House Substitute H-2 uses the term "frivolous" instead of "nonmeritorious"; strikes the section in the Senate-passed bill that would have provided for "special masters" to review lawsuits concerning prisons conditions; and rewrote the indigency provisions in the section prohibiting aid from state-funded lawyers if a prisoner had three or more prison lawsuits dismissed as frivolous. Finally, the House substitute simply amends sections 2963, instead of repealing and rewriting section 2963 of the RJA as part of the proposed new chapter.

BACKGROUND INFORMATION

Indigent prisoner civil suits. Public Act 555 of 1996 (MCL 600.2963) amended the Revised Judicature Act to make indigent prisoners responsible for paying filing fees and court costs of any civil lawsuits they file, and explicitly prohibits the fact of a prisoner's incarceration from being the sole basis for a determination of

indigency. However, the act specifically does not prohibit a prisoner from beginning a civil action or filing an appeal in a civil action if he or she has no assets and no means by which to pay even an initial partial filing fee. The act allows courts to waive or suspend payment of fees and costs in such cases, but requires the court to order payment when the reason for the waiver or fee no longer exists.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bills would have an indeterminate fiscal impact on state government. (See SFA bill analyses dated 4-26-99.)

ARGUMENTS:

For:

Proponents of the bills argue that they are needed to stem the tide of frivolous prisoner lawsuits. Modeled on the federal Prisoner Litigation Reduction Act (PLRA) of 1995, the bill would do a number of things. First, because the federal act reportedly has been effective in reducing the number of frivolous prisoner lawsuits in federal courts – and is the main reason why the state has been able to get relief from federal prison consent decrees – the bill is necessary to ensure that the state courts don't now become the focus of prisoner lawsuits. Also, given the reported effectiveness of the federal legislation, there is reason to believe that a state law mirroring the federal law would reduce the number of frivolous state prisoner lawsuits, thereby saving state resources currently needed to take care of these nonmeritorious cases. Reportedly both the attorney general's office and the Department of Corrections, which is the defendant (or one of the defendants) in prisoner lawsuits, waste a great deal of time and state money responding to frivolous lawsuits. This time and money could be better spent on other pressing needs, including meritorious prisoner lawsuits. Finally, because the federal act currently is being litigated, it would be useful for the state act to mirror the federal legislation so that the results of the litigation at the federal level will apply also to the state act.

Against:

Opponents of the bills argue a number of points:

** Given the decreasing oversight of prisons by the public, the media, and even the Legislative Corrections Ombudsman, lawsuits by prisoners are an important means of addressing prison conditions that violate constitutional and statutory standards. By further restricting the ability of prisoners to file lawsuits and by mandating that the courts dismiss prisoner lawsuits under certain conditions, the bill would further isolate the prisons and protect the Department of Corrections from the public oversight necessary to protect prisoner safety and welfare. Given the notoriety of the sexual abuse and assault cases against women prisoners so prominent recently in the news media, the bills would give the wrong message about prisoner safety, however well-intentioned the motives of their proponents.

** Since prisoners do not have a right to legal counsel for prison conditions lawsuits, it is difficult for prisoners to file competent pleadings in lawsuits because they have little access to legal advice, and because many prisoners are mentally ill, illiterate, or juveniles who do not know how to file correctly or even when an issue is remedial by a lawsuit. So it is not surprising that prisoners complaints, in the form of lawsuits, get dismissed as "frivolous" for being improperly drawn. This, however, does not mean that there is no substantive merit to many such lawsuits.

** The bill would prevent prisoners with serious, legitimate complaints about prison conditions or their treatment by prison staff from being heard and from collecting damages, and it would eliminate the deterrent effect of potential lawsuits against prison officials. A prisoner with three or more cases classified as "frivolous" would not be able to claim indigency or obtain court-appointed legal help, no matter how meritorious the case, unless there was either actual or the threat of imminent "serious physical injury" or criminal sexual assault.

** The prohibition against lawsuits for mental or emotional injury without accompanying physical injury is too high a standard and ignores the realities of prison life. For instance, one example given that would not qualify under the proposed provisions was described in committee testimony and involved a situation in which a prisoner alleged that a guard transporting him played a game of "Russian roulette" with the prisoner. There would be no physical injury in such a case, but obviously there would be potentially very serious emotional or mental injury.

** There is some evidence that the bill is not needed since lawyers specializing in corrections say that most prisoner filings are not about prison conditions and so would not be affected by the bill, and the complaints about "frivolous" lawsuits are exaggerated and often appear to focus on a few atypical outrageous cases that are dismissed anyway. According to committee testimony, there were only about 600 "frivolous" prisoner lawsuits last year (reportedly down from 800

to 1,000 in the immediately preceding years) out of a prison population of around 45,000 prisoners. This hardly seems like an overwhelming number of cases, particularly when, reportedly, almost 95 percent of prisoner lawsuits are dismissed anyway. In addition, courts already have the means to deal with prisoners who abuse the legal system by repeatedly filing lawsuits.

** The question can be raised whether the bills goes too far in breaching the separation of powers doctrine by having the legislature micromanage court decisions, mandating when courts would have to dismiss prisoner cases and limiting courts' discretion over such cases.

** Senate Bill 419 itself appears in places to be unclear, redundant, or internally inconsistent. For example, one section refers to prisoners who file actions prohibited by two other sections of the bill, when in fact these two other sections do not prohibit the filing of specific kinds of actions (though one of the two sections would prohibit prisoners from filing an action until the prisoner had exhausted all available administrative remedies). The bill also places prisoner lawsuits about prison conditions under the Revised Judicature Act's current provisions requiring indigent prisoners to pay filing fees and cost, though these provisions already apply to all civil suits filed by prisoners. Finally, the bill appears to have almost identical requirements in three different sections mandating court dismissal of certain prisoner lawsuits, which not only is confusing but appears unnecessarily redundant.

POSITIONS:

The Department of Corrections supports the bills. (9-30-99)

The Office of the Attorney General supports Senate Bill 419. (9-30-99)

The American Civil Liberties Union -- Michigan opposes the bills. (9-29-99)

The Prisons and Corrections Section of the State Bar of Michigan opposes the bills. (9-29-99)

Analyst: S. Ekstrom

■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.