

HOUSE BILL No. 6659

November 28, 2006, Introduced by Reps. Brandenburg and Pastor and referred to the Committee on Appropriations.

A bill to amend 1935 PA 253, entitled
"The state correctional facility reimbursement act,"
by amending the title and sections 1a, 1b, 3, 3a, 4, 4a, 4b, 5, and
6 (MCL 800.401a, 800.401b, 800.403, 800.403a, 800.404, 800.404a,
800.404b, 800.405, and 800.406), the title and sections 3, 4, 4a,
4b, 5, and 6 as amended and sections 1b and 3a as added by 1984 PA
282 and section 1a as amended by 1996 PA 286, and by adding section
5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide procedures for securing reimbursement to the
state of the expenses incurred by the state for the cost of care of

1 certain prisoners in state correctional facilities; to provide
2 procedures for securing the reimbursement of expenses to be
3 incurred by the state in regard to the future cost of care of ~~such~~
4 **THOSE** prisoners; **TO CREATE CERTAIN FUNDS**; and to prescribe certain
5 powers and duties of certain state and local public officers and
6 officials.

7 Sec. 1a. As used in this act:

8 (a) "Assets" means **ALL** property, tangible or intangible, real
9 or personal, ~~belonging~~ **THAT BELONGS** to or **IS** due a prisoner or
10 former prisoner, **OR THAT IS HELD FOR THE BENEFIT OF OR ON BEHALF OF**
11 **A PRISONER**, including, **BUT NOT LIMITED TO**, income or payments to
12 ~~such~~ **A prisoner OR FORMER PRISONER** from social security, worker's
13 compensation, veteran's compensation, pension benefits, previously
14 earned salary or wages, bonuses, annuities, retirement benefits, **A**
15 **FINANCIAL SETTLEMENT, DEVISE, INHERITANCE, BEQUEST, COURT AWARD,**
16 **INSURANCE BENEFITS PAYABLE OR ACCRUING TO A PRISONER OR FORMER**
17 **PRISONER**, or from any other source whatsoever, but does not include
18 any of the following:

19 (i) The homestead of the prisoner up to \$50,000.00 in value.

20 (ii) ~~Money~~ **UP TO \$1,500.00** saved by the prisoner from wages
21 and bonuses paid the prisoner while he or she was confined to a
22 state correctional facility.

23 (b) "Cost of care" means the cost to the department for
24 providing transportation, room, board, clothing, security, medical,
25 and other normal living expenses of prisoners, and the cost to the
26 department for providing college-level classes or programs to
27 prisoners, as determined by the department.

1 (c) "Department" means the department of corrections. ~~of this~~
2 ~~state.~~

3 (d) "Director" means the director of the department.

4 (e) "Prisoner" means any person who is under the jurisdiction
5 of the department and is either confined in ~~any~~ **A** state
6 correctional facility or is under the continuing jurisdiction of
7 the department.

8 (f) "State correctional facility" means a facility or
9 institution ~~which~~ **THAT** houses a prisoner population under the
10 jurisdiction of the department. State correctional facility
11 includes a correctional camp, community correction center, state
12 prison, and a state reformatory.

13 Sec. 1b. (1) The department shall develop a form ~~which~~ **THAT**
14 shall be used by the department to obtain information from all
15 prisoners regarding assets of the prisoners. **THE FORM MAY REQUIRE**
16 **THE PRISONER TO SUBMIT ANY INFORMATION THE DEPARTMENT CONSIDERS**
17 **PERTINENT TO AN INVESTIGATION OF A PRISONER'S ASSETS, INCLUDING**
18 **REQUIRING THE PRISONER'S WRITTEN AUTHORIZATION TO OBTAIN THE**
19 **PRISONER'S CONFIDENTIAL TAX INFORMATION HELD BY THE UNITED STATES**
20 **INTERNAL REVENUE SERVICE.**

21 ~~— (2) Upon being developed, the~~ **THE** form shall be submitted to
22 each person ~~who is a prisoner as of the date the form is developed~~
23 ~~and to every person who thereafter~~ is sentenced to imprisonment
24 under the jurisdiction of the department. The form may be
25 resubmitted to a prisoner by the department for purposes of
26 obtaining current information regarding assets of the prisoner.

27 (2) ~~(3)~~ Every prisoner shall complete the form or provide

1 for completion of the form and ~~the prisoner~~ shall swear or affirm
2 under oath that to the best of his or her knowledge the information
3 provided is complete and accurate.

4 ~~—— (4) The department shall have developed the form provided for~~
5 ~~under this section not later than 30 days after the effective date~~
6 ~~of this section.~~

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

9 (2) If the attorney general ~~upon completing the investigation~~
10 ~~under subsection (1) has good cause to believe that a prisoner has~~
11 ~~sufficient assets to recover not less than 10% of the estimated~~
12 ~~cost of care of the prisoner or 10% of the estimated cost of care~~
13 ~~of the prisoner for 2 years, whichever is less~~ **BELIEVES IT IS IN**
14 **THE PUBLIC INTEREST**, the attorney general ~~shall~~ **MAY** seek to
15 secure reimbursement for the expense of the state of Michigan for
16 the cost of care of that prisoner.

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

20 Sec. 3a. (1) A prisoner shall fully cooperate with the state
21 by providing complete financial information for purposes under this
22 act. **IF A PRISONER, OR A PERSON ON BEHALF OF A PRISONER, FILES AN**
23 **ACTION OR FILES AN ADMINISTRATIVE ACTION WITH AN ADMINISTRATIVE**
24 **AGENCY OF STATE, LOCAL, OR FEDERAL GOVERNMENT, OR AGREES TO ANY**
25 **TYPE OF ALTERNATIVE DISPUTE RESOLUTION, THE ATTORNEY FOR THE**
26 **PRISONER OR THE PERSON ACTING ON BEHALF OF THE PRISONER SHALL SERVE**
27 **THE WARDEN OF THE CORRECTIONAL FACILITY TO WHICH THE PRISONER IS**

1 CURRENTLY CONFINED AND THE ATTORNEY GENERAL, BY CERTIFIED MAIL,
2 WITH A COPY OF THE SUMMONS AND COMPLAINT, PETITION, OR OTHER
3 PLEADING INITIATING THE ACTION.

4 (2) The failure of a prisoner to fully cooperate as provided
5 in subsection (1) may be considered for purposes of a parole
6 determination under section 35 of ~~Act No. 232 of the Public Acts~~
7 ~~of 1953, being section 791.235 of the Michigan Compiled Laws~~ **THE**
8 **CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.235, AND MAY BE**
9 **CONSIDERED AS THE BASIS FOR OTHER DISCIPLINARY MEASURES AS**
10 **DETERMINED BY THE DEPARTMENT OF CORRECTIONS.**

11 Sec. 4. (1) The circuit court ~~shall have~~ **HAS** exclusive
12 jurisdiction over all proceedings under this act. The attorney
13 general may file a complaint in the circuit court ~~for~~ **IN INGHAM**
14 **COUNTY OR IN** the county ~~from~~ **IN WHICH THE PRISONER IS HOUSED, OR**
15 **ANY 1 OF THE COUNTIES IN** which ~~a~~ **THE** prisoner was sentenced,
16 stating that the person is or has been a prisoner in a state
17 correctional facility, that there is good cause to believe that the
18 prisoner has assets, and ~~praying~~ **ASKING** that the assets be used
19 to reimburse the state for the expenses incurred or to be incurred,
20 or both, by the state for the cost of care of the person as a
21 prisoner. **THE ATTORNEY GENERAL IS EXEMPT FROM PAYING A FILING FEE**
22 **WHEN BRINGING AN ACTION UNDER THIS ACT.**

23 (2) Upon the filing of the complaint under subsection (1), the
24 court shall issue an order to show cause why the ~~prayer~~ **REQUEST**
25 of the complainant should not be granted. The complaint and order
26 shall be served upon the prisoner personally or, if the prisoner is
27 confined in a state correctional facility, by registered mail

1 addressed to the prisoner in care of the chief administrator of the
2 state correctional facility where the prisoner is housed, at least
3 30 days before the date of hearing on the complaint and order.

4 (3) At the time of the hearing on the complaint and order, if
5 it appears that the prisoner has any assets which ought to be
6 subjected to the claim of the state under this act, the court shall
7 issue an order requiring any person, corporation, or other legal
8 entity ~~possessed or having~~ **THAT POSSESSES OR HAS** custody of those
9 assets to appropriate and apply the assets or a portion ~~thereof~~
10 **OF THE ASSETS** toward reimbursing the state as provided ~~for~~ under
11 this act.

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

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

21 (6) If the person, corporation, or other legal entity ~~shall~~
22 ~~neglect or refuse to~~ **DOES NOT** comply with an order under
23 subsection (3), the court shall order the person, corporation, or
24 other legal entity to appear before the court at ~~such~~ **A** time ~~as~~
25 **SPECIFIED BY** the court ~~may direct and~~ to show cause why the
26 person, corporation, or other legal entity should not be considered
27 in contempt of court.

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

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

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

21 (2) ~~To~~ **UPON REQUEST OF THE ATTORNEY GENERAL OR A PROSECUTING**
22 **ATTORNEY, THE COURT SHALL APPOINT A RECEIVER OR ENTER AN EX PARTE**
23 **RESTRAINING ORDER, OR BOTH, TO** protect and maintain assets pending
24 resolution of an action under this act. ~~, the court, upon request,~~
25 ~~may appoint a receiver.~~

26 (3) The attorney general or a prosecuting attorney shall not
27 enforce any judgment obtained under this act by means of execution

1 against the homestead of the prisoner.

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

8 (2) The attorney general shall not seek reimbursement under
9 this act for the cost of care of a prisoner **WHILE HE OR SHE WAS** in
10 a work camp if the department is being or has been **FULLY** reimbursed
11 for those costs by the prisoner pursuant to section 65c of ~~Act No.~~
12 ~~232 of the Public Acts of 1953, being section 791.265c of the~~
13 ~~Michigan Compiled Laws~~ **THE CORRECTIONS CODE OF 1953, 1953 PA 232,**
14 **MCL 791.265C.**

15 Sec. 5. (1) The sentencing judge, the sheriff of the county,
16 the chief administrator of the state correctional facility, and the
17 department of treasury shall furnish to the attorney general or
18 prosecuting attorney all information and assistance possible to
19 enable the attorney general or prosecuting attorney to secure
20 reimbursement for the state under this act.

21 (2) **THE ATTORNEY GENERAL OR AN APPOINTED AGENT OF THE ATTORNEY**
22 **GENERAL MAY ISSUE AN ADMINISTRATIVE SUBPOENA UNDER THIS SECTION FOR**
23 **PURPOSES OF AN INVESTIGATION UNDER THIS ACT. THE ATTORNEY GENERAL**
24 **OR THE ATTORNEY GENERAL'S APPOINTED AGENT MAY EXAMINE THE BOOKS,**
25 **RECORDS, AND THE PAPERS RELATING TO THE MATTER OF SECURING**
26 **REIMBURSEMENT UNDER THIS ACT OF ANY PRISONER WHO IS UNDER THE**
27 **JURISDICTION OF THE DEPARTMENT OF CORRECTIONS, OR ANY PERSON WHO IS**

1 BELIEVED TO BE HOLDING ASSETS BELONGING TO OR OWED TO A PRISONER,
2 OR ANY PERSON WHO IS BELIEVED TO BE OR IS ACTING ON BEHALF OF A
3 PRISONER. THE ATTORNEY GENERAL OR THE APPOINTED AGENT MAY ISSUE A
4 SUBPOENA REQUIRING A PERSON TO APPEAR AND BE EXAMINED WITH
5 REFERENCE TO A MATTER WITHIN THE SCOPE OF THE INQUIRY OR
6 INVESTIGATION BEING CONDUCTED BY THE DEPARTMENT AND TO PRODUCE ANY
7 BOOKS, RECORDS, OR PAPERS. THE ATTORNEY GENERAL OR APPOINTED AGENT
8 MAY ADMINISTER AN OATH TO A WITNESS IN ANY MATTER WITHIN THE SCOPE
9 OF THE INQUIRY OR INVESTIGATION BEING CONDUCTED BY THE DEPARTMENT.
10 THE DEPARTMENT MAY INVOKE THE AID OF THE CIRCUIT COURT IN REQUIRING
11 THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCING OF
12 BOOKS, PAPERS, AND DOCUMENTS. THE CIRCUIT COURT IN THE COUNTY IN
13 WHICH AN ACTION UNDER THIS ACT IS MAINTAINED, IN CASE OF CONTUMACY
14 OR REFUSAL TO OBEY A SUBPOENA, MAY ISSUE AN ORDER REQUIRING THE
15 PERSON TO APPEAR BEFORE THE DEPARTMENT AND PRODUCE BOOKS AND PAPERS
16 IF SO ORDERED AND ANY EVIDENCE RELATING TO THE MATTER IN QUESTION.
17 THE FAILURE TO OBEY A COURT ORDER ISSUED UNDER THIS SUBSECTION MAY
18 BE PUNISHED BY THE COURT AS CONTEMPT. A PERSON WHO IS ORDERED BY
19 THE ATTORNEY GENERAL TO TESTIFY OR TO PRODUCE ANY BOOKS, PAPERS,
20 RECORDS, OR MEMORANDA IN ANY INVESTIGATION OR HEARING IS NOT
21 EXCUSED FROM TESTIFYING OR PRODUCING THOSE ITEMS UPON THE GROUND
22 THAT THE TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE, MAY TEND
23 TO INCRIMINATE HIM OR HER OR SUBJECT HIM OR HER TO A CRIMINAL
24 PENALTY. HOWEVER, A PERSON SHALL NOT BE PROSECUTED OR SUBJECTED TO
25 ANY CRIMINAL PENALTY BECAUSE OF ANY TRANSACTION MADE OR THING
26 CONCERNING WHICH HE OR SHE MAY TESTIFY OR PRODUCE EVIDENCE,
27 DOCUMENTARY OR OTHERWISE, BEFORE THE DEPARTMENT OR ITS AGENT. A

1 PERSON TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUNISHMENT FOR
2 PERJURY COMMITTED WHILE TESTIFYING.

3 SEC. 5A. (1) THE STATE CORRECTIONAL FACILITIES REIMBURSEMENT
4 FUND IS ESTABLISHED IN THE STATE TREASURY. EXCEPT AS OTHERWISE
5 PROVIDED IN SECTION 6, THE STATE TREASURER SHALL CREDIT MONEY
6 COLLECTED UNDER THIS ACT TO THE REIMBURSEMENT FUND. THE MONEY IN
7 THE REIMBURSEMENT FUND SHALL BE EXPENDED ONLY FOR PURPOSES SET
8 FORTH IN SECTION 6.

9 (2) THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
10 REIMBURSEMENT FUND AND ALL INTEREST EARNINGS FROM THE REIMBURSEMENT
11 FUND SHALL BE CREDITED TO THE CORRECTIONAL FACILITIES REIMBURSEMENT
12 FUND.

13 (3) THE UNENCUMBERED BALANCE IN THE CORRECTIONAL FACILITIES
14 REIMBURSEMENT FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN
15 THE REIMBURSEMENT FUND AND SHALL NOT REVERT TO THE GENERAL FUND.

16 Sec. 6. (1) The costs of ~~any~~ investigations AND THE COST OF
17 THE PROSECUTION OR DEFENSE OF A CASE ARISING under OR WITH RESPECT
18 TO this act shall be paid from the reimbursements secured under
19 this act. ~~-, and the balance of the reimbursements shall be~~
20 ~~credited to the general fund of the state to be available for~~
21 ~~general fund purposes.~~ THE ATTORNEY GENERAL MAY ALSO EXPEND
22 REIMBURSEMENTS SECURED UNDER THIS ACT FOR THE DEFENSE OF LITIGATION
23 AGAINST THE STATE, ITS DEPARTMENTS, BOARDS, COMMISSIONS, OFFICERS,
24 OR EMPLOYEES IN OTHER CIVIL ACTIONS FILED BY PRISONERS.

25 (2) The department of treasury may determine the amount due
26 the state in cases under this act and render statements ~~thereof~~
27 OF THOSE AMOUNTS, and ~~such~~ THOSE sworn statements shall be

1 considered prima facie evidence of the amount due.