

TESTIMONY

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HOUSE BILL 2697  
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Good Afternoon Chairman Clark and the members of the Judiciary Subcommittee on Courts. Thank you for the opportunity to testify in support of House Bill 2697.

A lawsuit alleging that a prison nurse laced a prisoner's coffee with what the prisoner called "hepatitis incubus"; a lawsuit by a smoking prisoner who claims a right to be housed in a smoke-free environment; a lawsuit to compel taxpayers to pay for sex change surgery for two prisoners: this is the kind of wasteful and unproductive litigation my office must defend against every day. This is the kind of wasteful and unproductive litigation that will end if House Bill 2697 becomes law. For that reason, the Office of the Attorney General supports this Bill.

These lawsuits would be funny if the money and resources they extract from state taxpayers were not so great. Every time a prisoner files a lawsuit, Civil Litigation attorneys in my office must draft a response. Often this simple act of responding consumes an entire working day. And that is only the beginning of a process that involves numerous pre-trial motions and even full blown hearings. Especially egregious is the fact that these lawsuits almost always cost the prisoners nothing.

Let me repeat that: Especially egregious is the fact that these lawsuits almost always cost the prisoners nothing.

Prisoners do not lose all of their rights guaranteed under the State and federal constitutions when they enter prison. One of the rights that they do retain is the right to due process under the law. If a prisoner's constitutional rights are compromised by prison officials or prison conditions, then that prisoner has good reason to seek redress from our courts. This is a principle that House Bill 2697 does not change.

What House Bill 2697 will change is the ability of prisoners to abuse this right, which unfortunately many prisoners seem to make their life's work. The Commonwealth of Pennsylvania cannot tolerate frivolous claims concerning sex change operations and coffee laced with fictitious diseases. Common sense says something is terribly wrong if taxpayers must pay for this senseless overloading of our already strained judicial system. Common sense demands change and it is common sense that is the foundation of House Bill 2697.

The first and important point is that House Bill 2697 mirrors parts of the Federal Prison Litigation Reform Act of 1995, which is the federal government's effort to end these kinds of law suits in federal court. Preliminary reports say that federal courts have already seen a noticeable decrease in the

number of frivolous cases. Litigious prisoners, ever resourceful, will likely see no choice now but to file their frivolous claims only in state courts. This will force Civil Litigation Attorneys in my office to file motions, make arguments, and conduct trials at the courthouses where the prisoners file their suits, all at the expense of the state taxpayers. Or the Commonwealth will seek to remove these cases to federal court, where the party petitioning for removal, the Commonwealth, must pay the filing fees. In either scenario, the burden on state taxpayers absent state prisoner litigation reform will be tremendous. Pennsylvania must enact prisoner litigation reform legislation in order to stem what may be a tidal wave of frivolous prisoner litigation.

Under House Bill 2697, the prisoner must pay a filing fee before filing a complaint. As it is now, prisoners do not have to pay, which is a privilege that they enjoy and which law abiding citizens and taxpayers do not. If any member of this Committee or his or her constituents want to file a private law suit, he or she must pay a filing fee. Common sense says that a prisoner must also pay. A financial commitment will make a prisoner think twice before indulging in a frivolous claim.

It is important to note that if a prisoner lacks the means to pay the filing fee, then this Bill will allow the prisoner to file anyway. But first the prisoner must prove to the Court that

he is unable to pay. This is a fair arrangement because nobody wants to shut out an indigent prisoner with a legitimate grievance.

This bill does give the Court the option to require an able prisoner to earn the filing fee before hearing the complaint. But the Court cannot delay a prisoner's request for a restraining order or injunctive relief where the prisoner is in imminent danger of serious bodily harm. This is an important point because part of the Commonwealth's responsibility is to protect its prisoners. Our notions of justice and fair play demand it.

Because of these notions of justice and fair play, I have a number of minor suggestions regarding this bill which will strengthen the balance between stopping frivolous claims and guaranteeing due process to prisoners with legitimate grievances.

These suggestions focus on Section 3 subsection (d), which requires the Court to summarily dismiss a prisoner's law suit in certain situations.

Section 3(d)(1) requires the Court to dismiss a prisoner's lawsuit if the prisoner's claim of indigency is untrue. While there is little sympathy for prisoners who make false indigency claims, there may be times when a prisoner makes a false indigency claim, but does so innocently. For example, a visiting

relative may leave money for the prisoner without the prisoner's knowledge. Depending on the size of the institution, sometimes it takes time for the prison to post the money to the prisoner's account. If during that time the prisoner files a lawsuit claiming indigency, he risks a summary dismissal even though he was acting in good faith. I would support a technical amendment that would ensure that such innocent mistakes are not unduly penalized.

Section 3(d)(3) requires the Court to dismiss a case where the named defendants are "reasonably likely" to be immune from lawsuits under state law. But if a Court determines that a defendant is reasonably likely to be immune, and it turns out that the defendant is not immune, then the prisoner has been wrongly foreclosed from making a claim. Not only is this an injustice to the prisoner, it is potentially costly to the state. The prisoner will appeal and, if he is particularly litigious, sue the judge who made the ruling. A suit against a judge is the kind of suit that is barred by immunity, but that may not stop a prisoner from filing a claim anyway. This language may need some fine tuning to prevent this problem while still ensuring that government officials are guaranteed the full protections under the immunity doctrines.

Section 3(d)(4) requires the Court to dismiss a prisoner's complaint against a named defendant if in a prior suit against

that defendant, the prisoner acted in bad faith or presented false evidence during a hearing or trial. After all, a bad faith litigator is not welcome in our Courts. I would support an adjustment to this Section that would nonetheless enable such a prisoner to bring to the Court's attention a legitimate claim of imminent serious bodily injury.

Further review of these minor technical changes will fine tune this Bill to ensure that the Commonwealth deals with prisoners fairly but firmly. I emphasize, however, that I fully support the purpose of this Bill - to restore rationality to prisoner litigation law. Prisoner litigation reform is an issue of such compelling importance that it must be addressed by the legislature now.

I want to thank the members of this Committee for this opportunity to testify today.