DISTRICT ATTORNEY'S OFFICE
1421 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19102
686-8000

LYNNE ABRAHAM
DISTRICT ATTORNEY

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Testimony of Emily Zimmerman
on behalf of the
Philadelphia District Attorney's Office
before the House Judiciary Committee
in support of
House Bill 2697

Good afternoon, members of the Judiciary Committee. Thank you very much for the opportunity to comment on this important legislation concerning limitations on prisoners' lawsuits in Pennsylvania.

My name is Emily Zimmerman, and I am Chief of the Civil Litigation Unit of the Philadelphia District Attorney's Office. I am testifying on behalf of District Attorney Lynne Abraham and the Philadelphia District Attorney's Office.

In the course of my duties as Chief of the Civil Litigation Unit of the D.A.'s Office, I defend the Office, the District Attorney, and Assistant District Attorneys who are named as defendants in lawsuits brought by inmates who have been convicted of criminal offenses in Philadelphia. I also represent the Office in institutional litigation, some of which concerns prison conditions in Philadelphia.

The District Attorney's Office is not responsible for the

maintenance of the Philadelphia prisons and so my office is not typically named as a defendant in prison conditions litigation. The impact of House Bill 2697, as far as the sheer quantity of prison conditions lawsuits filed and the handling of these suits, would be felt most directly by those attorneys who represent the city government agencies and the officers and employees of such agencies which are responsible for the administration of prisons.

Nonetheless, the impact of prison conditions litigation can be felt by the entire criminal justice system. For example, the impact of consent decrees entered into by the parties to such litigation may extend far beyond the parties themselves. Pressures divorced from the case itself -- such as the tremendous financial and non-financial costs of litigation -- may create an incentive for consent decrees to be entered into, even though there has been no showing of unconstitutional prison conditions. These consent decrees may usurp control over the admission and release of inmates to prison from local criminal courts through their reliance on judicial prisoner release orders.

Prisoner release orders take a variety of forms. They may automatically release inmates who have already been committed to the prisons. Prisoner release orders may also limit the arrestees who are even eligible for admission to the prisons at all. As a result, arrested individuals may not even have to post bail to be freed pending trial, regardless of their prior criminal backgrounds. Such defendants may then fail to appear

for their scheduled court dates causing a glut of undisposed cases in the criminal justice system and a large population of frustrated crime victims whose rights are never vindicated.

House Bill 2697's limitation on the scope of prospective relief and the circumstances in which prisoner release orders can be imposed in prison conditions litigation represents an important recognition of the serious impact of such relief on all the players in the criminal justice system, including a recognition of the vital importance of the proper and efficient functioning of the criminal justice system and the rights of crime victims to final disposition of their cases.

House Bill 2697 recognizes the pervasive impact of prison conditions litigation not only in its limitations on the remedies available in such litigation, but also in its provision for the right to intervene in prison conditions litigation by interested government parties. Direct intervention in prison conditions litigation enables the interests of prosecutors as well as criminal court judges to be heard in these cases. In addition, the knowledge that these parties might intervene in prison conditions litigation can serve to heighten the awareness of the interests represented by prosecutors and the court by the initial parties to and court presiding over prison conditions litigation. Either way, it is clear that the effective functioning of the criminal justice system can no longer be ignored in the course of prison conditions litigation and its resolution.

I would recommend a few revisions to House Bill 2697's

intervention language in order to make the right to intervene more clear. First, I would revise the language of Section 6(b) of the Bill to state that "**Any** government party with jurisdiction over prisons or the prosecution or custody of persons who may be released from prison as a result of a prisoner release order shall have standing to intervene." The bill is currently drafted to state that "**The** government party" with such jurisdiction shall have standing to intervene. By changing "The" to "Any," it will be clear that more than one interested party may intervene in prison conditions litigation, provided that each party seeking to intervene possesses the requisite jurisdiction.

Second, I would recommend that line 22 of Section 6(b) be revised to state that any government party may intervene in "the initial and/or any related proceeding," so that the right to intervene will not be misconstrued to apply only to proceedings ancillary to the original litigation.

I also want to commend Section 9 of House Bill 2697, which requires the payment of any outstanding court orders in criminal cases due from a criminal defendant/civil plaintiff to be paid out of any monetary award received by that inmate-plaintiff. All too often, victims who have incurred significant financial expenses as a result of a crime are never compensated by the defendants responsible for such injury. House Bill 2697 recognizes the importance of holding inmates accountable for the consequences of their criminal behavior.

In addition to the payment of monies in connection with

criminal cases, I would also suggest that House Bill 2697 require the payment of all outstanding child support orders out of any award received by an inmate-plaintiff. Just as an inmate-plaintiff should be held accountable for the financial injury suffered by their victims, so too should an inmate-plaintiff be held responsible for the payment of court-ordered support to their children.

Prison conditions litigation can have a tremendous impact on the functioning of the entire criminal justice system. However, it is not just prison conditions litigation which takes a toll on the already limited resources of criminal justice agencies, but all litigation. House Bill 2697's scope is more limited than its federal counterpart, which also applies, at least in part, to any civil action brought by a prisoner, not only to prison conditions litigation.

For example, the federal Prison Litigation Reform Act, requires prompt judicial review of prisoners' civil rights suits seeking redress from a governmental entity or officer or employee thereof and requires dismissal of a complaint, or portions of a complaint, which "is frivolous, malicious, or fails to state a claim upon which relief may be granted; or ... seeks monetary relief from a defendant who is immune from such relief." Title VIII, Sec. 805.

The federal act also allows defendants in prisoner civil rights actions to waive the right to reply to lawsuits without any such waiver constituting an admission of the allegations

contained in the complaint. Under this provision, a court may not grant any relief to a plaintiff unless the defendant has filed a reply, and a court may require a defendant to respond to a complaint "if it finds that the plaintiff has a reasonable opportunity to prevail on the merits." Title VIII, Sec. 803(g).

Procedures such as these are intended to prevent valuable governmental resources from being expended defending meritless lawsuits, while maintaining access to the courts for prisoners with valid claims.

The Philadelphia District Attorney's Office commends House Bill 2697 for its effort to address many of the issues facing our justice system today. Once again, thank you for giving my office the opportunity to give input on this important legislation.