

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bills 2697 & 2770

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House Judiciary Subcommittee on Courts

Main Capitol Building  
Room 140, Majority Caucus Room  
Harrisburg, Pennsylvania

Wednesday, August 28, 1996 - 9:00 a.m.

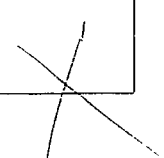
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BEFORE:

Honorable Daniel Clark, Majority Chairman  
Honorable Scot J. Chadwick  
Honorable Greg Fajt  
Honorable Thomas Caltagirone

KEY REPORTERS

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1 ALSO PRESENT:

2 Honorable Pat Brown

3  
4 Honorable Brett Feese

5 Honorable Jerry Birmelin

6  
7 Honorable Michael Horsey

8 Honorable Kathy Manderino

9  
10 Honorable Steve Maitland

11 Honorable David Mayernik

12  
13 Judy Sedesse  
14 Administrative Assistant to Committee

15 Heather Ruth  
16 Majority Research Analyst

17 Galina Milohov  
18 Minority Research Analyst

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C O N T E N T S

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WITNESSES

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Larry Frankel, Executive Director  
ACLU

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Mary Beth Marschik  
Liaison, Department of Corrections

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Ed Sweeney  
PA Prison Wardens' Association

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1 (Roll call was taken)

2 CHAIRMAN CLARK: The introductions  
3 concluded, I welcome our person, individual  
4 testifying today, Mr. Frankel, who is the  
5 Executive Director of the American Civil  
6 Liberties Union. Mr. Frankel.

7 MR. FRANKEL: Thank you. Good morning  
8 Chairman Clark and other Members of the  
9 Judiciary Committee. It's my pleasure to be  
10 here today to present the ACLU'S views on House  
11 prisoner litigation reform, House Bills 2697 and  
12 2770.

13 The ACLU recognizes that there is  
14 legitimate public interest in reducing the  
15 number of nonmeritorious claims filed by  
16 prisoners. Our office receives hundreds of  
17 letters from prisoners who think that they might  
18 have a case and want us to take up their cause.

19 We too, just like the witnesses we heard  
20 from yesterday, expend a considerable portion of  
21 our limited resources in responding to prisoners  
22 and determining which of their claims may have  
23 merit.

24 And while it is easy to declare one is  
25 opposed to frivolous lawsuits filed by

1 prisoners, it's not easy to identify what claims  
2 are frivolous and how we help distinguish  
3 between which should be in court and which  
4 should be dismissed summarily.

5 Unless the General Assembly is very  
6 careful about defining what is frivolous and  
7 assisting our courts in segregating the  
8 frivolous lawsuits from those that should remain  
9 in the judicial system, it is inevitable that  
10 important claims will be improperly dismissed.

11 And we believe that House Bill 2697 is  
12 not carefully drafted. In fact, given some of  
13 the deficiencies of this bill, it would not be  
14 unreasonable to suspect that the real intent of  
15 the proponents of House Bill 2697 is not  
16 necessarily representative of some of the people  
17 who spoke here yesterday, was to make it  
18 virtually impossible for our courts to remedy  
19 unsafe and inhumane prison conditions.

20 Much of the bill deals with those  
21 aspects. The portion of the bill that deals  
22 with frivolous claims in 2697 are a rather small  
23 portion of the bill. And having sat here  
24 yesterday and heard that testimony, it is even  
25 more clear to me that the real threat posed by

1 House Bill 2697 is that it will deprive our  
2 state courts of important tools that they may  
3 need to remedy the kind of disturbing prison  
4 conditions that have led to litigation all over  
5 the country.

6 And I would like to briefly talk about  
7 some of the cases not necessarily only from  
8 Pennsylvania that have been brought over prison  
9 conditions, the kinds of things that go on due  
10 to the overcrowding that is everywhere in the  
11 country.

12 In the District of Columbia,  
13 correctional officers and other prison employees  
14 were routinely sexually assaulting female  
15 prisoners. One guard fondled a female prisoner  
16 who was receiving care in the infirmary. He  
17 forced her to perform oral sex and then raped  
18 her.

19 Another officer forced a prisoner to  
20 perform oral sex on him while she was emptying  
21 trash as part of her work detail. In another  
22 matter, a judge found that guards at a state  
23 prison had engaged in a pattern of unprovoked  
24 and sadistic assaults on prisoners.

25 While the prisoners were restrained in



1           been beaten unconscious by the same assaultive  
2           prisoners a few days before. Then there's the  
3           Austin litigation which was in this state and in  
4           which my office participated. And one aspect of  
5           that litigation involved an outbreak of  
6           tuberculosis in Graterford.

7                         And despite warnings by the Commissioner  
8           of Health regarding the risk of a tuberculosis  
9           epidemic, prison officials failed to implement  
10          basic procedures for the detection and control  
11          of tuberculosis; thereafter, more than 400  
12          prisoners were found to be infected in a single  
13          prison -- this was in Graterford -- a level of  
14          infection that posed a threat not only to  
15          prisoners and prison personnel but also to their  
16          families who visited the prison.

17                        During the course of that litigation, we  
18          brought a rather emergency motion to the judge.  
19          Because the judge was able to move the case  
20          along, procedures were put in place rather  
21          quickly to deal with the epidemic.

22                        But without the court being available as  
23          the source to provide some remedy, it probably  
24          would have taken much longer for that to have  
25          been put in place. There's a number of other



1 instances which I have listed in my  
2 testimony, but I'll skip over them and move on  
3 to some points that I would like to make.

4 And I'm sure that most courts would  
5 consider those kinds of claims serious and I  
6 don't think that this bill would preclude those  
7 kinds of claims from being heard in the court.

8 Nevertheless, there are elements in the  
9 bills which will make it more difficult for the  
10 courts to order the appropriate relief and at  
11 least allow the parties to engage in the kind of  
12 settlement negotiations that may lead to  
13 long-term relief.

14 And while we do sincerely believe that  
15 the major threat of this bill is what is posed  
16 to the large class action prison conditions  
17 litigation, there are some points I'd like to  
18 make about Section 3(d) of the Bill, which is  
19 the part that deals with frivolous litigation.

20 I apologize for jumping back and forth,  
21 but I do want to get these matters in. One of  
22 the primary problems we find with that  
23 section is it doesn't define the term frivolous.  
24 What is frivolous to one judge will not be  
25 frivolous to another judge and we'll have an

1 inconsistent application throughout the state.

2 If the General Assembly wants to go on  
3 record as opposing frivolous litigation, it  
4 should accept some responsibility for defining  
5 exactly what frivolous is. I don't think you  
6 want to leave that up to the court. I don't  
7 think you should leave it up to the courts. The  
8 courts may bump that responsibility if you don't  
9 take some of it yourself.

10 Subsection -- I think it's 3, but in  
11 that section there's a statement that the court  
12 will be allowed to dismiss a lawsuit which does  
13 not state a claim upon which relief may be  
14 granted.

15 The court already has the authority to  
16 do that if the defendant files a motion saying  
17 the complaint doesn't state grounds, you know,  
18 upon which relief may be granted. This can  
19 happen in response to motions to dismiss which  
20 are filed by preliminary objections in  
21 Pennsylvania, judgments on the pleadings, and  
22 motions for summary judgment.

23 What this bill would permit is for  
24 the judge to dismiss that lawsuit without the  
25 defendant having to file a motion, without the

1 plaintiff having a chance to know that this is  
2 even being considered.

3 Now, this strikes us as somewhat  
4 unreasonable. But forgetting the  
5 unreasonableness of it or not, one doubts, I  
6 think, that our courts are really going to start  
7 dismissing lawsuits unless the defendants  
8 actually file pieces of paper asking them to do  
9 so.

10 Our courts are already overburdened.  
11 You're asking them to start reading complaints  
12 once they come in before a defendant has even  
13 filed a piece of paper. I don't think it's  
14 realistic that they're going to do it.

15 A bill also permits the courts to  
16 dismiss a case if it determines that the  
17 defendants are likely to be immune from the  
18 cause of action. Frankly, as someone who has  
19 practiced law for ten years and filed lots of  
20 motions based on the Torts Claims Act, I'm not  
21 sure what this phrase is supposed to mean.

22 The courts determine whether parties  
23 have absolute immunity or qualified immunity.  
24 Sometimes that's very fact based even though it  
25 is a question of law. Sometimes the pleadings

1           need to be flushed out more through discovery or  
2           some kind of responses.

3                       The phrase is very difficult for me to  
4           understand, how it can actually be implemented  
5           by the courts. Again, as I stated earlier,  
6           we already have plenty of motions the defendants  
7           can file if the facts and law warrant it. And  
8           I'm not prepared to endorse giving them yet  
9           another procedural basis to do that.

10                      The bill also attempts to bar lawsuits  
11           brought by prisoners who have previously filed  
12           prison conditions litigation if a court has made  
13           a finding that the prior action was filed in bad  
14           faith or that the prisoner knowingly presented  
15           false evidence.

16                      And when we heard testimony yesterday  
17           and I believe there will be some later today  
18           about what was called frequent filers, which I  
19           think is probably a very appropriate term, but  
20           this provision doesn't necessarily confine  
21           itself to the frequent filers.

22                      You could have filed -- a prisoner could  
23           have filed one claim and have that finding made  
24           and be dismissed. Another prisoner could have  
25           filed thirty claims, no judge ever made the

1 finding, and they could still go in.

2 I think you've got equal protection  
3 problems with that kind of language there. And  
4 Attorney General Corbitt suggested yesterday and  
5 I would support that suggestion that there still  
6 has to be a proviso that if this new claim  
7 really does establish a substantial injury to  
8 that plaintiff that this should not bar a  
9 lawsuit.

10 I also would like to say at this time  
11 there were two other suggestions in Attorney  
12 General Corbitt's, pages 4 to 6 of his  
13 testimony, that certainly seem to deal with some  
14 of the drafting problems that I mentioned with  
15 regard to that Section.

16 But all of the provisions of Section  
17 3(d) as well as all of the provisions of this  
18 bill do raise substantial questions about  
19 whether the Legislature itself is denying  
20 access to the courts. And those questions will  
21 undoubtedly lead to constitutional challenges.

22 I think that was noted yesterday and  
23 Mr. Love (phonetic) was here on behalf of the  
24 Prison Society noted some cases that have gone  
25 into Federal Court challenging the Federal

1 provisions. I'm not familiar with those case.

2 I can't speak about them, but I do note  
3 from reading a case, Tillery versus Owens, which  
4 was a challenge to the prison conditions at the  
5 Western Penitentiary in Pittsburgh, the court  
6 specifically noted that prisoners have a  
7 well-established, constitutional, due process  
8 right to access to the courts.

9 And it's fundamental that access to the  
10 courts. Conditions of confinement or violations  
11 of civil rights may not be denied or obstructed.  
12 And I think there has to be consideration of how  
13 much obstruction there may be here.

14 I know that I shouldn't say I personally  
15 know -- I've heard both the testimony yesterday  
16 and from others that federal courts do find ways  
17 to dismiss some of these lawsuits without  
18 running into the problems. And maybe some more  
19 testimony from people who have been in Federal  
20 Court and practicing to see what the Federal  
21 Courts are doing that the state courts may be  
22 able to do would be useful.

23 I'd now like to turn to the questions  
24 that I think are raised by the other aspects  
25 of the bill, the aspects that affect the prison

1 condition litigation that was brought on a  
2 wide-spread basis to really address the problems  
3 related to overcrowding and underfunding of our  
4 prison system.

5 The legislation is particularly  
6 problematic because it invades the authority  
7 of the courts to fashion the appropriate  
8 remedies. I know that Members of this Committee  
9 are painfully aware of the importance of the  
10 doctrine of the separation of powers. In fact,  
11 I think Representative Clark, if not another  
12 Member of the Committee, asked a question on  
13 that issue yesterday.

14 By limiting the kinds of remedies that  
15 may be ordered, which is one of the aspects of  
16 this bill including the elimination of special  
17 masters and artificial restrictions on  
18 prospective relief, the General Assembly may  
19 accomplish little but violate that doctrine and  
20 prevent our courts from effectively dealing with  
21 compelling claims that come before them.

22 I reread Ms. Vanderbreck's testimony  
23 from yesterday. She's the one who was here on  
24 behalf of the Department of Corrections. On  
25 page 4 of that testimony, she stated the

1       legislation contains common sense provision  
2       permitting reevaluation of court orders.

3                She doesn't specify anywhere in the  
4       testimony what provision she's specifically  
5       referring to, so I can only assume that she's  
6       referring to provisions regarding the length of  
7       a preliminary injunction which was found on page  
8       6 lines 9 through 15 and the provisions that  
9       allowed for automatic review or termination of a  
10      court order after two years, which is found on  
11      page 7, lines 3 through 8.

12              And while she may believe and others may  
13      believe that these are common sense, to us they  
14      seem to be artificial and unnecessary limits on  
15      duration of court orders that really are  
16      intended to spur the proper authorities that fix  
17      unconstitutional conditions.

18              If you read some of the court decisions  
19      on prison condition litigation, the courts are  
20      very careful. They do not want to interfere in  
21      the administration of the prison systems. They  
22      want to make sure that the officials who are  
23      responsible for that administration act, but  
24      they are not going in and arbitrarily taking over  
25      prisons.



1                   And sometimes court orders and  
2                   conditions require two, three, four years.  
3                   Sometimes they do six months. It would be far  
4                   better to let the courts fashion those remedies  
5                   on a case by case basis, what is appropriate,  
6                   what is not, rather than have time limits fixed  
7                   by legislative fiat.

8                   I don't understand and I would like to  
9                   be enlightened what the problem is with the  
10                  attorneys for the Commonwealth or for any of the  
11                  defendants going back into the same court that  
12                  entered the order asking for modification.

13                  I don't understand why they need this  
14                  type of legislative fix. And it would be  
15                  interesting to find out more why they need this  
16                  legislative fix, but I believe that the courts  
17                  are capable when motions are properly presented  
18                  to them to reassess, to determine whether the  
19                  conditions still exist.

20                  And my reading of some of the cases  
21                  indicates that that's what courts do. The  
22                  courts ask the parties to come back in three  
23                  months or six months or a year. What progress  
24                  is being made? That's why they appoint special  
25                  masters to monitor the case to see if, you know,

1 plans are being devised and implemented to  
2 improve the conditions.

3 So I don't know that they are common  
4 sense. I think it's probably -- it would amount  
5 to legislative intrusion into the judiciary's  
6 authority. And I think the courts would  
7 probably not look too kindly on it.

8 Another aspect which Ms. Vanderbreck  
9 seemed to think was a good idea which we would  
10 question would be the aspect of this legislation  
11 regarding settlement agreements. I believe it's  
12 on page 7 at the bottom, the time limit on  
13 settlements.

14 What in essence it really says is that  
15 if one administration enters into a settlement  
16 agreement, the succeeding administration can  
17 come into court and immediately ask for it to be  
18 voided. It would make the settlement agreements  
19 not binding on the next administration.

20 I can't think of a greater disincentive  
21 to trying to settle any of these prison  
22 condition cases. And settlement is usually in  
23 everybody's interest. Why are we going to make  
24 -- why would you want to make an agreement with  
25 a party that in two years they can come in and

1 ask for it to be voided?

2 It really acts as a disincentive and  
3 goes against the whole notion that, you know,  
4 the prisons are the responsibility of the  
5 Commonwealth not the responsibility of one  
6 administration and the next administration can  
7 just ask for any agreement to be voided.

8 With regard to that, I'd like to just  
9 draw your attention to the fact that the  
10 litigation which was Austin versus The  
11 Department of Corrections, which was the  
12 large-scale class action lawsuit that our office  
13 along with others brought challenging the  
14 conditions in the state prison system was  
15 settled, was settled without a consent decree,  
16 was settled by an agreement that the court  
17 reviewed.

18 The legislation also unnecessarily  
19 limits the duration of court orders intended to  
20 spur the proper authorities to fix  
21 unconstitutional conditions.

22 Even though it takes many years of hard  
23 work by all parties to bring about real change  
24 and to remedy substantial health and safety  
25 problems, this legislation would create

1           artificial deadlines for the courts and  
2           corrections officials.

3                       The ability of corrections officials to  
4           act responsibly and reasonably is undermined by  
5           the provision that limits the effect of  
6           settlement agreements. This legislation would  
7           treat such agreements as voidable contracts and  
8           act as a disincentive to the settlement of cases  
9           that could result in a resolution of the  
10          conditions which led to the litigation in the  
11          first place.

12                      Rather than continuing to point out each  
13          and every deficiency of this legislation, I  
14          would like to conclude my testimony with some  
15          observations on the reality of prison conditions  
16          litigation.

17                      It is simply ludicrous to think that  
18          courts easily or eagerly order any kind of  
19          relief in prison conditions litigation. The  
20          last thing most judges want to do is to assume  
21          responsibility for the abysmal conditions of our  
22          prisons.

23                      When courts feel compelled to act, it is  
24          because of some truly horrific conditions that  
25          violate any sense of decency. They are acting

1 to correct the failures of the legislative and  
2 executive branches to properly discharge their  
3 duties regarding prisoners.

4 Restricting the courts' powers may make  
5 some legislators feel good. It will not,  
6 however, address the problems that exist in our  
7 prisons. All Pennsylvanians have a stake in  
8 sanitary and secure correctional facilities.

9 When riots or tuberculosis epidemics  
10 break out in our prisons as they have in the  
11 not-too-distant in Pennsylvania, the potential  
12 impact on the safety and health of the general  
13 public is enormous. The costs to society are  
14 great.

15 It is in the public's interest to have  
16 every place of incarceration in this  
17 Commonwealth run in accordance with  
18 constitutional standards. Prison condition  
19 litigation is an important tool for ensuring  
20 that the public's interest is safeguarded.

21 House Bill 2697 so severely limits the  
22 ability for the judicial branch to address the  
23 pervasive problems of an overcrowded prison  
24 system as to ultimately endanger the entire  
25 public. For the sake of all Pennsylvanians and

1 not just its prisoners, we urge you to reject  
2 this legislation.

3 The court also had a lot of praise for  
4 not only the plaintiff's attorney but for the  
5 defendant's attorney, the representatives from  
6 then in time Attorney General Preate's office.

7 But they devised an agreement that  
8 really allowed both the correction officials to  
9 maintain the control and management of the  
10 prison, make improvements, and have monitoring  
11 without the court interfering on a day-to-day  
12 basis as to what was going on.

13 I wanted to bring that to your attention  
14 because I think it shows that the attorneys for  
15 the Commonwealth do know how to negotiate in  
16 these areas. Maybe they're already moving away  
17 from consent decrees because of problems that  
18 they've had.

19 But this settlement agreement could not  
20 have been entered into, would not have been  
21 entered into had this provision be been in  
22 existence.

23 Why would a court have entertained a  
24 settlement agreement, why would the plaintiffs  
25 even negotiate a settlement agreement that would



1 represent the Commonwealth should spend all  
2 their time answering them, but it does give me  
3 reason to think that either their  
4 computerization isn't as good as it should be,  
5 which there was some reference to, or they're  
6 not aware of all of the available tools to them  
7 to get these matters dismissed more readily.

8 I heard anecdotal evidence, but it  
9 would be interesting to know more specifically  
10 how some of these claims even merited a hearing  
11 in the court. I think that through the use of  
12 pretrial motions and discovery one could easily  
13 put those cases in a posture for early  
14 dismissal.

15 There also was some testimony about the  
16 Philadelphia prison litigation and the prison  
17 cap there. And I would like to clarify the  
18 record on some of that because there's been a  
19 lot of misinformation about that prison cap.

20 The City of Philadelphia voluntarily  
21 entered into an agreement for a prison cap. The  
22 court did not order it on its own. The court  
23 had an agreement from the City and enforced the  
24 agreement the City entered into. And there's  
25 been a continual attempt to attack the judge



1           who's enforcing an agreement that one of the  
2           parties entered into.

3                       And I think it's important for this  
4           panel to understand when testimony is presented  
5           about that prison litigation that it understand  
6           that the City, you know, took on the  
7           responsibility for trying to resolve what was a  
8           very bad situation in the City of Philadelphia  
9           with regard to prison overcrowding.

10                      I don't know the reasons it did.  
11           Possibly was to spur the other components of  
12           government to actually build the new prisons  
13           that needed to be built. But the court was  
14           responding to a situation that was presented to  
15           it, and a lot of the criticism of the court  
16           seems to be unwarranted in that regard.

17                      The issue of filing fees which is what  
18           2770 primarily addresses but is also addressed  
19           in Representative Brown's bill, we have no real  
20           objection to the notion that prisoners should be  
21           paying filing fees if they have the money to be  
22           paying the filing fees.

23                      And, in fact, my understanding of  
24           current procedures, they have to demonstrate  
25           already that they are paupers to be allowed to

1 proceed in forma pauperis. So I don't know that  
2 this really changes the law too much other than  
3 allowing the partial payment scheme, which is  
4 included in 2697.

5 Certainly, they shouldn't be treated  
6 differently than other parties with regard to  
7 paying the fees and the ability to pay fees; and  
8 we have no disagreement there.

9 As one of the questions that  
10 Representative Mayernik posed, he asked about  
11 the question of idle pay, whether prisoners were  
12 paid even if they weren't working and some of  
13 that might go to paying filing fees.

14 But also one of the aspects of the  
15 Austin litigation that was negotiated was for  
16 the department to work to create more jobs in  
17 the prison. Now, give the prisoners the ability  
18 to work, make them pay the filing fees, see what  
19 happens; but you also have to give them the  
20 ability to work if you're going to expect them  
21 to pay the fee.

22 The representative from the  
23 Philadelphia's District Attorney's office  
24 supported strengthening the language which would  
25 allow really the prosecutors to intervene in



1 the courts, some of those certainly attributable  
2 to the amount of crime in Philadelphia, but some  
3 of it's attributable to either lack of  
4 compromise on the part of the district  
5 attorney's office or lack of following the  
6 paperwork through.

7 So certainly they should be allowed to  
8 intervene. You know, with right to intervene  
9 should come responsibility to be part of coming  
10 up with a solution to the problem, something  
11 that as a Philadelphian I can say we don't hear  
12 very much out of the same people who want to  
13 complain about the prison cap.

14 One other suggestion that occurred to me  
15 yesterday which is not in my testimony was we  
16 look at the administrative remedies that exist  
17 in the prisons. I'm not familiar with that.  
18 There was a little bit of testimony there.

19 But if there was a true grievance  
20 procedure, an Ombudsman, and the prisoner hasn't  
21 availed themselves of that procedure, then their  
22 lawsuit should be tossed out for failure to  
23 exhaust the administrative remedy.

24 Now, again, whether that procedure  
25 exists and how well it exists at present is

1 something worth looking at that may relieve some  
2 of the litigation that goes on because they may  
3 feel there's no other means for them to get a  
4 hearing.

5 I'm not naive to think that certainly  
6 some prisoners are going to continue even if  
7 there is a good administrative procedure, but  
8 the attorneys who have to defend the cases will  
9 be able to file motions if these prisoners  
10 haven't pursued an administrative remedy. And  
11 that is another possibility to look at.

12 In closing, I would just like to offer  
13 some reflections on prison conditions  
14 litigation. As I stated earlier, the last thing  
15 that most judges want to do is to assume  
16 responsibility for the abysmal conditions of our  
17 prisons.

18 In the case Tillery versus Owens which I  
19 mentioned earlier, the court after -- it's a  
20 fascinating opinion if you have a strong stomach  
21 in terms of what the conditions were in that  
22 prison that caused the court to enter an order.

23 But after reciting all the health,  
24 safety problems in that prison, the court in its  
25 conclusion -- and I would like to read this

1           stated as follows:

2                       The state correctional institution at  
3           Pittsburgh is constitutionally inadequate in  
4           many ways. As we've repeatedly stated in this  
5           opinion, we are well aware that except as a last  
6           resort a court should not substitute its  
7           judgment nor insinuate itself into the  
8           administration of an institution.

9                       Indeed, we have to desire to do so.  
10          Courts are not real eager to get involved with  
11          this problem. And some of the language of the  
12          bill would have -- at least some people think  
13          that courts when, you know, a piece of  
14          litigation's filed involving prisoners are in  
15          there entering orders that have no legal basis.

16                      I mean, they've looked for the least  
17          intrusive means possible to correct the  
18          constitutional problems but usually leave it in  
19          the hands of the correction officials to do so  
20          and set some deadlines for that work to be done.

21                      When courts feel compelled to act, it's  
22          because of the truly horrific conditions that  
23          violate any sense of decency. They're acting to  
24          correct really the failures of the  
25          administrative and legislative branches to

1 properly run the prison system and oversee the  
2 running of the prison system.

3 Restricting the court's powers may make  
4 some legislators and some attorneys feel good;  
5 it will now, however, address the problems that  
6 exist in our prisons in this state. All  
7 Pennsylvanians have a stake in sanitary and  
8 secure correctional facilities.

9 When riots such as those at Camp Hill or  
10 tuberculosis epidemics break out as they did at  
11 Graterford, the potential impact on the safety  
12 and health of the general public is enormous.  
13 The costs to society are great.

14 It is in the public's interest to have  
15 every place of incarceration in this  
16 Commonwealth run in accordance with  
17 constitutional standards. It's also in the  
18 public's interest for prisoners to come out of  
19 prison less hardened than when they went in,  
20 less likely to commit further crimes.

21 And the barbaric conditions that have  
22 existed in the past in some prisons in this  
23 state have some relationship to the attitudes of  
24 these prisoners when they get out.

25 Prison condition litigation is an

1 important tool for ensuring that the public's  
2 interest is safeguarded. House Bill 2697 as  
3 presently drafted limits the ability of the  
4 judicial branch to address pervasive problems of  
5 an overcrowded prison system so as to endanger  
6 the entire public.

7 For the sake of all Pennsylvanians, not  
8 just the prisoners, but all Pennsylvanians, we  
9 urge you to at least modify this legislation  
10 before you pass it. Thank you.

11 CHAIRMAN CLARK: Thank you, Mr. Frankel.  
12 Have the courts developed a definition of  
13 frivolous that you're aware of?

14 MR. FRANKEL: Not that I'm aware of.

15 CHAIRMAN CLARK: To me, frivolous is  
16 very hard to define. But, you know, when you  
17 see it, you know it's there. Is that somewhat  
18 of a safe assumption for a judge or anyone  
19 involved in the legal system?

20 MR. FRANKEL: I don't know that it's  
21 safe. You know, yesterday, you heard the  
22 Attorney General describe as frivolous this  
23 claim of a prisoner who wanted a smoke-free cell  
24 because that prisoner smoked.

25 And then you heard the attorney who



1 actually got involved in the case said that that  
2 case ultimately led to an injunction and awarded  
3 attorney's fees. So -- and there were a lot of  
4 other reasons why probably other than just that  
5 one claim. But what some may find as frivolous  
6 others may not.

7 I don't know the details about the  
8 prisoners who demanded sex change operations.  
9 But if it was someone who was in the middle of  
10 the operation and under heavy medication and  
11 then ended up in prison and his health is being  
12 damaged because the operation isn't completed,  
13 that may be a legitimate claim. I don't know.

14 So my answer to you is maybe you know it  
15 when you see it and you can't really define it,  
16 but you have to be very careful. And that's why  
17 the law does have a motion to dismiss for  
18 failure to state a claim for which relief can be  
19 granted. And that may be the best definition of  
20 frivolous that we can come up with.

21 CHAIRMAN CLARK: Now, in your testimony  
22 you indicated that your organization recognizes  
23 that there's a legitimate public interest in  
24 reducing the number of nonmeritorious claims  
25 filed by prisoners.

1           Would it be safe to characterize your  
2 testimony is that realizing that legitimate  
3 public interest, there are already in place ways  
4 and rules and manners to reduce the number of  
5 nonmeritorious claims?

6           MR. FRANKEL: I believe that there are  
7 in place and I was certainly having, as I said,  
8 been a litigator before I started this line of  
9 work know that there are many motions that can  
10 be filed that don't take a great deal of time  
11 because the bulk of it's in your word processor  
12 and it only needs to be merely changed.

13           So I think that there are many things in  
14 place. What I would recommend is taking a look  
15 at the kind of grievance procedure that exists  
16 within the prison because if we can improve that  
17 that probably will also reduce the claim. And  
18 we do not object to the provision regarding  
19 filing fees.

20           CHAIRMAN CLARK: Okay. Thank you.  
21 Anymore questions? Representative Chadwick.

22           REPRESENTATIVE CHADWICK: Thank you,  
23 Mr. Chairman. Mr. Frankel, one of the things  
24 that Attorney General Corbitt mentioned  
25 yesterday that struck me and you referred to it

1           too was the concept that prisoners should be  
2           required to pay the filing fees the same as all  
3           of the rest of us would so that they have some  
4           stake financially in the litigation.

5                       And the idea that General Corbitt had  
6           was that this might help reduce some of the  
7           frivolous litigation because they'd have to make  
8           a decision as to whether or not some of their  
9           limited resources should go into that out of  
10          their commissary account or whatever.

11                      I will confess that I don't know how  
12          commissary accounts work. I don't know how much  
13          money goes into them. I don't know where it  
14          comes from. I also don't know how jobs in  
15          prison work. I don't know how many there are.  
16          I don't know who gets selected to do them. I  
17          don't know how much they make, and I don't know  
18          what happens to the money.

19                      But I think we all know that the filing  
20          fee for litigation is a small portion of the  
21          cost of the litigation. The attorney fees are a  
22          bigger chunk of it. My question to you is this:

23                      If a prisoner has the ability to work  
24          and earn money, should they not only be required  
25          to pay the filing fee but also some portion of

1           what they're earning in prison toward the  
2           attorney fees?

3                         That way they'd have to make the same  
4           kind of decisions that all of the rest of us do  
5           which is with the limited resources that are  
6           available to us in our lives, is it really worth  
7           it to bring this litigation or is it frivolous  
8           and high unlikelihood of success and we should  
9           let it go?

10                        Shouldn't they pay some portion of what  
11           they're making in prison toward the attorney  
12           fees as well?

13                        MR. FRANKEL: I assume you're referring  
14           to an attorney who is appointed for them and not  
15           the Commonwealth's attorneys. And I would -- if  
16           they have sufficient means within their prison  
17           accounts, that is worth looking at as is if they  
18           receive a monetary award where attorney's fees  
19           don't come as part of that award.

20                        Some of that should probably come out  
21           too. They shouldn't be treated differently in  
22           terms of being plaintiffs than others with  
23           regard to payment of filing fees, costs, or  
24           attorney's fees provided they have the monetary  
25           means. And that is a big proviso.

1                   REPRESENTATIVE CHADWICK: That's the  
2                   only question I had. Thank you, Mr. Chairman.

3                   CHAIRMAN CLARK: If I might clear  
4                   something up. There are two kinds of suits that  
5                   a prisoner can bring, and the legislation that  
6                   we're considering is primarily civil actions.

7                   Now, they can appeal their criminal  
8                   convictions and they can go through  
9                   post-conviction motions and all of those appeals.  
10                  Generally, they're provided with a court  
11                  appointed counsel.

12                  I think Representative Chadwick talked  
13                  yesterday about being called back to testify or  
14                  be sued. And that was probably in a  
15                  post-conviction appeal because I likewise have  
16                  spent some days on the bench testifying as to  
17                  the actions of the District Attorney's office on  
18                  post-conviction appeals, but they are in the  
19                  criminal realm as opposed to the civil.

20                  And although I would add that once a  
21                  public defender's appointed to a defendant, why,  
22                  very seldom does anyone look at any resources  
23                  which that defendant has in order to take that  
24                  attorney away from him once he's appointed?

25                  MR. FRANKEL: A couple of points there.

1 I mean, I believe Representative Chadwick's  
2 question was about civil cases; and everything  
3 that we've talked about here is about civil  
4 cases.

5 The second is just a parenthetical note.  
6 I'm -- having recently been named in a  
7 post-conviction relief account petition, I was  
8 fully aware of the problems of trying to juggle  
9 my schedule to show up in court and say I don't  
10 remember this case. It's nine years ago.

11 I know that that goes on, but that's a  
12 whole different realm. We're talking about the  
13 civil remedies that the prisoners seek for  
14 conditions of confinement. And they have a  
15 constitutional right of access to courts. The  
16 question is how much do they have to pay? And  
17 that really does depend on the resource.

18 Finally, to note, that most of the  
19 people who end up in prison are disproportionate  
20 people who have no money because those with  
21 money have other ways because they can get into  
22 some kinds of programs. They can hire better  
23 attorneys or whatever. But the disproportionate  
24 number of people in prison have no resources.

25 CHAIRMAN CLARK: But an attorney isn't

1 appointed for a prisoner to bring a civil  
2 action, is it?

3 MR. FRANKEL: No. But there are  
4 instances where the federal courts will appoint  
5 an attorney to represent somebody who has  
6 brought a claim. I think -- there the courts do  
7 kind of sort out between meritorious and  
8 nonmeritorious by appointing attorneys.

9 I don't know what the procedure is in  
10 state court for civil claims. I doubt that  
11 attorneys are appointed. But federal courts do  
12 appoint attorneys for civil claims.

13 CHAIRMAN CLARK: Thank you for clearing  
14 that up. Representative Horsey.

15 REPRESENTATIVE HORSEY: Just one  
16 question. A lot of times when the court  
17 appoints an attorney in a tortious action,  
18 that's after the court has looked at the case  
19 and it's determined it should move forward; is  
20 that correct?

21 MR. FRANKEL: That's my understanding.  
22 I don't think they just appoint an attorney  
23 whenever one of these petitions comes in.

24 REPRESENTATIVE HORSEY: And the point  
25 here is it's been determined by the court not be

1           frivolous at that point?

2                   MR. FRANKEL: I don't know what the  
3           court -- that part I can't answer. I think it  
4           would be worthwhile to find out more about how  
5           the federal system has worked in the past  
6           because there are cases where they are  
7           appointing attorneys.

8                   We know. We heard about it yesterday  
9           from Mr. Love where he was -- he replaced an  
10          attorney who had been appointed in the first  
11          place in that case involving the prisoner who  
12          wanted a smoke-free environment.

13                   CHAIRMAN CLARK: Representative  
14          Caltagirone.

15                   REPRESENTATIVE CALTAGIRONE: Thank you,  
16          Mr. Chairman. As a matter of fact and a matter  
17          of historical record, this Committee when I took  
18          over it's chairmanship went over to Camp Hill  
19          prior to the riots.

20                   I distinctly recall that it was not a  
21          terrible place. There may have been some  
22          overcrowding; but short of that and some other  
23          minor problems that were faced, you know, the  
24          incidents and the problems that led up to that  
25          and the destruction that was entailed over



1           there, we -- this Committee then did tour that  
2           very facility one week after the riots and just  
3           recently have toured it again.

4                        There's a total transformation that has  
5           taken place. The point that I'm trying to make  
6           is this: This General Assembly and this  
7           Commonwealth through its taxpayer's dollars have  
8           been spending a totally inordinate amount on the  
9           growing numbers of prisoners in this state both  
10          at the local level -- I think there's been a  
11          number of counties and we've been involved  
12          through this Committee's efforts and the General  
13          Assembly as a whole placing on the ballot money  
14          that -- taxpayers monies that have been  
15          appropriated to build additions to prisons, to  
16          build almost a completely new system in the  
17          State of Pennsylvania.

18                       We've toured a number those facilities.  
19          We're spending close to a billion dollars this  
20          year. The largest single growth item in our  
21          budget over the past several years has been the  
22          state prisons.

23                       There's no question that this is a  
24          litigious society with the jail house lawyers  
25          and the recreational filers, the amount of cost

1 and time especially at the local county level  
2 let alone at the state level. These are not  
3 meant to be Boy Scout and Girl Scout camps. We  
4 have some pretty hard-core criminals in these  
5 facilities.

6 And I'm not suggesting that the ACLU is  
7 wrong in some of the areas you've pointed out;  
8 but in my nine or ten years I guess now as  
9 Chairman of this Committee, we have heard from  
10 numerous people within the system both at the  
11 state and county level that the amount of  
12 litigation filed by inmates is totally  
13 disproportionate, providing them the legal  
14 libraries that many people on the outside could  
15 not even begin to afford, tying up the court's  
16 time, effort, and money with -- and here we go  
17 again with this term frivolous.

18 And it's in the eye of the beholder, but  
19 it still consumes an inordinate amount of time  
20 both at the county -- and especially at the  
21 County levels. We've had it in Berks County as  
22 they've had it in other counties, and it seems  
23 that it never ends.

24 What I would like to see the ACLU help  
25 this Committee with and this General Assembly is

1       devising some type of a system where they can,  
2       in fact, bear those types of grievances without  
3       getting it into a court of law to see if, in  
4       fact, those types of instances really mandate a  
5       court filing and that they should be responsible  
6       in some way, shape, or form for the fees, costs,  
7       and even the attorney's fees, the filing fees  
8       and whatnot that would be associated with that  
9       action.

10               And I would expressly hope that you  
11       would possibly work with us in drafting some  
12       type of language and other members of the legal  
13       community to try to come up with something  
14       that's reasonable and fair.

15               It's not that people don't have rights  
16       just because they're prisoners. There have been  
17       abuses; we recognize that. But there's abuses  
18       on the other end too.

19               And I think the general public is just  
20       getting sick and tired as are members of this  
21       General Assembly of the kind of nonsense that is  
22       being committed upon the general public for  
23       people that have violated the law, went through  
24       a fair trial, had been convicted and are  
25       incarcerated.

1           Now, they have given up their rights to  
2           be members of a free society because of the  
3           actions that they've committed. And we've got  
4           to answer to our constituents when we talk about  
5           the general state budget and the amount of money  
6           that we continue to pour into this system.

7           I know that's a shotgun approach that  
8           I'm taking. We've worked together for a number  
9           of years, Larry; and it's not that I don't agree  
10          with you on the situations where there's harm  
11          and abuses being committed.

12          I don't think any Member of this panel  
13          isn't in agreement with that. But the kind of  
14          nonsense that we heard yesterday about I don't  
15          like crackers or I don't like cookies or I don't  
16          like this hot soup or I want air conditioning or  
17          I want this or that. And it goes on, and we all  
18          know it.

19          MR. FRANKEL: If I may interject, I  
20          thought I stated pretty clearly in my testimony  
21          and I'll restate, we don't like all the  
22          claim -- we get plenty of letters ourselves.

23          We know that there's a lot that's going  
24          on that shouldn't be occupying the court's time.  
25          And we fully support taking measures to deal

1 with that situation and we'd be happy to help in  
2 terms of drafting things.

3 And I've suggested looking at the  
4 grievance procedure that exists in the prisons  
5 and see how it can be improved to make sure  
6 that, you know, if a prisoner hasn't exhausted,  
7 his suit will be dismissed immediately. That is  
8 not an issue.

9 Where I think we end up disagreeing with  
10 the bill is some of the artificial limitations  
11 that this bill tries to place on the real  
12 substantive prison litigation by limiting the  
13 remedies, by limiting the time frames.

14 So in response to you, Representative  
15 Caltagirone, we agree that something has to be  
16 done and we're more than happy to work with the  
17 Committee in trying to draft something.

18 REPRESENTATIVE CALTAGIRONE: Thank you,  
19 Mr. Chairman.

20 CHAIRMAN CLARK: Representative Feese.

21 REPRESENTATIVE FEESE: Thank you,  
22 Mr. Chairman. I just have one question.  
23 Mr. Frankel, you indicated that the federal  
24 courts are addressing some of the nonmeritorious  
25 claims.

1           Do you know of any ways that they're  
2           doing it other than through a 1286 motion? Is  
3           that the way they're doing, or do they have  
4           other mechanisms to do that?

5           MR. FRANKEL: My belief -- one mechanism  
6           they have is by not granting an IFP; and I'm  
7           aware of a couple times when that's occurred.  
8           If they do not grant the in forma pauperis,  
9           nothing happens. And I think that that is one  
10          way to resolve it.

11          We also heard from at least one of the  
12          witnesses yesterday that the court was imposing  
13          sanctions on one of these frequent filers. And  
14          I don't know the details and I will try and find  
15          them out from the witness who stated that, but  
16          that may indeed be a way.

17          My concern with the bill as it was  
18          drafted, it didn't just deal with the frequent  
19          filer. You could have filed one claim and had  
20          it dismissed and you'd be treated the same as  
21          the ones who have 70 claims.

22          But in response to your question, I will  
23          ask the attorneys who do more of this work what  
24          they know specifically that federal courts are  
25          doing and provide that information.

1                   REPRESENTATIVE FEESE: One other  
2 question, you alluded to a possibility of an  
3 administrative procedure where if it is not  
4 followed that the individual's claim would be  
5 denied automatically. And I assume you're  
6 referring to much like an age discrimination  
7 claim or something like that, that type of  
8 procedure.

9                   Would you agree that maybe in  
10 conjunction with that the court if a lawsuit is  
11 subsequently filed could merely review the  
12 administrative record and make an initial  
13 determination whether to proceed?

14                   Otherwise, we might be just adding a  
15 step without really weeding out nonmeritorious  
16 claims. Are you following my question --

17                   MR. FRANKEL: I'm following your  
18 question. I'm wondering how the court gets that  
19 administrative record. The problem that I see  
20 with the way the bill's drafted is it allows the  
21 court to dismiss it without even the plaintiff  
22 having an opportunity to respond.

23                   So I think you build in potentially for  
24 the defendant to file the administrative  
25 record -- I mean, the one suggestion actually

1           which again, no problem, was I believe -- I  
2           can't remember whose testimony -- that the  
3           defense could just file a waiver.

4                         We're not going to waive an answer, but  
5           this doesn't admit anything. Or in the  
6           alternative, if an administrative procedure is  
7           set up that they could file a notice that we do  
8           not believe that the administrative procedure's  
9           been followed with.

10                        Here's the record, and you can judge it  
11           on that basis with notice to the plaintiff that  
12           they have to file some kind of response.

13                        REPRESENTATIVE FEESE: I have concerns  
14           about the sua sponte portions of the section  
15           regarding frivolous litigation. But I'm  
16           concerned with whether we could have a procedure  
17           whereby if you had an administrative proceeding  
18           first, part of the prisoner's pleading would  
19           then need to aver that they had the  
20           administrative proceeding within the time frame  
21           allowed much like when you file an age  
22           discrimination claim and at that point have the  
23           defense submit the record and the court could  
24           make an initial determination without the  
25           necessity of other hearings, et cetera.



1           Because there is -- I disagree with your  
2           statement that there's not a significant amount  
3           of time involved in these cases at the motion to  
4           dismiss level and that maybe it's just an issue  
5           of computerization for the department. I  
6           disagree with that.

7           I've been the defendant in -- I lost  
8           count of the prisoner lawsuits -- as the  
9           Chairman of Lycoming County Prison Board for  
10          eight years. And it takes a significant amount  
11          of time, each case. It takes a significant  
12          amount of money, each case, on a motion to  
13          dismiss.

14          So when you envision that process of  
15          reviewing administrative record and make an  
16          initial determination, it's appropriate to  
17          include if you're willing to work with us and  
18          truly reduce frivolous lawsuits.

19          MR. FRANKEL: I mean, I do envision  
20          something based on what you're saying. You've  
21          got to make sure that the prisoners in their  
22          pleadings know that they have to allege this.

23          One of the facts that came out yesterday  
24          was that the federal litigation is basically a  
25          form they use to initiate the pleading; state

1 court there's not.

2 State court is much more fact pleading,  
3 which I think aside from the fact that I think  
4 the jail house lawyers probably say you got a  
5 better chance in federal court, the fact that  
6 it's easier to file in federal court explains  
7 why.

8 I don't know that everybody's going to  
9 rush to file in state court because state court  
10 pleading is more difficult than federal court  
11 pleading. But if there is notice that you have  
12 to aver that the administrative procedure has  
13 been complied with and the defendant files the  
14 record, I think that's perfectly reasonable.

15 The question is, How do we make sure  
16 that people know that that's a requirement?

17 REPRESENTATIVE FEESE: Thank you.

18 CHAIRMAN CLARK: Representative  
19 Birmelin.

20 REPRESENTATIVE BIRMELIN: Mr. Frankel,  
21 I'm not sure I heard exactly what I think I  
22 heard from your testimony this morning; and I  
23 just want to ask you a question that would  
24 clarify it in my mind.

25 As you know, Representative Mayernik's

1 Bill 2770 deals only with the issue of whether  
2 or not the inmate's salary or accounts can be  
3 drawn from. I think you said that you don't  
4 think that this bill would be necessary because  
5 current administrative procedures would not  
6 require this to be done. Is that what you said?

7 MR. FRANKEL: If I did, that isn't what  
8 I intended to say. What I thought I said is  
9 that currently a prisoner has to allege that  
10 they'er indigent before they're allowed to go  
11 ahead and proceed without payment of fees.

12 I think what Representative Mayernik's  
13 bill is appropriate, it gets to the issue of how  
14 you determine whether they're indigent or not  
15 because the courts are going to say if a  
16 prisoner has no capacity to pay, they're still  
17 going to be able to proceed.

18 My reference in terms of whether it's  
19 necessary or not, I think the courts already are  
20 aware that, you know, the ability to proceed  
21 without payment of the filing fee is dependent  
22 on at least allegations of indigency.

23 You don't just file papers and because  
24 you're in prison you're allowed to proceed.  
25 That's what my answer intended.

1                   REPRESENTATIVE BIRMELIN: Mr. Chairman,  
2                   may I interrogate the maker of the bill,  
3                   Mr. Mayernik?

4                   CHAIRMAN CLARK: You go right ahead.  
5                   Mr. Mayernik -- well, will Mr. Mayernik stand  
6                   for interrogation by the gentleman, Mr.  
7                   Birmelin? You mat sit for it. You don't have  
8                   to stand for it necessarily.

9                   REPRESENTATIVE MAYERNIK: Yes,  
10                  Mr. Speaker, I'll be happy to.

11                  CHAIRMAN CLARK: You may proceed,  
12                  Mr. Birmelin.

13                  REPRESENTATIVE BIRMELIN: Thank you,  
14                  Mr. Speaker. Mr. Mayernik, I assume the fact --  
15                  the very fact that you introduced this  
16                  legislation is the answer to my question. And  
17                  that is that these accounts currently are  
18                  untouchable either for using it for filing fees  
19                  but also for determination of need; is that  
20                  correct?

21                  REPRESENTATIVE MAYERNIK: That's  
22                  correct. And what I intended to do is expand it  
23                  also to future accounts that can be attached,  
24                  not only what they presently have in there  
25                  because what I'm concerned about the prisoners

1           doing is spending their accounts or transferring  
2           their accounts from one prisoner to the other  
3           then filing suits -- frivolous lawsuits and then  
4           after the suits are filed and it's determined  
5           that they're indigent, then the other prisoner  
6           transfers the money back over into the account.

7                        So I would also expect future accounts  
8           of the prisoners to be attached.

9                        REPRESENTATIVE BIRMELIN: The second  
10          follow-up question would be, if this is the case  
11          that, you know, they may transfer them or what  
12          have you, are these accounts protected currently  
13          by law or by regulation of the Department of  
14          Corrections and is there not another way around  
15          passing legislation to make those accounts  
16          accessible to for the purpose of paying for  
17          court costs?

18                       REPRESENTATIVE MAYERNIK: I don't have  
19          an answer, Jerry. Since we're in a legislative  
20          business, I'm looking at a legislative remedy.  
21          And the other states that have pass it -- I  
22          think you had left before I had given the answer  
23          yesterday that there's about six other states;  
24          Arizona, Minnesota, Texas that have passed  
25          statutes. So I went from the statutory

1 approach.

2 REPRESENTATIVE BIRMELIN: Okay. I  
3 appreciate that.

4 REPRESENTATIVE MAYERNIK: I think the  
5 Department of Corrections could better answer  
6 the question of regulation, can they do it by  
7 regulation? Could you speak to that, Mary Beth?

8 CHAIRMAN CLARK: Why don't we have Mary  
9 Beth come over and use the microphone.

10 REPRESENTATIVE MAYERNIK: Mary Beth  
11 Marschik is a liaison for the Department of  
12 Corrections, for the benefit of the  
13 stenographer.

14 MS. MARSCHIK: We've been looking at the  
15 whole issue of inmate accounts and what can be  
16 derived from inmate accounts to pay certain  
17 kinds of financial obligations.

18 This was initiated when the legislation  
19 was considered in terms of the medical co-pay  
20 for inmates' medical services. And we've been  
21 looking at (1), how much money actually goes in  
22 the accounts and the flow of that money.

23 Also what we can do in terms of using  
24 that account for satisfaction of court costs,  
25 restitution payments, any support obligations.

1 One of the issues that we've found that sort of  
2 drives our ability is we need information from  
3 counties. Particularly if there are court  
4 orders for financial obligations, we need to  
5 have that.

6 If you recall during special session  
7 there was legislation -- Representative  
8 Caltagirone introduced it in prior  
9 sessions -- that would have given us the ability  
10 to have that information. We find that  
11 oftentimes a person comes to us into the system,  
12 we have no information on medical services that  
13 may have been rendered.

14 That's particularly problematic where  
15 there's indication of TB exposure, mental health  
16 treatment, and also more information about the  
17 facts of the crime whether it's a PSI or an  
18 official version of the crime as well as any  
19 court orders for restitution, court costs, and  
20 fines.

21 So all of that sort of plays into our  
22 examination of inmates' accounts. The inmate  
23 general welfare account is not a statutory  
24 creation. It's something that we have  
25 administratively. And we have to determine in

1 addition to the amounts of money available in  
2 the account, what we can access.

3 Also look at are we permitted under the  
4 current law on wage attachments to actually  
5 attach monies from those accounts because much  
6 of the money is from wages. And I can't tell  
7 you truthfully an average amount in someone's  
8 account. It's part of what we're looking at.

9 REPRESENTATIVE BIRMELIN: Can you answer  
10 the question as to whether or not these accounts  
11 are protected by state law, by Department of  
12 Corrections regulations, or what?

13 MS. MARSCHIK: There's no statutory  
14 mechanism for it. So the law's, in effect, silent  
15 on that.

16 REPRESENTATIVE BIRMELIN: Why could not  
17 these fees be extracted from their accounts  
18 today?

19 MS. MARSCHIK: Well, many of the fees  
20 are derived from wages. And the issue I brought  
21 up before, are we permitted under current law on  
22 wage attachment to attach those fees for it? We  
23 have express authority on the medical services  
24 co-pay legislation. And child support's  
25 another under that wage attachment statute.



1                   REPRESENTATIVE BIRMELIN: I guess you're  
2                   telling me you don't know whether or not you can  
3                   do it?

4                   MS. MARSCHIK: Right. We're looking at  
5                   that now. We have one opinion. And, in fact,  
6                   we do need to have express authority to go  
7                   beyond the child support obligations to look at  
8                   restitution, court costs and fines, and  
9                   dovetailing with that getting the information so  
10                  that we know, in fact, if there are outstanding  
11                  orders.

12                  REPRESENTATIVE BIRMELIN: So you're  
13                  already operating on any extractions from these  
14                  accounts on some existing state law, either  
15                  child support or wage attachment; but when it  
16                  comes to court filing fees, you have no  
17                  guidelines or nothing in the statute to guide  
18                  you in that?

19                  MS. MARSCHIK: Right because it's a  
20                  two-fold problem. One is the express authority;  
21                  and secondly, the information so that we know  
22                  who, in fact, has those orders.

23                  REPRESENTATIVE MAYERNIK: Jerry, you  
24                  know what'll happen -- if they do attach the  
25                  accounts now, what'll happen is somebody's going

1 to sue them and it's going to get tied up in  
2 court and it's going to be counterproductive to  
3 what we're going to try to do here today with  
4 this legislation.

5 So that's why Representative Brown and  
6 myself introduced this legislation so we can  
7 statutorily permit the Commonwealth to do this.  
8 I'm sure someone will still -- probably the  
9 gentleman at the table today will still  
10 challenge that authority; but it will be a lot  
11 clearer and cleaner having the statute and  
12 having the Attorney General defend it.

13 So that's why Representative Brown and I  
14 thought it's the best way to build the statute.

15 REPRESENTATIVE BIRMELIN: Mr. Chairman,  
16 I've terminated my interrogation. May I make a  
17 statement on the bill?

18 CHAIRMAN CLARK: You certainly may,  
19 Mr. Birmelin.

20 REPRESENTATIVE BIRMELIN: Thank you.  
21 Just anecdotally, I along with Representative  
22 Caltagirone have been to many of our state and  
23 County prisons.

24 And I think it's interesting when you go  
25 into the prisons and you go by what is typically

1           called their commissary and you ask the director  
2           of that prison or superintendent, where do these  
3           guys get the money to pay for their 2 1/2-pound  
4           bags of Doritos and all the other things that  
5           they buy?

6                     Assuming that what Mr. Frankel says is  
7           true -- and I don't have any reason not to  
8           believe that many of our prisoners are  
9           indigent -- they get the money. I mean, they  
10          get the money from relatives; they get it from  
11          friends; they get it from other sources.

12                    Maybe they had some resources before  
13          they were incarcerated and whatever family  
14          members they have left in life send it to them  
15          periodically, but they do have access.

16                    It's a rare prisoner who does not have  
17          an account where he has the money in it for  
18          personal things. So in answer, I guess, to  
19          Representative Chadwick's comment, I think that  
20          the money is there. It may not be a whole lot;  
21          but then again, a filing fee isn't a whole lot  
22          of money either.

23                    And it's my understanding that the  
24          prisons only allow them to spend so much per  
25          month anyway. They're not -- they just can't

1 get \$1,000 in their account and spend down  
2 \$1,000 on, you know, buying 500 candy bars or  
3 whatever.

4 So I think it is a source; and I think  
5 it is -- at least from my prospective,  
6 Representative Mayernik's bill is simple, clean,  
7 and is worthy of our support. And I think that  
8 Representative Brown's bill may present some  
9 more problems, but I don't see any problem with  
10 the aspect that deals with this particular issue  
11 of drawing down from their accounts. Thank you.

12 CHAIRMAN CLARK: I'd interject one  
13 thing, maybe, when the prisoner files his in forma  
14 pauperis petition that he would attach his  
15 prison account statement for the last year that  
16 would show what was put in and what was taken  
17 out and whether it was attached by wages or  
18 whatever.

19 MR. FRANKEL: I believe that a lot of  
20 that is in the filing fee provision in 2697.  
21 And in response to the interchange that I just  
22 heard statutorily may indeed be a better way to  
23 go, if there is no authority.

24 But I would suggest that the provisions  
25 in 2697 present fewer complications later on

1           because it establishes the means by which the  
2           court or somebody can determine what can be  
3           taken out.

4                        I mean, I think you need that in there;  
5           otherwise, you will run into some constitutional  
6           complications if it's going to be the  
7           institution that determines that that is going  
8           to be problematic.

9                        So in terms of the filing fees which,  
10          again, to be very clear and reiterate, that's  
11          not an issue that we oppose; but we do believe  
12          that the provisions in 2697 because they're more  
13          comprehensive and have some of the elements that  
14          Representative Clark just mentioned is probably  
15          a cleaner way to go.

16                       CHAIRMAN CLARK: Representative  
17          Manderino.

18                       REPRESENTATIVE MANDERINO: Thank you,  
19          Mr. Chairman. Mary Beth, before you walk away,  
20          I do have a question for you if I may since  
21          you're here. My understanding -- and I'm  
22          pulling from my memory -- but my understanding  
23          is that the average prison wage is somewhere  
24          around 40 or 42 or 43 cents an hour?

25                       MS. MARSCHIK: There's a wage scale



1           assume that the department might want specific  
2           direction from the Legislature about what  
3           priority they have. So I'm not asking for an  
4           answer.

5                       I'm just asking that -- that's a  
6           question, if the department could give us some  
7           idea about both the monetary levels and the  
8           amount of direction they want vis-a-vis  
9           priorities that that would be helpful.

10                      MS. MARSCHIK: Absolutely. I'll get  
11           that for you.

12                      REPRESENTATIVE MANDERINO: Thank you.  
13           My next question is for Mr. Frankel. And I  
14           appreciate because I think it's an important  
15           aspect that you're not opposed to the filing  
16           fees. I just want to make sure that I  
17           understood what you were saying.

18                      You were saying that in 2697 the Brown  
19           legislation which has many aspects, not just  
20           filing fees, that if we look at the provisions  
21           under his legislation that deals with filing  
22           fees they just flesh out a little bit more  
23           specifically than does 2770, how you would go  
24           about it? And that's your recommendation?

25                      MR. FRANKEL: Yes, that is my

1 recommendation. While I've got the floor, I do  
2 want to address something that you raised with  
3 Mary Beth Marschik. Child support, to the  
4 extent child support is paid out, just bear in  
5 mind that if the children are on public  
6 assistance, that's money that would go back to  
7 the department, not to the family necessarily.

8           You know, there may be some pass  
9 through; but you have to be -- keep that in  
10 mind, which is just if you're going to set up a  
11 priority, that may be a decision you may want to  
12 make.

13           But there is a lot of media press in  
14 Philadelphia that some judgments that were being  
15 paid to people who were improperly arrested,  
16 some of the money was going to go to pay back  
17 child support.

18           Well, many of these cases, the money's  
19 going back to the Department of Welfare, not the  
20 mother or the children. And the Department of  
21 Welfare is certainly entitled to it; but those  
22 who were talking about how great the settlement  
23 is that's helping these children, it wasn't  
24 necessarily getting to the children. And that's  
25 what I wanted to point out.



1                   REPRESENTATIVE MANDERINO: My second  
2 question goes to the dialogue that happened  
3 earlier in earlier questioning vis-a-vis  
4 attorney fees. And I got all confused. I want  
5 to state what I think is the fact and tell me if  
6 I'm wrong.

7                   In the State of Pennsylvania, state  
8 court litigation, not federal court litigation,  
9 in civil matters which is what these two bills  
10 address, civil matters in state courts, there is  
11 no assignment of an attorney, am I correct?

12                   MR. FRANKEL: I believe you are correct  
13 because I know of no constitutional requirement  
14 that an attorney be assigned.

15                   REPRESENTATIVE MANDERINO: So somebody  
16 who is pursuing -- a prisoner who's pursuing a  
17 civil matter is either pursuing it as his own  
18 attorney or he has interested some private  
19 attorney or public interest law group to take on  
20 his case and represent him; but the court  
21 isn't -- we as a Commonwealth aren't giving him  
22 direct resources to pursue these civil cases  
23 against us?

24                   MR. FRANKEL: That is my understanding.

25                   REPRESENTATIVE MANDERINO: Okay. Thank

1 you. Thank you, Mr. Chairman.

2 CHAIRMAN CLARK: Any additional  
3 questions of this witness? Seeing none, why we  
4 thank you very much, Mr. Frankel, for your  
5 input.

6 And the next witness to testify before  
7 the Committee will be Edward Sweeney, who's here  
8 on behalf of the Pennsylvania Prison Warden's  
9 Association. And Mr. Sweeney is the warden of  
10 the Lehigh County Prison in Allentown.  
11 Mr. Sweeney.

12 MR. SWEENEY: Good morning. I would  
13 like to thank Representatives Gannon and  
14 Representative Clark for extending me the  
15 invitation to testify before the Committee today  
16 in regard to House Bills No. 2697 and 2770. The  
17 State's version of the prison litigation reform.

18 Pennsylvania Prison Warden's Association  
19 is an organization composed of corrections  
20 professionals currently or formerly in various  
21 administrative capacities, including but not  
22 limited to wardens of federal, state, and county  
23 prisons throughout the Commonwealth of  
24 Pennsylvania.

25 The membership of the PPWA has direct

1 interest and substantial expertise in providing  
2 recommendations to address the growing problem  
3 of inmate litigations, and we support House  
4 Bills 2697 and 2770.

5 Jails, prisons, and judicial systems  
6 throughout the State of Pennsylvania are  
7 increasingly besieged by inmate litigation, much  
8 of which is frivolous. Record inmate population  
9 growth across the state has exacerbated the  
10 litigation trend.

11 And while we recognize some inmate  
12 litigation is meritorious and deserves close  
13 judicial attention, such cases become lost in  
14 the flood of frivolous proceedings. There are  
15 those who claim limiting inmate litigations by  
16 any measure will result in regressive,  
17 wide-spread, nonconstitutional practices. We  
18 disagree.

19 Adherence to law is fundamental to  
20 professional corrections practice. Our adoption  
21 of this premise is clear. Whereby most prison  
22 administrators have developed independent  
23 mission statements establishing the primary  
24 mission for our respective staff around which  
25 all facility policies and procedures will be

1 promulgated, the primary tenent common to all  
2 mission statements I have ever heard regarding  
3 prison management is to run a constitutionally  
4 sound prison operation.

5 Knowledgeable and competent jail  
6 administrators as well as a professional and  
7 well-trained staff are the primary components to  
8 attain this mission, not the mere presence or  
9 fear of inmate litigations.

10 Nationally recognized professional  
11 corrections organizations have promulgated  
12 volumes of prison standards or bench marks  
13 against which prison operations can always be  
14 measured.

15 Additionally in Pennsylvania, the State  
16 Department of Corrections perform semi-annual  
17 inspections of all county and state prison  
18 institutions ensuring compliance with the law.  
19 Some will argue the implementation of filing fee  
20 will restrict the filing of legitimate claims.  
21 Again, we disagree.

22 The levying of a mandatory filing fee on  
23 inmate-initiated litigations forces the affected  
24 inmate to assess the merits of his own claim and  
25 the seriousness of the alleged civil rights

1 violation prior to submission.

2 Who better than the affected inmate can  
3 make the initial determination regarding the  
4 merits of his claim? Absent of any filing fee,  
5 the inmate will simply file the necessary forms  
6 and let the judicial staff sort it out at the  
7 expense of the taxpayer. Prison litigation  
8 reform is needed to curtail frivolous filings.

9 The next portion of my testimony will  
10 relate directly to my personal experiences as a  
11 warden of an 1100-bed county jail facility.  
12 Although specific details may be unique, the  
13 scenarios are all too common.

14 Over the past five years, I have seen a  
15 significant increase in the number of  
16 prisoner-initiated civil right litigations filed  
17 in the state and federal courts. As a prison  
18 administrator, I can see firsthand the overall  
19 cost associated with preparing a legal defense  
20 for those cases which are bound over for trial.

21 Nothing's more frustrating than being  
22 forced to direct costly human resources to spend  
23 hours upon hours of time to prepare documents,  
24 locating records, and making hundreds of copies  
25 in order to refute a frivolous inmate claim.

1           Even after hearing the judge state the  
2 case is dismissed with prejudice, I feel no  
3 sense of victory or accomplishment due to the  
4 costly investment of resources which could have  
5 been utilized elsewhere.

6           Some inmates, which I like to refer to  
7 as recreational filers, have personally filed  
8 dozens of litigations against prison staff as  
9 sport or as a form of harassment. At no cost to  
10 the inmate, if the case would be bound over for  
11 trial, he is taken for a ride to the courthouse  
12 where he could personally call numerous staff  
13 members to the witness stand.

14           One particular inmate who is prone to  
15 litigate frivolous issues filed nine separate  
16 1983 actions over the period of two years.  
17 Although all of the litigations were found to be  
18 without merit, he improved his written and  
19 verbal presentations with each court appearance.

20           Five of his eight filings required a  
21 formal court hearing. He was being educated, if  
22 you will, by the federal courts by serving pro  
23 se, as his own attorney, during repeated civil  
24 proceedings.

25           The cost to the taxpayers for this

1 convicted armed robber's civil education was no  
2 less than \$7,600. I computed that figure by  
3 calculating eighty hours of county solicitor  
4 time, 120 hours of uniformed staff overtime for  
5 court testimony and transporting of the inmate,  
6 as well as in excess of 60 hours of prison staff  
7 time preparing all of the necessary documents  
8 for court.

9 This cost factor does not take into  
10 consideration any of judicial costs associated  
11 with the hearings or the figure would be much  
12 higher.

13 In regards to the relief portion of the  
14 proposed bill, I present the following  
15 historical account in very brief terms:  
16 Effective January 1, 1990, we entered into a  
17 consent decree in order to resolve an inmate  
18 litigation filed in 1986.

19 Six and one half years later, today, we  
20 are still involved in the legal arguments  
21 regarding the scope and the duration of this  
22 agreement. The pending House Bill and already  
23 enacted Federal Prison Litigation Reform Act  
24 will serve well to regulate any future  
25 court-imposed relief or agreed upon consent

1       decrees to avoid such an expensive perpetual  
2       process.

3               I will close my prepared testimony on  
4       what I believe to be common ground for all  
5       interested parties. Not all inmate litigations  
6       filed are frivolous. Inmates should retain the  
7       right to submit civil rights violations to the  
8       courts for judicial review.

9               The current system in place, however, is  
10       broke; and we need to fix it. House Bills 2697  
11       and 2770 preserve the inmate's right to file  
12       suit while applying necessary and reasonable  
13       controls to enable effective prison management.

14               On behalf of the Pennsylvania Prison  
15       Warden's Association, I thank you for the  
16       opportunity to be heard. And before you would  
17       start with questions, I would just like to  
18       respond to the last discussion about the  
19       definition of indigency and proceeding in forma  
20       pauperis.

21               As I understand the authorization to  
22       proceed in forma pauperis is that the level of  
23       indigency which is an established monetary  
24       figure for the federal government for you and I  
25       as living in the community, let's just



1 say -- and I'm not sure of the exact  
2 amount -- let's just say it is \$6,000 gross  
3 annual income.

4 That level of indigency should not be  
5 the same for an inmate who is provided with all  
6 of his food, clothing, and care throughout the  
7 course of his incarceration.

8 So it's that measure which enables the  
9 inmate to be able to file his litigation without  
10 cost because normally an inmate accounts records  
11 due to internal regulations and restrictions  
12 would not give him the opportunity to maintain a  
13 balance of over \$6,000 on his inmate account.

14 And it's that account record which gets  
15 submitted on which the determination is made if  
16 he is permitted to proceed in forma pauperis.

17 CHAIRMAN CLARK: Thank you very much,  
18 Warden Sweeney. Are there any questions of this  
19 witness? Ms. Manderino.

20 REPRESENTATIVE MANDERINO: Thank you,  
21 Mr. Chairman. Mr. Sweeney, thank you for your  
22 testimony and particularly that last suggestion.  
23 I think it's worthy of taking note.

24 One of the other suggestions made  
25 earlier this morning I'd like your input on.

1 And that was the idea of having a required  
2 administrative procedure that you must show that  
3 you have gone through before you have access to  
4 the courts.

5 I don't know if you were here for that  
6 part of the testimony. I don't believe that's  
7 required now; so if it is, you know, correct me  
8 in my understanding. But what do you think of  
9 that idea?

10 MR. SWEENEY: Well, that is a primary  
11 component of the Federal Prison Litigation  
12 Reform Act. It does require the inmate to  
13 exhaust all internal grievance processes or  
14 other remedies before they can move on. And if  
15 they fail to do so, the judge has the authority  
16 to dismiss the litigation at that time.

17 I really just -- I had a notation here  
18 myself I was going to inquire privately as to  
19 why that was not a component to this piece of  
20 legislation. I had that noted as perhaps going  
21 into Section D, the frivolous litigation, as  
22 adding a No. 5.

23 Actually, the way it's worded is,  
24 Notwithstanding any filing fee that has been  
25 paid, the court shall dismiss prison conditions

1           litigations at any time including prior to  
2           service on the defendant if the court determines  
3           that any of the following.

4                       And then I was going to suggest adding a  
5           No. 5; The prisoner has not exhausted the  
6           internal grievance process prior to initiating  
7           the litigation where appropriate. I would think  
8           that that's a good suggestion.

9                       And I was under the impression that  
10          perhaps there was some rethinking regarding that  
11          matter that may have happened within the  
12          facilitators of this document.

13                      REPRESENTATIVE MANDERINO: When you  
14          say -- I'm not familiar fully with the federal  
15          prison reform proposal. It's still in a  
16          proposal stage or has it now --

17                      MR. SWEENEY: That has been signed into  
18          law.

19                      REPRESENTATIVE MANDERINO: Okay. So  
20          what you're saying to us is we already  
21          have -- because of requirements of federal law,  
22          we already have a process that inmates have to  
23          show that they've gone through if they're filing  
24          in federal court. Why not apply that same thing  
25          to state court actions?

1           MR. SWEENEY: Inmates have the option of  
2           filing civil rights 1983 actions either through  
3           the federal courts or through the state courts.  
4           The federal courts have made that filing  
5           historically very easy and the remedies given  
6           have oftentimes been greater; and therefore, the  
7           propensity has always been there to go through  
8           the federal filing.

9           Since the Federal Prison Litigation  
10          Reform Act has been signed into law, I believe  
11          it is extremely imperative that the state  
12          establish some type of its own prison litigation  
13          reform because I believe the inmate litigations  
14          are now going to take a turn and come down  
15          through the state channels more often than the  
16          federal channels since there already are many  
17          established constraints now via the federal  
18          version of the Prison Litigation Act.

19          REPRESENTATIVE MANDERINO: You refreshed  
20          my recollection. That was just recently signed?

21          MR. SWEENEY: Yes.

22          REPRESENTATIVE MANDERINO: So we don't  
23          have a track record now to see how much that has  
24          reduced or limited 1983 or other civil rights  
25          filings at this point. We're just anticipating

1           because of that new requirement that that may  
2           help to stem excessive litigation?

3                       MR. SWEENEY: I do not have any personal  
4           experience with it as of yet. The act, I  
5           believe, just took effect sometime in mid-July.  
6           There have been numerous cases already -- maybe  
7           numerous is the wrong word -- which have been  
8           filed across the country which some of the  
9           results are just starting to come back in on  
10          from the federal court's challenges as far as if  
11          it's constitutional.

12                      And I, in fact, have with me a recent  
13          Correctional Law Reporter issue, which is a  
14          special edition based on the Prison Litigation  
15          Reform Act. And it has within it a listing of  
16          all of the court cases in regards to prison  
17          litigation reform which are just currently being  
18          answered by the courts.

19                      REPRESENTATIVE MANDERINO: Thank you.  
20          Thank you, Mr. Chairman.

21                      CHAIRMAN CLARK: Thank you. Along those  
22          lines, we received testimony yesterday from the  
23          Attorney General's office that in the middle  
24          district of Pennsylvania's federal court system  
25          there has been a significant decrease in the

1 number of prison actions filed in the middle  
2 district federal court system.

3 And he also was concerned that they'll  
4 now file those or avenue those through the state  
5 court system. So we thank you very much for  
6 your --

7 REPRESENTATIVE HORSEY: Mr. Chairman,  
8 may I ask a question?

9 CHAIRMAN CLARK: Yeah, Representative  
10 Horsey.

11 REPRESENTATIVE HORSEY: Just a couple  
12 quick questions. We do have a state  
13 administrative process for filing grievances  
14 within the corrections system; is that correct?

15 MR. SWEENEY: Well, I'm not employed by  
16 the Pennsylvania Department of Corrections. I  
17 work for Lehigh County. I believe the state  
18 from my review of their handbook some time back  
19 does have a grievance system in place across the  
20 state for its state institutions.

21 REPRESENTATIVE HORSEY: And does your  
22 individual county prison have administrative  
23 procedures for prisoners to file grievances?

24 MR. SWEENEY: We have what we  
25 characterize as an informal grievance procedure.

1 We speak to it in their inmate handbook advising  
2 them that they need to submit request slips in  
3 writing to the specific staff member involved.

4 If not granted what they consider to be  
5 proper relief, they should forward those  
6 requests up the line as high as my level to give  
7 me every opportunity to be able to respond to  
8 any inquiries prior to filing litigations.

9 There was a -- prior to the filing of  
10 the passing of the federal version of the Prison  
11 Litigation Reform Act, the only system that was  
12 in place that mandated that an inmate go through  
13 the internal remedies or grievance process was  
14 if your grievance process was certified as  
15 a -- the account was titled CRIPA, C-R-I-P-A,  
16 and I cannot put together what that stood for in  
17 my mind.

18 But it dealt with a sort of -- the  
19 agreement system had to be certified by the  
20 federal courts if there was going to be the  
21 mandate that they had to exhaust your grievance  
22 system first before they could proceed with  
23 federal litigation. And we did not have a  
24 certified CRIPA grievance process in Lehigh  
25 County.

1           The new Federal Litigation Reform Act,  
2           however, really totally abolishes the need for  
3           the CRIPA certification and simply requires that  
4           if you have a grievance system in place the  
5           inmate must follow that and have the  
6           documentation to support it.

7           REPRESENTATIVE HORSEY: Okay. Just one  
8           question, if we have a administrative process in  
9           place, whether it be county or state -- and I  
10          still haven't gotten a comment on whether we  
11          have a state grievance structure -- would it not  
12          stop this whole slow down or deplete the number  
13          of frivolous suits, quote, that are filed?

14          I mean, isn't that -- I think I heard  
15          that from the gentleman here who testified  
16          before you. His comments was if we enhanced the  
17          administrative grievance process maybe on a  
18          local level, county, statewide that would cut  
19          down on frivolous suits. Do you believe that?

20          MR. SWEENEY: I believe that it  
21          certainly gives the opportunity for the courts  
22          to have in front of them a more complete  
23          document that shows all the details of the case.

24          However, my experience has been that the  
25          cases that are the most difficult and the cases



1           that ultimately end up in front of a trial judge  
2           are those where there is a genuine dispute of  
3           fact. I say something happened; you say it did  
4           not.

5                        There is not a complete package at that  
6           point for the judge to review and make a  
7           determination if this is a simple question of he  
8           said he wanted crunchy peanut butter and we said  
9           we were not going to provide him with crunchy  
10          peanut butter as one of the ten most frivolous  
11          litigations filed. That actually was a case.

12                      And by having that documentation of  
13          showing the full picture, the judge is able to  
14          make a determination, yes, that is a frivolous  
15          litigation; and he can kick it back.

16                      So a grievance system I do believe  
17          certainly will enhance the opportunity for the  
18          courts to be able to dismiss more cases.

19                      REPRESENTATIVE HORSEY: That wasn't  
20          the -- the question is, Do you think over and  
21          above prisoners going to court that we will cut  
22          down on the number of frivolous cases if we have  
23          an administrative grievance process in place  
24          whether it be county or statewide; and if so, if  
25          we enhance that system, there will be less suits

1 filed?

2 I heard what you said about fact  
3 situations, but I just simply need to get your  
4 opinion because you're a warden. If we have an  
5 administrative process in place, a formal  
6 administrative process whether it be county or  
7 state we will cut down on frivolous suits that  
8 are filed in court. Do you think it will?

9 MR. SWEENEY: I believe it will. And --

10 REPRESENTATIVE HORSEY: Thank you.

11 MR. SWEENEY: -- and the key to it, of  
12 course, is the legislation as it's written now  
13 does not require them to exhaust that internal  
14 grievance process.

15 REPRESENTATIVE HORSEY: And that's  
16 because we don't have a formal system in place,  
17 I understand. Do we, on a county or state  
18 level?

19 MR. SWEENEY: (No audible response).

20 REPRESENTATIVE HORSEY: We do?

21 Statutorily, do we --

22 CHAIRMAN CLARK: I would doubt  
23 statutorily.

24 REPRESENTATIVE HORSEY: Okay. Thank  
25 you.

1                   CHAIRMAN CLARK: Any additional  
2                   questions? All right. Again, we thank you for  
3                   your testimony. And with that, that concludes  
4                   our agenda for this morning's hearing on House  
5                   Bill 2697 and 2770.

6                   I certainly want to thank all the  
7                   Members who came today and participated in the  
8                   hearing and also the individuals who testified  
9                   this morning. Thank you very much.

10                   (At or about 1:36 p.m., the hearing was  
11                   concluded.)

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