

Vermonters for Criminal Justice Reform

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EIN: 80-0906305

www.VermontersforCriminalJusticeReform.org

Testimony re “Lighten the Load” Bill

We have been asked to testify on section 23 of the bill, around filing fees for post-conviction relief.

First, we want to acknowledge that by many accounts there are frivolous claims filed, and we are not opposed to requiring inmates to file a small fee, which can be waived if the person has no funds at all. Thus we do not oppose the spirit of this bill. However, parts of it seem overly complex and also unnecessary, and we suspect that the committee may not fully grasp the financial situations of most inmates.

It is worth remembering that 97% of those involved with the criminal justice system in Vermont cannot afford a private attorney. In other words, the vast majority have scant resources at their disposal. Those who have no facility jobs and no outside source of funds from family will get their fees waived. (There is no way to use a financial disincentive to discourage frivolous filings on the part of people who have nothing.)

For some others, a small fee, say \$20, might make sense, but no more. If the goal of the bill is to discourage frivolous filings (and not to create new levels of bureaucracy, further burdening the courts and corrections facilities), then \$20 represents enough of a sacrifice to get someone to think twice.

Let me explain. In Michigan, for example, only half the inmates have jobs, which is a higher percentage than in any facility in state. This is not because the men don't want jobs; it's because there aren't enough jobs. During the first six months after the transfer of inmates from KY to Michigan, there was a desperate plea for more jobs, because in KY, “everyone who wanted a job had one” and that was not the case in Michigan. When it became clear there no more jobs would be available, men eventually stopped asking.

In any case, men lucky enough to have jobs earn about \$2 a day, sometimes \$3. (Note: not per hour, per day.) Thus \$20 typically represents two weeks' wages. Out of this \$20, inmates must buy extra food, snacks, toothpaste, underwear, shoes, reading glasses, everything else they need to live aside from the barest essentials provided by the facility, as well as phone or email time to communicate with family. (These items don't cost proportionally less; they cost the same as on the outside. The least expensive sneakers cost \$53, for example, representing over 5 weeks' salary if one bought nothing else.) To put this in context then, a \$20 filing fee, or two weeks' wages, is the equivalent of about \$1,300 for a legislator, or \$1,700 if you count the meal allowance. You'd have to have a lot of faith in your claim to pay a filing fee of \$1,300. The current filing fee for post-conviction relief is \$90, which represents 4 ½ weeks' worth of salary (\$5,850 in legislators' salary terms).

It is true that some inmates receive help from families. These families already bear the extra financial burden of supporting their loved one in prison. According a recent report from the Ella Baker Center called “Who Pays?” which laid out in great detail the financial burden on families,

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83% of family members who bear burden of court and other costs related to incarceration are women.

Thus we suggest a strike-all amendment as attached.

If the bill as proposed is preferred, we submit the following:

The *in forma pauperis* application is the generally accepted mechanism for determining eligibility to pay. We cannot see the cost-benefit of developing another layer of paperwork. Furthermore, the requiring the inmate to provide certified copies of accounts that have to be compiled and provided by facilities raises a great deal of concerns. We hear of requests of various kinds being ignored on an almost weekly basis, and if you were going to require the inmate try to acquire these forms, we'd want to see some protections for the inmate and motivation for the facility, along the lines of:

“If the general account statement is not provided within 5 days of the inmate’s request, the action shall proceed and the fee shall be assessed to each facility that has failed to provide the account statement.”

Section (c)(2) is far too complex to make it economically worthwhile for the state. Remember, someone with a facility job may earn \$40 a month. 20% of that is \$8; collecting that every month for six months would yield \$48. This is a lot of paperwork for \$48.

A final note about (g), notification of victim. Since (f) already requires that any restitution owed to victim or facility come out of any award, we can see no reason to require notifying a former victim that an incarcerated individual is being awarded money because of an injustice committed against the incarcerated individual.

Suzi Wizowaty
Executive Director
March 8, 2016

*** Post-Conviction Relief Filing Fees ***

15 Sec. 23. 32 V.S.A. § 1431a is added to read:

§ 1431A. FEES IN SUPREME AND SUPERIOR COURTS; CIVIL ACTION 17 BY INMATE;
APPLICATION TO PROCEED IN FORMA PAUPERIS

- (a) Prepayment of filing fee and certified copies required. A person confined in a state correctional facility may bring a civil action or appeal a judgment in a civil action arising under federal or state law with respect to a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined by filing a fee of \$20.
 - (1) An inmate unable to pay the fee may submit the *in forma pauperis* application and affidavit required by Rule 3.1(b) of the Vermont Rules of Civil Procedure.
 - (b) Waiver of prepayment of filing fee.
 - (1) The court shall order that prepayment of the filing fee is waived if it finds that the person is without sufficient funds to pay the filing fee.
 - (2) If the court denies the *in forma pauperis* application, the action or appeal shall be dismissed without prejudice unless the person pays the filing fee to the clerk of court within 7 days after the denial.
 - (c) Restrictions on filing fee. A person shall not be prohibited from bringing or appealing a civil action if the court finds that the person does not have the assets or means to pay the filing fee.
 - (d) Payment of outstanding restitution orders. If compensatory damages are awarded to a person in a civil action as the result of a condition of the person's confinement or the effect of an action or inaction by a government official on the life of the person confined, the amount of damages owed shall first be paid to satisfy any outstanding restitution orders pending against the person, whether as the result of court proceedings or facility disciplinary proceedings. After full payment of all pending restitution orders, the remainder of the damages award shall be forwarded to the person.
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