



Citizens in Chains:

The High Cost of Prisoner Lawsuits to California Taxpayers

A Report from Citizens Against Lawsuit Abuse
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Introduction

A criminal's burden to society does not end upon conviction – in many ways that is just the beginning. Few people realize how much money goes into the housing and care of convicted criminals. For instance, California's prison system costs the state nearly \$11 billion to operate, or roughly \$64,700 for each of the system's approximately 170,000 inmates.^{1,2} Clearly, we must provide adequate food, shelter and health care for California's prisoners, as well as training and rehabilitation so they can return to society with the skills and desire to contribute constructively, but these are in no way where prisoners' costs end.

In the midst of one of the worst budget crises in California's history, our prison system has been one of the central issues at play. Already, Federal Receiver J. Clark Kelso has requested \$70 million immediately and \$3.4 billion in the next fiscal year to pay for prison health care facilities if lawmakers do not agree to borrow money to do so.³ While Kelso battles for money, a recent poll found that nearly half of California voters would favor cutting money from prisons and corrections over any other major area of state spending.⁴

It is in the context of the state's budgetary woes that a critical eye should be placed on a great expense to California's prisons: the legal fees it incurs as a result of lawsuits filed by prisoners. These lawsuits are a burden to our prisons and to our courts. While some lawsuits are justified, such as the lawsuits that identified the problems in prisoner health care that led to the installment of Federal Receiver Kelso, myriad other lawsuits delay the process for Californians who are not in prison, but rather awaiting justice from our already clogged court system. Many lawsuits filed by prisoners are minor grievances at best, which—if they have any merit at all—deserve only modest payments far less than the state's cost to process the cases. At worst, these frivolous lawsuits amount to a very expensive taxpayer-funded hobby for prisoners while they await parole.

Some highlights, or lowlights as the case may be, of prisoner-initiated lawsuits in California include:

- In 2005, an inmate sued employees of Corcoran State Prison for issuing a “blanket ban on incoming catalogs” as well as denying him access to “For Him Magazine,” a men's magazine that frequently features photographs of scantily-clad women. *Martinez v. Velasquez* (US District Court, Eastern District of CA: CIV-F-05-0077) was settled for \$151.

¹ California Department of Corrections and Rehabilitation State Audit Report, June 2008; Governor's Proposed Budget, 2008-2009

(<http://www.ebudget.ca.gov/StateAgencyBudgets/0010/0820/departments.html>)

² California Department of Corrections and Rehabilitation Population Report, June 11, 2008

³ The Sacramento Bee, Capitol Alert, May 29, 2008

⁴ The Sacramento Bee, Capitol Alert, June 10, 2008

- In 2007, Gregory Lynn Norwood, who is serving life without parole for first degree murder and robbery, brought a suit against Folsom State Prison for depriving him of outdoor time during extended lockdown sessions, which resulted from prisoner attacks on staff. Norwood claimed these lockdowns, instituted to ensure the safety of both employees and prisoners, caused him to suffer from stress, anxiety, depression, headaches, and muscle cramps. A federal court jury awarded Norwood \$11 in compensatory damages and \$39,000 in punitive damages.⁵
- In 1992, death row prisoner Randy Kraft sued author Dennis McDougal and Warner Books for publishing a study of his case, claiming it smeared his “good name” and “hurt his prospects for future employment.” Kraft, who was convicted of 16 murders and suspected of committing many others, sought \$62 million in damages. While the lawsuit was dismissed, it cost McDougal and Warner some \$50,000 in legal fees, not to mention the cost incurred by state courts to process the suit.⁶

California’s prison system is far from perfect, but as long as the filing of lawsuits with little to no merit is allowed, money, time and attention will continue to be diverted from the meaningful reforms we need.

⁵ Denny Walsh, “Inmate wins federal case; Jury directs Folsom staffers to pay \$39,000 in punitive damages,” Sacramento Bee (November 11, 2007).

⁶[TruTV Crime Library](#)

Project Methodology

Inmate-initiated civil litigation from the last six budget years (2002-03 through 2007-08) was examined to determine its burden on California's budget. Only civil lawsuits brought by inmates incarcerated in California state prisons were examined, not cases involving Writs of Habeas Corpus, which pertain to issues of innocence and guilt. The California Department of Corrections and Rehabilitation (CDCR) and the Department of Justice (DOJ) are the primary state agencies that handle inmate litigation.

Departmental budgets revealed three of the major costs associated with inmate-initiated civil litigation. First, these cases require staff within CDCR and DOJ solely devoted to handling prisoner-initiated lawsuits. In fact, CDCR created an entirely new unit to handle these cases. Secondly, there are costs associated with obtaining outside legal counsel to defend some cases in court. Third, the state must pay any resulting settlements and judgments. However, there are costs that could not be discerned from budget documents and, therefore, are not included in calculations of the fiscal impact of prisoner litigation. Those costs include filing fees and other court-related costs (as prisoner plaintiffs are "paupers" and do not have to pay their own costs), in addition to the salaries of the litigation coordinators at each of California's more than 30 prisons who deal with these lawsuits.

In order to obtain the data needed to calculate the annual fiscal impact of inmate-initiated civil lawsuits, a series of requests made under the California Public Records Act (Govt. Code. §§ 6250 - 6276.48) were submitted to DOJ and CDCR. The first request asked for settlements and judgments for prisoner-related lawsuits on a year-by-year basis, as well as any costs incurred by the departments for retaining external legal counsel to handle these cases. The second request asked for both DOJ and CDCR budget data that was relevant to inmate litigation, in particular Budget Change Proposals and Section 28 / 28.50 documents. These documents were filed mid-year in instances when DOJ and CDCR required additional funding to manage the volume of inmate litigation. A third request asked CDCR for copies of case materials pertaining to some of the specific civil lawsuits filed by inmates.

Findings

On average, prisoners file more than two lawsuits every business day, costing the state more than \$191 million over the past six years.^{7, 8} This continuous onslaught of lawsuits led CDCR to file a Budget Change Proposal in 2002-03, requesting the creation of two new units within the department to specifically address the rapid increase in litigation costs from inmate-initiated civil suits.

As a result, the Liability Response Unit (LRU) was formed, in addition to the Major Litigation Unit, which handles class action cases brought by prisoners. The primary duty of the LRU is to gauge when to settle a case out of court and avoid the excess costs that are often associated with a trial. The Budget Change Proposal discusses the magnitude of inmate-initiated civil litigation brought against the state each year as well as the millions paid out every year in settlements and judgments to inmates. In this proposal, the CDCR stated, “There are presently an estimated 2,400 inmate-related lawsuits pending against the CDCR and its employees. Significant resources are required to defend this incredibly high volume of litigation.”⁹ Consequently, the total budget for the Correctional Law Section has increased 63 percent from 2002-03 to the proposed figures for 2008-09. The number of departmental personnel has increased more than 20 percent and salary expenditures for the section rose 45 percent during this same time period (See Table A in the Appendix for more information).

Cost to State Resulting from Inmate-Initiated Civil Litigation (In millions)

Budget Year	DOJ CLU Budget	CDCR LRU/CLU Salaries	Outside Legal Counsel**	Adult Settlements / Judgments	Total
2002-03	\$12.9	\$1.7	\$0.2	\$12.0	\$26.8
2003-04	\$14.0	\$2.7	\$0.3	\$10.2	\$27.2
2004-05	\$14.6	\$1.9	\$0.4	\$13.6	\$30.5
2005-06	\$16.0	\$4.2	\$16	\$15.9	\$37.7
2006-07	\$20.2	\$3.5	\$2.1	\$12.3	\$38.1
2007-08*	\$18.1	\$2.1	\$1.0	\$9.7	\$30.9
Total	\$95.8	\$16.1	\$5.6	\$73.7	\$191.2

*Note: 2007-08 is a partial year

**Note: Outside Legal Counsel reflects costs to CDCR only

In addition to the staffing costs, prisoner-initiated lawsuits also come with hefty bills for outside counsel. Since 2002-03, more than \$5.6 million has been spent on

⁷ CDCR, Office of Legal Affairs letter, dated March 12, 2008 and DOJ letter, dated March 12, 2008, detailing nearly 4,000 recorded lawsuits by CDCR and nearly 5,300 by DOJ.

⁸ This cost does not include administrative costs or litigation coordinators at prisons, as discussed in the methodology.

⁹ CDCR, Budget Change Proposal, 2002-03.

outside counsel needed to fight or settle these lawsuits by CDCR alone. DOJ stated that it did not track these costs (See Table B in the Appendix for more details).

The last of the three main costs associated with prisoner litigation is the most unpredictable: verdicts and settlements. Since 2000, the state has paid adult prisoners more than \$89 million in verdicts and settlements. Although there is a negligible difference between the number of lawsuits that were settled and those that resulted in judgments – 356 settlements and 326 judgments – the cost to the state from cases that went to trial is nearly three times higher: \$66 million for judgments compared to \$23 million for settlements (See Table C, D, E and F in the Appendix for a more details).

Discussion

Given the budget cuts that all of California's departments are facing this year, the \$32 million spent on average each year for prisoner-initiated litigation could certainly be reappropriated for programs more in line with taxpayers' interests. For example:

- CDCR and DOJ could pay for the care and feeding of nearly 500 prisoners;¹⁰
- The Department of Public Health has proposed reducing funding for AIDS programs by \$11 million. Programs that will receive less funding include AIDS Education and Prevention, AIDS Epidemiology and Surveillance, AIDS Drug Assistance, and HIV Counseling and Testing;¹¹
- The Governor has proposed cutting \$18.7 million and 115 positions from the California Department of Veterans Affairs Veterans Homes. The funding reductions will cause delays in opening much-needed new facilities and programs across the state;¹²
- The proposed budget-balancing cuts include a \$15 million reduction in the Senior Citizens' Renters' Tax Assistance Tax Relief Program. The reduction would result in a 10 percent decrease in assistance to low-income seniors that benefit from this program;¹³
- The Citizen's Option for Public Safety/Juvenile Justice Crime Prevention Act Program will likely see a \$23.8 million reduction in local government financing from the state. This would reduce discretionary funding granted to law enforcement agencies by 10 percent;¹⁴
- California public schools are also facing funding cuts, such as a \$59.6 million reduction for Before and After School Programs, as well as a \$14.2 million reduction in Child Nutrition Programs;¹⁵ and
- The Governor's 2008-09 proposed and revised budgets proposed a new surcharge on homeowners' and business property insurance policies in order to increase funding for fire protection. A large portion of this money, \$28.9

¹⁰ Based on the cost estimate per prisoner highlighted above

¹¹ Governor's Proposed Budget for 2008-09, Proposed budget reductions for Health & Human Services, <http://www.ebudget.ca.gov/BudgetSummary/HHS/32266019.html>

¹² Governor's Proposed Budget for 2008-09, Proposed budget reductions for General Government, <http://www.ebudget.ca.gov/BudgetSummary/GEN/31649122.html>

¹³ Ibid

¹⁴ Ibid

¹⁵ Governor's Proposed Budget for 2008-09, Proposed budget reductions for K through 12 Education, <http://www.ebudget.ca.gov/BudgetSummary/K12/32269077.html>

million, would go to hiring 1,100 seasonal firefighters to staff all 336 state fire engines with full four member crews during peak fire season.¹⁶

While there is no way to eliminate the state's spending on litigation, as some lawsuits have merit and should proceed through the civil justice system, even small reductions in expenditures could help ease some of our budget woes. CDCR is taking a proactive approach to cut litigation costs and curb runaway spending on judgments. However, one agency alone cannot change a system that encourages prisoners to continue to victimize California's citizens by diverting their tax dollars from critical programs and services.

Each year, common sense reforms are brought before the Legislature and each year they are rejected when the personal injury bar calls in the favors they purchase from legislators through their campaign contributions. This past year, Assembly Bill 1891, which would have allowed courts to carve frivolous claims out of a lawsuit while allowing the portions of a suit with merit to continue, failed to pass out of committee. This bill also would have given judges the authority to order payment of attorney's fees for frivolous or delaying tactics. Senate Bill 423, which would have capped punitive damages awards at three times compensatory damages, suffered the same fate.

These bills would have had an immediate impact on the prison system. If frivolous claims in otherwise merited lawsuits were eliminated, the state would not be forced to spend taxpayer dollars defending ridiculous claims, while prisoners still would be guaranteed their day in court. Likewise, a cap on punitive damages would discourage prisoners from pursuing cases when little actual damage occurred in hopes of a runaway judgment by juries.

Given the enormity of our state's budget crisis, taxpayers should not be put in the position of paying millions of dollars each year to deal with these often ridiculous lawsuits. We call on our Legislature to pass common sense reforms to prevent convicted felons from further victimizing California's taxpayers.

¹⁶ Governor's Budget May Revise 2008-09, pp 20-21

Appendix

Table A: Staff Positions Devoted to Handling Inmate Lawsuits

Budget Year	DOJ	CDCR	Total
2002-03	84.9	21.8	106.7
2003-04	88.7	21	109.7
2004-05	86.2	23.6	109.8
2005-06	92.3	49.6	141.9
2006-07	108.8	45	153.8
2007-08 (est.)	102.3	33	135.3
2008-09 (prop.)	102.3	33	135.3

Table B: Cost of Outside Counsel to CDCR (in millions)

Budget Year	Outside Counsel
2002-03	\$0.2
2003-04	\$0.3
2004-05	\$0.4
2005-06	\$1.6
2006-07	\$2.1
2007-08*	\$1.0
Total	\$5.6

Table C: Adult Inmate Lawsuits Aggregate Settlements, by CDCR Program Code (in millions)

Budget Year	Institu-tions	Health Care	Education	Parole	Admin-instrative	Total
2000-01	\$0.6	\$1.9	\$0.0	\$0.0	\$0.0	\$2.4
2001-02	\$0.9	\$0.5	\$0.0	\$0.0	\$0.0	\$1.4
2002-03	\$3.2	\$0.5	\$0.0	\$0.0	\$0.0	\$3.8
2003-04	\$2.3	\$1.1	\$0.0	\$0.0	\$0.0	\$3.5
2004-05	\$1.3	\$1.0	\$0.0	\$0.3	\$0.0	\$2.7
2005-06	\$2.0	\$2.9	\$0.0	\$0.0	\$0.0	\$4.9
2006-07	\$1.1	\$0.0	\$0.0	\$0.0	\$0.0	\$1.2
2007-08*	\$3.0	\$0.3	\$0.0	\$0.0	\$0.0	\$3.3
Total	\$14.6	\$8.2	\$0.0	\$0.4	\$0.0	\$23.3

Table D: Adult Inmate Lawsuit Aggregate Judgments, by CDCR Program Code (in millions)

Budget Year	Institutions	Health Care	Education	Parole	Administrative	Total
2000-01	\$1.6	\$2.6	\$0.0	\$0.0	\$0.0	\$4.2
2001-02	\$3.8	\$4.1	\$0.0	\$0.0	\$0.0	\$7.9
2002-03	\$3.2	\$4.9	\$0.0	\$0.0	\$0.0	\$8.1
2003-04	\$3.4	\$3.3	\$0.0	\$0.0	\$0.0	\$6.6
2004-05	\$4.4	\$4.9	\$0.0	\$1.6	\$0.0	\$10.9
2005-06	\$3.6	\$6.6	\$0.0	\$0.8	\$0.0	\$11.0
2006-07	\$2.9	\$6.5	\$0.0	\$1.6	\$0.0	\$11.1
2007-08*	\$2.8	\$3.0	\$0.0	\$0.6	\$0.0	\$6.4
Total	\$25.7	\$35.8	\$0.0	\$4.6	\$0.0	\$66.2

Table E: Cost of Settlements and Judgments for Adult Inmates (in millions)

Budget Year	Settlements	Judgments	Total
2000-01	\$2.4	\$4.2	\$6.6
2001-02	\$1.4	\$7.9	\$9.3
2002-03	\$3.8	\$8.1	\$11.9
2003-04	\$3.5	\$6.6	\$10.2
2004-05	\$2.7	\$10.9	\$13.6
2005-06	\$4.9	\$11.0	\$15.9
2006-07	\$1.2	\$11.1	\$12.3
2007-08*	\$3.3	\$6.4	\$9.7
Total	\$23.3	\$66.2	\$89.5

Table F: Number of Payments Made to Inmates by the State

Budget Year	Settlements	Judgments	Total
2000-01	42	32	74
2001-02	37	39	76
2002-03	38	34	72
2003-04	45	47	92
2004-05	58	71	129
2005-06	70	42	112
2006-07	23	42	65
2007-08*	43	19	62
Total	356	326	682