Tense Times: The Past, Present and Future of Prisoner Reimbursement

By Daniel M. Levy

All of us know that a criminal defendant in a felony trial runs the risk of incurring a prison sentence. Most of us have some understanding of what a prison sentence entails. Many of us even contemplate the cost of a prison stay to the taxpayers. Even so, few of us are aware that Michigan has a statute that requires an inmate to reimburse the taxpayers for the expense of his or her incarceration.

Michigan’s prison reimbursement statute, the State Correctional Facilities Reimbursement Act (SCFRA),1 is based upon a relatively straightforward principle: Michigan taxpayers pay the room and board expenses of all prison inmates; where an inmate can afford to pay all or part of the expenses, the Legislature has determined that they should be required to do so. Recent efforts by the state have caused a steady increase in collections under the Act, from $181,000 in fiscal year 1990-91 to $786,500 in 1996-97.

The statute limits recovery to no more than the actual costs of the individual inmate’s incarceration.2 Exemptions include a $50,000 homestead,3 any funds earned by the inmate as prison wages or bonuses,4 and 10 percent of the inmate’s total assets.5 Incarceration expenses are determined by the Department of Treasury6 and may include projected expenses.7 The established procedure used by the Department is to add up all the expenses incurred by a specific prison for the year and divide by the number of inmate days served within the institution during that period.8 These per diem figures are then applied based upon the number of days that the inmate in question has served, or is projected to serve, at given institutions.9 The Department’s determination is prima facie evidence of the amount due.10

THE PAST

SCFRA is not a new statute. It originated in 1935;11 however, it was not extensively utilized until the early 1980s. (The concept of prisoner reimbursement goes back much further. The common law in the Middle Ages provided that the property of a person convicted of a felony was forfeited to the government. However, in practice these laws were less about reimbursement than profit. Immense revenue was raised by the English kings because, in those times, the punishment for most felonies was execution. After the hangman did his work, there was no further expense to the state.) SCFRA was significantly amended in 198412 to what is largely its present form. Early litigation under the statute concerned primarily two issues, the constitutionality of the Act and the 10 percent rule.

The first challenges to the Act were to its constitutionality. In Auditor General vs. Hall,13 the court rejected the inmate’s claim that the statute violated the constitutional privilege against double jeopardy. The appellate court reversed the trial court’s finding that the Act was penal, holding that: “We regard the statutory obligation of a prisoner to pay for his keep and maintenance, if he has a sufficient estate, as civil rather than criminal in character.”14

The court went on to examine the question of whether it was an equal protection violation to impose a reimbursement obligation upon an inmate with assets while another with the same criminal classification but no assets, had no such obligation. The court found that no equal protection violation exists as the reimbursement amount was a matter properly left to judicial discretion.15

It is interesting that the Hall court felt obligated to opine that “It is not our province to discuss the wisdom of the Act, its effect on the morale of the prisoners and their rehabilitation, or other questions that might be raised. These are questions solely for the Legislature.”16 A fact in the Hall opinion is the determination that “the cost of a prisoner’s keep varied from $1.03 to $1.118 a day.”17

A divided Michigan Supreme Court in State Treasurer v. Wilson18 found that, while
SCFRA only named the three penal institutions in existence when the Act was passed in 1935, this did not prevent its application relative to inmates of prisons later constructed. (This discrepancy had already been eliminated by the 1984 amendments to SCFRA). The Court, however, remanded the case for examination of a vagueness claim which the Court of Appeals rejected, finding that "When read as a whole the statutory provisions are extremely clear."19

Another early challenge to SCFRA concerned the state's ability to seek reimbursement from an inmate's accumulated social security disability payments. In State Treasurer v Brown20 the court found that, under Michigan law, such a suit was proper. This opinion was overruled shortly thereafter by Bennett v Arkansas21 in which the U.S. Supreme Court found that, under the Supremacy Clause, the states were bound by the very narrow language of the Social Security Act forbidding the application of any legal process to benefits "paid or payable."22

The Court did not stop with Social Security payments. It also found that the statutory language protecting veterans benefits, which prevents "any legal or equitable process whatever, either before or after receipt by the beneficiary,"23 barred any state claim to such funds. Bennett should be seen as a bar to any SCFRA claim to funds derived from a federally protected source which has particular language extending the protection to funds "after receipt by the beneficiary."

The most substantial challenge to SCFRA was the one brought by the inmate in State Treasurer v Cuellar.24 SCFRA provides that "If the attorney general has good cause to believe that a prisoner has sufficient assets to recover not less than 10 percent of the estimated cost of care of the prisoner or 10 percent of the estimated cost of care of the prisoner for 2 years, whichever is less, the attorney general shall seek to secure reimbursement."25

Mr. Cuellar argued that this language imposed a requirement that the state prove it's ability to recover 10 percent of the costs of care before suit could be brought under SCFRA. The court rejected his claim, finding that the language imposed a statutory duty upon the attorney general to bring suit in such instances, but that the attorney general also has discretion to seek reimbursement in any case that does not meet this threshold.26

This also prevents a situation in which an inmate who is placed into a more secure (and therefore more costly) facility due to his or her violent nature, could as a result, claim an exemption from suit as his or her assets, while 10 percent of costs at a minimum security institution, are not 10 percent of costs at the maximum security prison.

An inmate facing a SCFRA suit, or an attorney representing a client so situated, should always consider whether there are others, besides the inmate, who are dependent upon the assets at issue.
dependent upon the assets at issue. SCFRA provides that "the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support." State Treasurer v Downer provides that where there is a dispute regarding the nature of these obligations, the trial court is required to hold an evidentiary hearing.28

Downer should not, however, be seen as creating any right on behalf of the inmate to decide to whom the assets should go. It remains a judicial determination. Further, the court in State Treasurer v Sheko specifically rejected the claim that an inmate retains any common-law right to prefer creditors.

THE PRESENT

At the time of this writing, there are four cases at various stages of litigation, which involve significant issues regarding the application of SCFRA. Three of these cases involve pensions. In Roberts v Baugh,30 the inmate receives a pension as a Chrysler retiree. In Roberts v Ebright,31 he receives a disability pension. In both cases, the pensions are protected under federal law by the Employee Retirement Income Security Act (ERISA). ERISA provides for the nondiscrimination and nonassignability of pensions. The state of Michigan has argued that this protection is designed to require that the pension actually go to the pension recipient. As such, argues the state, ERISA should not be seen to prevent a court from making a judicial determination that the pension recipient resides within the Michigan Department of Corrections and that pension checks should be so directed.

The state further argues that once pension funds reach the pension recipient, and are deposited into the pension recipient's personal account, ERISA ceases to apply. Needless to say, the defendants in these cases disagree, claiming that ERISA prohibits a court from requiring that pension funds be sent to the pension recipient's current address and allows pension recipients to direct the payment in any manner that they wish (something the state would characterize as an assignment). Decisions in these two cases are anticipated shortly, and may in fact predominate publication of this article.

State Treasurer v Schuster also involves a pension, but as the inmate was a public school employee, the pension is governed by the nonassignation language found in Michigan's Public Schools Employee's Retirement Act.34 As such, in addition to the above arguments, the state also claims that, to the extent the two Michigan statutes are in conflict, SCFRA is the more specific and thus controls. The Michigan Supreme Court heard oral arguments in Schuster on October 9, 1997, and a decision is expected later this term.

In Roberts v Gardner,35 a divided panel of the Court of Appeals held that the state's claim to funds derived from the inmate's disability pension was governed by the federal Consumer Credit Protection Act (CCPA).36 The state has filed a timely application for leave to appeal with the Michigan Supreme Court. The state points out that the CCPA contemplates mutually agreed extensions of consumer credit, and it is not relevant to the state's request for reimbursement brought on by involuntary incarceration. This matter is further complicated by the recent death of Mr. Gardner and a subsequent request by Prison Legal Services of Michigan that the application for leave therefore be dismissed. A decision on the application is expected later this term.

THE FUTURE

The future of SCFRA is somewhat uncertain. As the state's efforts to collect have become more aggressive, inmates have become increasingly effective in dispossessing, or hiding assets before their incarceration. (The ethics of an attorney assisting in this regard is an interesting question, left for another day and another author.) The assets most difficult to successfully keep from the state's attention are those pension benefits at issue in the Ebright, Baugh and Schuster appeals. Should the state be unable to seek reimbursement from these funds, the amounts annually collected as reimbursement will be greatly reduced.

Further, if the Gardner opinion is extended rather than reversed, reimbursement totals will be cut by a third. In any event, it is clear that the effort to seek prison reimbursement is one that has the full support of Attorney General Frank J. Kelley, the state Legislature and the Michigan taxpayers. Thus, in one form or another, prison reimbursement is bound to remain a topic on which persons practicing criminal or corrections law should want to stay informed.

ADDENDUM

After this article was typeset, the Federal District Court issued its opinion in Baugh.37 The court held that a court cannot order the pension source to redirect a recipient's 36 funds. It does not address the question of whether the recipient can be ordered to cause the funds to be redirected, nor does it indicate what a court might be permitted to do to enforce such an order should the recipient refuse to comply.

On January 21, 1998 the Michigan Supreme Court issued an opinion reversing the Court of Appeals in State Treasurer v Schuster. The Court found that "the reimbursement act has priority over the pension act in that the nonassignment provision does not insulate a public school employee's pension from the reimbursement provision."
COLLECTIONS PURSUANT TO THE
STATE CORRECTIONAL FACILITIES
REIMBURSEMENT ACT
By Fiscal Year (10/1-9/30)

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Footnotes
1. MCL 800.401 et seq.; MSA 28.1701 et seq.
2. MCL 800.404(4); MSA 28.1704(4).
3. MCL 800.401a(a)(i); MSA 28.1701(a)(i).
4. MCL 800.401a(a)(ii); MSA 28.1701(a)(ii).
5. MCL 800.403(3); MSA 28.1703(3).
6. MCL 800.406(2); MSA 28.1708(2).
7. MCL 800.404(1); MSA 28.1704(1).
8. Sworn affidavits filed by David Vellel (administerator of the Office of Fiscal Management of the Michigan Department of Corrections) in a number of circuit court cases.
9. Id.
10. MCL 800.406(2); MSA 28.1708(2).
14. Id. at 221.
15. Id. at 223.
16. Id. at 220.
17. Id. at 218.
22. Id. at 485 US 396; citing 42 USC 407(a).
23. Id. at 485 US 396-7; citing 38 USC 3101(a).
25. MCL 800.403(2); MSA 28.1703(2).
27. MCL 800.404(3); MSA 28.1704(3).
31. U.S. District Court, Eastern District of Michigan, file No. 97-10069-BC.
32. 28 USC 1001, et seq.
33. Michigan Supreme Court No. 103686.
34. MCL 38.1301 et seq., MSA 15.893(111) et seq.
36. 15 USC 1671 et seq.

ACROSS
1. Justice's classic symbol.
7. Symbol of judicial authority (plural).
13. Poetic.
14. Combines clypeus with the blues.
15. Guildor (Abbr.).
17. Northwest zip code.
18. Debt symbol.
20. Book parts (Abbr.).
22. Extraordinary relief (Abbr).
23. Fellow of the American Academy of Arts and Sciences (Abbr).
26. Lawyer accompaniment suggesting a draw.
28. Congratulations to its young Midwestern law school.
29. Bachelor of Laws (Abbr).
30. Not detected (Environmental law acronym).
31. Lawyer symbol.
32. Latin for "incidentally" (Abbr).
33. Indefinite article.
34. For our information (Abbr).
35. Required ornamentation for English barristers.
36. Facade.
37. Contracted.
38. Male.
39. Weighty symbol.
48. Excluded.
50. Minnesota Multiphasic Personality Inventory (Abbr).
51. Included within the borders.
52. Astronomical (Abbr).
55. Pharmaceutical abbreviation for salt.
56. The pentagram is one of its many symbols.
58. Traveling in a circular motion.
60. Affirmative icon.
61. The quintessential symbol of the lemon (plural).

DOWN
1. Official seal for contracts.
2. Combining form meaning "best.
3. Amendment (Abbr).
4. Bachelor of Literature (Abbr).
7. Always greener somewhere else.
8. Early form of bronze money.
9. Type of computer monitor.
10. For example (Abbr).
11. Symbol of the Old West.
12. Affixed with a symbolic emblem.
14. Prefix meaning by assimilation.
20. Trial lawyers' stock in trade.
24. International symbol of political buffoonery.
25. Saint Lawrence Seaway Development Corporation (Abbr).
27. Brits who played one of The 12 Angry Men (Abbr).
29. Jail inhabited's only token of hope.
33. Goes with 26 Across.
34. Opposite directions (Abbr).
35. A legal right of election.
36. Slow speed chase symbol.
40. Confer with the opposing party in a lawsuit, to attempt settlement.
41. Cooks.
43. Up and running.
44. Very enthusiastic or infatuated.
45. Trademark (Abbr).
50. Master of Science in Industrial Engineering (Abbr).
52. American Utopian Association (Abbr).
54. Symbol of advanced legal education.
58. Account executive (Abbr).

Answers on page 233