

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 on society does not end upon conviction – in many ways it is just beginning. Very 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.¹² While it is clear that 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, these are in no way where prisoner's costs end.

In the midst of one of the worst budget crises in California's history, our prison system has been among 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 it.³ While Kelso battles for money, a recent poll found that nearly half of 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, a myriad of 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, which are far less than the state's cost to process the cases. At worst, these frivolous lawsuits often amount to a very expensive taxpayer-funded hobby for prisoners while they await parole.

Some highlights, or lowlights, of abuses of litigation amongst 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.
- 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

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

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 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 lawsuits such as these are allowed to be filed, money, time and attention will continue to be diverted from the meaningful reforms we need to processing, and sometimes even settling, cases completely without merit.

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

⁶ http://www.crimelibrary.com/serial_killers/predators/kraft/10.html

Project Methodology

Inmate-initiated civil litigation from the last six fiscal years – from Fiscal Year (FY) 2002/03 to FY 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 CDCR and the DOJ are the primary state government departments that handle inmate litigation.

Departmental budgets revealed that there are three 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 the cases in court. Third, the state must pay any resulting settlements and judgments.

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 deal with these cases. The second request asked for budget data for both DOJ and CDCR that was relevant to inmate litigation, in particular Budget Change Proposals and Section 28 / 28.50 documents. These documents would be filed mid-year in the case that DOJ and CDCR required additional funding to handle 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 fiscal years.⁷ This continuous onslaught of lawsuits led the CDCR to file a Budget Change Proposal in FY 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.

From this, 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 often come 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 CDC and its employees. Significant resources are required to defend this incredibly high volume of litigation.”⁸ Consequently, the total budget for the Correctional Law Section has increased 63 percent from FY 2002/03 to the proposed figures for FY 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 F in the Appendix for more information).

Total Cost to State Resulting from Inmate-Initiated Civil Litigation

FY	DOJ CLU Budget	CDCR LRU/CLU Salaries	Outside Legal Counsel**	Adult Settlements / Judgments	Total
2002-03	\$12,889,000.00	\$1,722,942.00	\$177,921.76	\$11,932,164.25	\$26,722,028.01
2003-04	\$13,979,000.00	\$2,722,384.00	\$312,449.21	\$10,173,700.67	\$27,187,533.88
2004-05	\$14,610,000.00	\$1,916,347.00	\$444,538.84	\$13,594,728.97	\$30,565,614.81
2005-06	\$16,033,000.00	\$4,237,396.00	\$1,582,644.99	\$15,871,804.61	\$37,724,845.60
2006-07	\$20,210,000.00	\$3,454,641.00	\$2,050,040.18	\$12,269,507.00	\$37,984,188.18
2007-08*	\$18,091,000.00	\$2,083,337.00	\$1,041,366.71	\$9,721,734.83	\$30,937,438.54
Totals:	\$95,812,000.00	\$16,137,047.00	\$5,608,961.69	\$73,563,640.33	\$191,121,649.02

**Note: FY 2007-08 is a partial year*

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

In addition to the staffing costs, prisoner-initiated lawsuits also come with hefty bills for outside counsel. Since FY 2002/03, more than \$5.6 million has been spent on outside counsel needed to fight or settle these lawsuits by the CDCR alone. DOJ stated that it did not track these costs (See Table A in the Appendix for more details).

⁷ CDCR, Office of Legal Affairs letter, dated 3-12-2008 and DOJ letter, dated 3-12-2008, detailing nearly 4,000 recorded lawsuits by CDCR and nearly 5,300 by DOJ.

⁸ CDCR, Budget Change Proposal, FY 2002/03

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 not a large discrepancy between the number of lawsuits that were settled and those that resulted in judgments – 356 were settled between FY 2000/01 and thus far in FY 2007/08, compared to 326 judgments during the same time period – 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 B, C, D and E in the Appendix for a more details.) Combining the total cost of adult offenders from 2000 to present, the state has paid \$89,473,966.75 in settlements and judgments to adult prisoners since 2000.

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:

- 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;⁹
- The Governor has proposed cutting \$18.7 million and 115 positions from California Department of Veterans Affairs Veterans Homes. The funding reductions will cause delays in opening much needed new facilities and programs across the state;¹⁰
- 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% reduction in assistance to low-income seniors that benefits from this program;¹¹
- The Citizens 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%;¹²
- 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;¹³ and
- The Governor's Budget and his May Revise Budget 2008-09 proposed a new surcharge on homeowners' and business property insurance policies in order increase funding for fire protection. A large portion of this money, \$28.9 million, would go to hire 1,100 seasonal firefighters to staff all 336 state fire engines with full four member crews during peak fire season.¹⁴

⁹ Governor's Proposed Budget for FY2008-09, Proposed budget reductions for Health & Human Services, [Hhttp://www.ebudget.ca.gov/BudgetSummary/HHS/32266019.html](http://www.ebudget.ca.gov/BudgetSummary/HHS/32266019.html)

¹⁰ Governor's Proposed Budget for FY2008-09, Proposed budget reductions for General Government, <http://www.ebudget.ca.gov/BudgetSummary/GEN/31649122.html>

¹¹ *Ibid*

¹² *Ibid*

¹³ Governor's Proposed Budget for FY2008-09, Proposed budget reductions for K through 12 Education, <http://www.ebudget.ca.gov/BudgetSummary/K12/32269077.html>

¹⁴ Governor's Budget May Revise 2008-09, pp 20-21

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. The 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 continue, failed to pass out of committee. This bill also would have given judges the authority both 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 portions of lawsuits with merit were eliminated, many prisoner-initiated lawsuits would shrink or be altogether eliminated through the vetting of frivolous claims and the threat of sanctions. Likewise, with a cap on punitive damages, the aforementioned lawsuit never would have resulted in \$39,000 in punitive damages on an \$11 award. With many cases brought by prisoners seeking little money in actual damages, this would help control runaway judgments 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.

Appendix

Table A

Outside Counsel Cost to CDCR

Fiscal Year	Amount
2002-03	\$177,921.76
2003-04	\$312,449.21
2004-05	\$444,538.84
2005-06	\$1,582,644.99
2006-07	\$2,050,040.18
2007-08*	\$1,041,366.71
Total:	\$5,608,961.69

Table B

Adult Inmate Lawsuit Aggregate Settlements by Year – Broken down by CDCR “Program Code”

FY	Institutions (25)	Health Care (50)	Edu. (45)	Parole (30)	Admin. (10)	Total
2000-01	\$561,422.70	\$1,868,037.89	\$0.00	\$15,000.00	\$0.00	\$2,444,460.59
2001-02	\$868,248.00	\$512,149.00	\$0.00	\$40,330.00	\$0.00	\$1,420,727.00
2002-03	\$3,234,172.00	\$507,650.00	\$0.00	\$52,500.00	\$0.00	\$3,794,322.00
2003-04	\$2,429,566.67	\$1,111,887.03	\$0.00	\$0.00	\$0.00	\$3,541,453.70
2004-05	\$1,303,578.30	\$1,000,927.76	\$0.00	\$332,901.61	\$50,000.00	\$2,687,407.67
2005-06	\$2,009,474.71	\$2,888,255.57	\$0.00	\$5,000.00	\$0.00	\$4,902,730.28
2006-07	\$1,131,560.00	\$56,146.39	\$0.00	\$0.00	\$0.00	\$1,187,706.39
2007-08*	\$3,043,117.96	\$281,900.00	\$0.00	\$0.00	\$0.00	\$3,325,017.96
Total:	\$14,581,140.34	\$8,226,953.64	\$0.00	\$445,731.61	\$50,000.00	\$23,303,825.59

Table C

Adult Inmate Lawsuit Aggregate Judgments by Year – Broken down by CDCR “Program Code”

Department						
FY	Institutions (25)	Health Care (50)	Edu. (45)	Parole (30)	Admin. (10)	Total
2000-01	\$1,601,918.39	\$2,576,018.99	\$0.00	\$0.00	\$0.00	\$4,177,937.38
2001-02	\$3,761,439.08	\$4,105,762.37	\$0.00	\$0.00	\$0.00	\$7,867,201.45
2002-03	\$3,201,996.16	\$4,935,846.09	\$0.00	\$0.00	\$0.00	\$8,137,842.25
2003-04	\$3,358,573.34	\$3,271,787.51	\$0.00	\$1,886.12	\$0.00	\$6,632,246.97
2004-05	\$4,411,690.56	\$4,869,380.46	\$0.00	\$1,576,250.28	\$50,000.00	\$10,907,321.30
2005-06	\$3,567,490.34	\$6,570,146.76	\$0.00	\$831,437.23	\$0.00	\$10,969,074.33
2006-07	\$2,943,709.63	\$6,498,643.21	\$0.00	\$1,639,447.77	\$0.00	\$11,081,800.61
2007-08*	\$2,833,514.20	\$3,012,983.76	\$0.00	\$550,218.91	\$0.00	\$6,396,716.87
Total:	\$25,680,331.70	\$35,840,569.15	\$0.00	\$4,599,240.31	\$50,000.00	\$66,170,141.16

*Note: FY 2007-08 is a partial year

Table D**Cost of Settlements and Judgments for Adult Inmates:**

FY	Adult Inmate Settlements	Adult Inmate Judgments	Adult Inmate Total
2000-01	\$2,444,460.59	\$4,177,937.38	\$6,622,397.97
2001-02	\$1,420,727.00	\$7,867,201.45	\$9,287,928.45
2002-03	\$3,794,322.00	\$8,137,842.25	\$11,932,164.25
2003-04	\$3,541,453.70	\$6,632,246.97	\$10,173,700.67
2004-05	\$2,687,407.67	\$10,907,321.30	\$13,594,728.97
2005-06	\$4,902,730.28	\$10,969,074.33	\$15,871,804.61
2006-07	\$1,187,706.39	\$11,081,800.61	\$12,269,507.00
2007-08*	\$3,325,017.96	\$6,396,716.87	\$9,721,734.83
Totals:	\$23,303,825.59	\$66,170,141.16	\$89,473,966.75

**Note: FY 2007-08 is a partial year*

Table E**Number of Payments Made by the State**

FY	Adult Settlements	Adult Judgments	Grand 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

Table F**Staff Positions Devoted to Handling Inmate Litigation:**

Fiscal Year	# of DOJ Personnel	# of CDCR Personnel	Total # of Personnel
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

**Note: FY 2007-08 is a partial year*