

PRISON REIMBURSEMENT STATUTES: THE TREND TOWARD REQUIRING INMATES TO PAY THEIR OWN WAY

TABLE OF CONTENTS

I.	Introduction	326
II.	Various Approaches to Prison Reimbursement Statutes	332
	A. Iowa.....	332
	B. Michigan	333
	C. Contributions at the Federal Level.....	335
III.	Statute Application and Forms of Inmate Contribution	337
	A. Scope of Application.....	337
	1. Introduction	337
	2. <i>State v. Van Hoff</i>	337
	3. <i>State Treasurer v. Cuellar</i>	337
	4. <i>State v. Henson</i>	338
	5. <i>State v. Turner</i>	338
	B. Forms of Reimbursement: Assets and Earnings	339
	1. <i>Hogan v. Arizona</i>	339
	2. <i>State v. Turner</i>	341
	3. <i>Burns v. State</i>	342
	C. Forms of Reimbursement: Entitlements	342
	1. Introduction	342
	2. <i>State Treasurer v. Brown</i>	343
	3. <i>Bennett v. Arkansas</i>	343
IV.	Bases of Constitutional Challenges	344
	A. Due Process.....	344
	1. Introduction	344
	2. <i>Ervin v. Blackwell</i>	345
	3. <i>State v. Turner</i>	345
	B. Supremacy Clause.....	346
	1. <i>Bennett v. Arkansas</i>	346
	2. <i>Hankins v. Finnel</i>	347
	C. Ex Post Facto: <i>Peeler v. Heckler</i>	348
V.	Conclusion.....	349

I. INTRODUCTION

As of July 1, 1990, over 1,100,000 incarcerated individuals called federal and state correctional facilities home.¹ Local jails alone housed over 405,000 inmates,² while the federal and state prison systems combined held nearly 739,000 prisoners.³ Of this immense number, over 688,000 were incarcerated in state prisons, which represented 274.3 out of every 100,000 persons in the general population at the time the figures were compiled.⁴ The overall cost of maintaining correctional systems throughout the United States is staggering. When the previously mentioned prison population figures were gathered, federal, state, and local government correctional expenditures surpassed \$19.1 billion annually.⁵ In 1988 the average corrections expenditure per inmate approached \$20,000 per year.⁶

The state, local, and federal correctional population has grown on a yearly basis at an astounding rate—nearly doubling every ten years since 1970;⁷ thus, the costs associated with such prison population growth have increased accordingly.⁸ These continuing cost increases will inevitably alter significant aspects of

1. See U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S., at 197, tables 328-329 (112th ed. 1992). In 1990, 1,144,214 inmates comprised the total jail and prison population throughout the United States. *Id.*

2. *Id.* at table 328. This figure excludes federal and state prisons, institutions exclusively for juveniles, state operated jails in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, and facilities which retain persons for less than 48 hours. *Id.*

3. *Id.* at table 329. This population figure is based on the Bureau of the Census' estimated resident population as of July 1, 1990. *Id.* It includes all persons under the jurisdiction of federal and state authorities, excluding the State of Alaska, rather than those in the custody of such authorities, and represents inmates sentenced to maximum terms of more than one year. *Id.*

4. *Id.*

5. *Id.* at 190, table 310. This figure is based on 1988 public expenditures in the area of federal, state, and local corrections. *Id.* The total is adjusted to exclude duplication from intergovernmental expenditures. *Id.* Of this \$19.1 billion total, expenditures were apportioned among federal, state, and local governments in the following amounts: \$1.22 billion at the federal level, \$12.67 billion at the state level, and \$6.53 billion at the local level. *Id.*

6. *Id.* at 197, table 328-329. Calculation of expenditures per inmate is based on 1988 figures; total number of jail inmates: 343,569; total state and federal prison population: 603,732. *Id.* The state, local, and federal expenditures, as based on 1988 figures, is over 19.1 billion. *Id.* at 190, table 310.

7. See *id.* at 197, table 329. The increases in federal and state prison populations between 1970 and 1990 illustrate this rapid growth increase. *Id.* In 1970, the total state and federal prison population stood at approximately 196,000—accounting for a rate of incarceration of 96.7 out of each 100,000 individuals in the estimated general population. *Id.* By 1980, the prison population figure nearly doubled, reaching 315,974 and a per population incarceration rate of 139.2. The 1990 figures reflect an increase over the 1980 figures of greater than one hundred percent, bringing the total number of state and federal inmates to 738,894 and the per population rate to 294.5. *Id.*

8. See *id.* at 190, table 310. In 1988, total correctional expenditures totaled \$19.1 billion, representing an approximate per inmate expenditure of \$20,000. *Id.* Using this \$20,000 per inmate figure, and the 1970 and 1980 prison population, the total corrections expenditures in 1970 and

the criminal judicial process. For instance, "the added costs of confinement will increase pressure on defense lawyers, who will . . . have to take into account the spiraling costs of imprisonment in making strategic decisions for their clients."⁹

In an effort to effectively address the problem of financing the increasingly expensive care and maintenance of correctional facilities and the convicts they house, many states have enacted laws requiring inmates to reimburse the government for a portion of the costs of their own incarceration.¹⁰ The scope of these statutes is not necessarily limited to prisons or jails; they may also encompass such facilities as state-operated halfway houses and residential treatment centers.¹¹

In addition to outright contribution of pre- or post-incarceration assets, inmates housed in Iowa's correctional facilities may also be required during their sentence to perform "service[s] . . . for the benefit of the institutions."¹² The

1980 would only approach approximately \$3.9 billion and \$6.3 billion respectively. *See id.* at 197, table 329. These figures are based upon 1988 dollars in conjunction with the corresponding 1988 per inmate expenditure. They illustrate the relative growth of expenditures and do not represent actual expenditures for the indicated years.

9. Jonathan Groner, *Judges Begin Making Convicts Pay Prison Costs*, LEGAL TIMES, Jan. 27, 1992, at 6 (quoting Joseph diGenova, former United States Attorney for the District of Columbia).

10. Iowa's statute reads:

When committing a person to a residential treatment center operated by a judicial district department of correctional services, the court shall order the person to surrender to the district department their total earnings less payroll deductions required by law. The court shall establish the person's legal obligations by order and the district department shall deduct from the earnings to satisfy the court order in the following order of priority:

1. An amount the resident may be legally obligated to pay for the support of dependents. . . . For the purpose of this subsection, "legally obligated" means under a court order.

2. An amount determined to be the cost to the judicial district department of correctional services for food, lodging, and other expenses incurred by or on behalf of the resident.

3. Restitution ordered by the court under chapter 910.

4. Any other financial obligations which are admitted to by the resident. . . .

Any balance remaining . . . shall be credited to the resident's personal account . . . and shall be paid to the resident upon release.

IOWA CODE § 905.12 (1993) (emphasis added); see generally George L. Blum, Annotation, *Validity, Construction, and Application of State Statute Requiring Inmate to Reimburse Government for Expense of Incarceration*, 13 A.L.R.5th 872 (1993) for a comprehensive look at a variety of similar statutes and their application to numerous forms of targeted inmate contributions.

11. IOWA CODE § 905.12 (1993).

12. *Id.* § 904.701. The Iowa statute reads in full:

Inmates of the institutions may be required to perform any proper and reasonable service suited to their strength and attainments, for the benefit of the institutions or the welfare of the inmates, either in the institutions proper or in the industries established in connection with them. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution.

institutions' directors then pay the inmates an allowance "when practicable."¹³ Although this allowance closely resembles an employment wage, the Iowa legislature defined the statute as "a gratuitous payment and . . . not a wage arising out of an employment relationship."¹⁴ From the allowance paid to the inmate, the institution "may deduct . . . an amount to pay all or part of the cost of the inmate's incarceration."¹⁵ Thus, through reimbursement laws such as these, many states are actively pursuing an end to the financial woes arising from correctional expenditures.¹⁶

When a convicted criminal is confined and cared for within a state's prison system, he or she becomes, in essence, a dependent of the state—subject to unique correctional facility rules and regulations and the laws of the state or federal government controlling the facility. Prison reimbursement statutes not only provide a tool to compensate the state or federal government for the cost of maintaining convicted criminals, but these statutes also command active inmate participation in the asset forfeiture process.¹⁷

The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, *and in view of the cost attending the maintenance of the inmate*. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

Id. (emphasis added). This type of reimbursement mechanism is quite common. See *infra* note 34 and accompanying text.

13. IOWA CODE § 904.701 (1993).

14. *Id.* (emphasis added).

15. *Id.* § 904.702. The complete text of this code section reads:

If allowances are paid pursuant to section 904.701, *the director may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment*. The amount deducted shall be forwarded to the clerk of the district court or proper official. The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund established in section 904.508. However, if the inmate's deposit in the inmate savings fund is sufficient to pay the amount due the inmate upon discharge, parole, or placement on work release pursuant to section 906.9, and the inmate has voluntarily withdrawn from the savings fund, the director shall not make further deposits from the inmate's allowances into the savings fund unless the inmate chooses to participate in the savings fund. *The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration*. The director may pay all or any part of remaining allowances paid pursuant to section 904.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

Id. (emphasis added).

16. See *infra* note 34.

17. See, e.g., MICH. COMP. LAWS § 800.401 (West Supp. 1994); see also text accompanying notes 52-56.

A number of states use reimbursement statutes similar to the one noted previously to enable the state's prison system to demand inmate contribution for their care and upkeep costs.¹⁸ These contributions take many forms. State and federal entities target, among other things, prison payroll checks,¹⁹ pre-incarceration assets,²⁰ and federal entitlements such as social security benefits.²¹

Not only have several states codified the concept of prison reimbursement, but the United States Sentencing Commission considered the subject at the federal level as well.²² This attention led to the incorporation of mandatory federal correctional facility reimbursement fines under the current federal sentencing policy.²³ The Federal Sentencing Guidelines dictate "the court *shall* impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered."²⁴

All such reimbursement statutes—whether state or federal—present an obvious conflict. One side of the discord involves states' interest in maintaining adequate and humane prison conditions without requiring taxpayers to foot the bill of prison care and maintenance. On the other hand, these statutes raise important constitutional questions: Do such reimbursement laws deprive inmates of property without due process of law?²⁵ Do they conflict with the United States

18. See *infra* note 34.

19. See *Buckley v. Barlow*, 997 F.2d 494, 495-96 (8th Cir. 1993); *Ervin v. Blackwell*, 733 F.2d 1282, 1285-86 (8th Cir. 1984); *Hogan v. Arizona Bd. of Pardons & Parole*, 501 P.2d 944, 946-47 (Ariz. 1972).

20. See generally *Department of Corrections v. Wilson*, 388 N.W.2d 312, 314 (Mich. Ct. App. 1986) (holding statute allowing state to use prisoner's assets to pay for cost of incarceration was not unconstitutionally vague).

21. See *Bennett v. Arkansas*, 485 U.S. 395 (1988) (considering at length an Arkansas reimbursement statute illustrating a broad approach to the forms of prisoner assets subject to forfeiture). In *Bennett* the Court stated:

The estate of a person incarcerated in a penal facility of the Arkansas Department of Correction "may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner." Arkansas Stat. Ann. § 46-1702(b) (Supp. 1985) defines "estate" as "any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever.

Id. at 396, n.1 (citing ARK. CODE ANN. § 46-1702(b) (Michie 1987 & Supp. 1985)); *State Treasurer v. Brown*, 337 N.W.2d 23, 24-25 (Mich. Ct. App. 1983).

22. 18 U.S.C. § 4007 (Supp. V 1993). The Revision Note to § 4007 of the United States Code states: "[T]he United States Sentencing Commission shall study the feasibility of requiring prisoners incarcerated in Federal correctional institutions to pay some or all of the costs incident to the prisoner's confinement . . ." Pub. L. 100-690, § 7301, 102 Stat. 4463 (1988).

23. U.S.S.G. § 5E1.2(i) (1992).

24. *Id.* (emphasis added); see *infra* notes 70-79.

25. "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." U.S. CONST. amend. V; see *Ervin v. Blackwell*, 733 F.2d 1282, 1284-85 (8th Cir. 1984); *State v. Turner*, 312

Constitution's Supremacy Clause?²⁶ Do they surpass states' legislative authority?²⁷ Do they constitute *ex post facto* laws?²⁸

Although such areas of potential constitutional conflict may invite broad, indiscriminate, and confiscatory reimbursement policies, sentencing fines, post-sentencing contributions, and other compensatory schemes, they have yet to be uniformly utilized at the state or federal level.²⁹ One reason for the limited utilization at the federal level is many convicts are too poor to pay such a fine.³⁰ In fact, sixty-five percent of those convicted in fiscal years 1989 to 1990 were unable to pay *any* amount toward a reimbursement fine.³¹ Although the fine is mandatory for defendants who can afford it, many judges were not fully aware of the federal reimbursement fine provision.³² Finally, the federal sentencing rule does not apply to crimes committed on or before November 1, 1987—the effective date for sentencing guidelines imposing mandatory reimbursement contributions.³³ The explanation at the state level lies in the simple fact that many states, for one reason or another, have yet to enact such statutes. Prison reimbursement mechanisms provided for by statute currently exist in only thirty-one states.³⁴

N.W.2d 418, 421 (Mich. Ct. App. 1981); *Flowers v. Smith*, 496 N.Y.S.2d 149, 150-51 (N.Y. App. Div. 1985), *aff'd*, 494 N.E.2d 455 (N.Y. 1986).

26. "Th[e] Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the judges in every state shall be bound thereby." U.S. CONST. art. VI, cl. 2; *see Hankins v. Finnel*, 964 F.2d 853, 859 (8th Cir.), *cert. denied* 113 S. Ct. 635 (1992).

27. *See State Treasurer v. Wilson*, 388 N.W.2d 312, 315 (Mich. Ct. App. 1986) (holding Michigan's reimbursement statute did not constitute unconstitutional delegation of legislative authority to the courts).

28. *See Peeler v. Heckler*, 781 F.2d 649, 652 (8th Cir. 1986) (stating the reimbursement statute in question was "not an *ex post facto* law, since there [wa]s a rational connection between the provision and the nonpunitive goal of regulating the distribution of disability benefits"); U.S. CONST. art. I, which states in part: "No bill of attainder or *ex post facto* law shall be passed." U.S. CONST. art. I, § 9, cl. 3. Other areas of constitutional challenge also exist with regard to prison reimbursement statutes. *See generally* *Fayle v. Stapley*, 607 F.2d 858, 863 (9th Cir. 1979). The *Fayle* court considered the nature of the Colorado reimbursement statute requiring inmates to contribute to the cost of prison health care. *Id.* The court saw "no constitutional inequality in requiring those receiving more expensive care to be liable for additional costs through assets which they may have accumulated." *Id.* (quoting *State v. Estate of Burnell*, 439 P.2d 38, 40 (Colo.), *appeal dismissed*, 393 U.S. 13 (1968)); *State Treasurer v. Wilson*, 388 N.W.2d 312, 314-15 (Mich. Ct. App. 1986) (holding Michigan's prison reimbursement statute was deemed not constitutionally vague).

29. Groner, *supra* note 9, at 6.

30. *Id.*; *see infra* note 68.

31. Groner, *supra* note 9, at 6.

32. *Id.*

33. Groner, *supra* note 9, at 6.

34. Prison, jail, or correctional halfway house reimbursement statutes exist with varying scope in the following states: Alabama (ALA. CODE § 14-8-6 (Supp. 1994)); Alaska (ALASKA STAT. § 33.30.131(b) (1994)); Arizona (ARIZ. REV. STAT. ANN. § 31-334 (1986)); Arkansas (ARK. CODE ANN. §§ 12-29-501 to 507 (Michie 1987)); California (CAL. PENAL CODE § 1208 (West 1982 & Supp. 1995)); Colorado (COLO. REV. STAT. § 17-10-106 (Supp. 1994)); Florida (FLA. STAT. ANN. § 944.485 (West Supp. 1995)); Idaho (IDAHO CODE § 20-242 (1987)); Iowa (IOWA CODE §§

This Note analyzes the constitutional validity of prison reimbursement statutes in the state and federal context, and considers recent reimbursement statutes, constitutional challenges to such laws, and the rationale of the resulting judicial decisions. Part II focuses on the prototypical state and federal statutes, which by requiring inmates to reimburse the government for the cost of their care and maintenance, are dealing with the problem of rising incarceration expenses.³⁵ The Iowa and Michigan state reimbursement statutes provide the substantive basis for the discussion and analysis in Part II. The two statutes pursue similar goals, but display divergent approaches to the escalating prison cost problem.³⁶

Although the two statutes discussed in Part II typify the approach other states have taken, the subsequent analysis of the scope, application, and constitutional validity of such laws will not be limited to merely Iowa and Michigan. Parts III and IV examine the practical application and question the constitutionality of various state and federal sentencing provisions and reimbursement statutes.³⁷

Part III briefly explores the wide variety of targeted inmate contributions in different jurisdictions and circumstances.³⁸ Some state reimbursement laws broadly define contributable "assets;"³⁹ inmates have thus been provided a wide base from which to challenge the scope and application of these statutes. Part III also explores judicial responses to the wide range of assets the correctional system sees fit to confiscate.

Finally, Part IV discusses and analyzes potential constitutional pitfalls facing prison reimbursement statutes and the challenges in bringing these perceived problems to light.⁴⁰

904.701-702, 905.12 (1995)); Kansas (KAN. STAT. ANN. § 19-1930 (1987 & Supp. 1995)); Kentucky (KY. REV. STAT. ANN. § 439.179 (Baldwin 1994)); Maine (ME. REV. STAT. ANN. tit. 30-A, § 1601 (West Supp. 1994)); Maryland (MD. CODE ANN., CRIM. LAW § 645AA (1994)); Michigan (MICH. COMP. LAWS § 800.401 (1993)); Minnesota (MINN. STAT. § 243.23 (1993)); Missouri (MO. ANN. STAT. §§ 217.825-.841 (Vernon 1992)); Montana (MONT. CODE ANN. § 7-32-2245 (1993)); Nebraska (NEB. REV. STAT. § 83-183.01 (1992)); New Hampshire (N.H. REV. STAT. ANN. § 651:25 (1992)); New Jersey (N.J. STAT. ANN. § 30:4-91.4 (West 1993)); New Mexico (N.M. STAT. ANN. § 33-2-43 (Michie 1993)); North Carolina (N.C. GEN. STAT. § 148-33.1 (1993)); Ohio (OHIO REV. CODE ANN. § 5147.29 (Anderson 1991)); Oklahoma (OKLA. STAT. ANN. tit. 57, § 510.9 (West 1993)); Rhode Island (R.I. GEN. LAWS § 12-19-2 (1992)); South Dakota (S.D. CODIFIED LAWS ANN. § 24-2-28 (1993)); Tennessee (TENN. CODE ANN. § 41-2-139 (1993)); Texas (TEX. GOV'T CODE ANN. § 497.004 (West 1993)); Utah (UTAH CODE ANN. § 77-19-4 (1993)); West Virginia (W. VA. CODE § 62-11A-1 (1993)); and Wisconsin (WIS. STAT. § 302.425 (1993)).

35. See *infra* text accompanying notes 41-81.

36. See *infra* text accompanying notes 41-65.

37. See *infra* text accompanying notes 82-192.

38. See *infra* text accompanying notes 82-143.

39. See *infra* note 110-32.

40. See *infra* text accompanying notes 144-92.

II. VARIOUS APPROACHES TO PRISON REIMBURSEMENT STATUTES

A. Iowa

The state of Iowa incorporates numerous characteristics of other states' reimbursement statutes with similar goals,⁴¹ but Iowa's statutes are not as wide reaching as those utilized by Michigan.⁴² Even so, the Iowa statute is broad enough to require contributions from those confined to residential treatment centers.⁴³ It mandates the deduction of an amount from the prisoner's wages earned during his or her term at the treatment facility.⁴⁴ Iowa does not automatically apply the deduction towards the facility's care and maintenance costs; instead, it subjects the deduction to a payment ranking system in which the care and maintenance costs are given high payment priority.⁴⁵

First, the inmate is required to pay a portion of the earnings to satisfy "[a]n amount the resident may be legally obligated to pay for the support of dependents."⁴⁶ Next, any remaining amount will be treated as a contribution to the treatment center "for food, lodging, and other expenses incurred by or on behalf of the resident."⁴⁷ Finally, court ordered restitution and "[a]ny other financial obligations which are admitted to by the resident are deducted."⁴⁸

The Iowa statutes addressing the reimbursement of prison costs, as opposed to residential treatment facility reimbursement, are not as specifically worded, but are similar in operation and effect: "Inmates of the institutions may be required to perform any proper and reasonable service . . . for the benefit of the institutions. . . . The director may when practicable pay the inmate an allowance. . . . The allowance is a gratuitous payment and is not a wage arising out of an employment relationship."⁴⁹ This "allowance" or earned wage is then subject to state seizure through the application of a separate code section,⁵⁰ which states in pertinent part:

If allowances are paid . . . the director may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment. . . . not to exceed ten percent of the amount of the allowance. . . . [In addition, the] director may deduct and disburse an amount . . . to pay all or part of the cost of the inmate's incarceration.⁵¹

41. See IOWA CODE §§ 905.12, 904.701-.702 (1993).

42. See *infra* notes 52-62.

43. IOWA CODE § 905.12 (1993).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* § 904.701.

50. *Id.* § 904.702.

51. *Id.*

B. Michigan

Michigan, like Iowa, utilizes a number of separate but integrally related prison reimbursement statutes in its pursuit of inmate contributions. Unlike Iowa, however, the Michigan statutes are more encompassing in both scope and application. Michigan's State Correctional Facility Reimbursement Act⁵² "imposes a civil liability on all prisoners able to pay [for their maintenance,] whether they were sentenced before or after the effective date of the act, but such liability does not extend to any period of imprisonment prior to the effective date of such act."⁵³ The Michigan Supreme Court has held, "the statutory obligation of the prisoner to pay for his keep and maintenance, if he has a sufficient estate, as civil rather than criminal in character."⁵⁴

The Michigan statute requires individuals imprisoned in state correctional facilities to complete a State Department of Corrections form in order to provide information regarding prisoners' assets.⁵⁵ After prisoners fill out the form and subsequently swear under oath to the financial information therein,⁵⁶ the completed form—a corresponding financial report of each prisoner—and an "estimate of the total cost of care for . . . [each] prisoner"⁵⁷ is forwarded to the attorney general along with any other available prisoner asset information.⁵⁸ If a

52. MICH. COMP. LAWS § 800.401 (West Supp. 1994).

53. *Id.*; see also *Auditor General v. Olezniczak*, 4 N.W.2d 679, 680 (Mich. 1942) (holding that the prison reimbursement act "imposes a civil liability on all prisoners able to pay whether they were sentenced before or after the effective date of act, but such liability of imprisonment prior to the effective date of such act").

54. MICH. COMP. LAWS § 800.401 (West Supp. 1994) (citing *Auditor General v. Hall*, 1 N.W.2d 516, 518 (Mich. 1942)).

55. MICH. COMP. LAWS § 800.401b(2)-(3) (West Supp. 1994). A state correctional facility "includes a correctional camp, community correction center, state prison, and a state reformatory." *Id.* § 800.401a(f). "Prisoner" is statutorily defined as "any person who is under the jurisdiction of the department [of corrections] and is either confined in any state correctional facility or is under the continuing jurisdiction of the department." *Id.* § 800.401a(e).

56. *Id.* § 800.401b(3).

57. *Id.* § 800.402. "'Cost of care' means the cost to the department of corrections for providing transportation, room, board, clothing, security, medical, and other normal living expenses of prisoners under the jurisdiction of the department." *Id.* § 800.401a(b).

58. The Michigan reimbursement statute defines "Assets" as:

[P]roperty, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payments to such prisoner from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever, but does not include any of the following:

(i) The homestead of the prisoner up to \$50,000.00 in value.

(ii) Money received by the prisoner from the state as settlement of a claim against the department [of corrections] by the prisoner.

prisoner fails to provide the required financial information, the statute allows such behavior and lack of cooperation to "be considered for purposes of parole determination."⁵⁹

The attorney general then reviews these reports, and determines if there is

good cause to believe that a prisoner has sufficient assets to recover not less than 10% of the estimated cost of care of the prisoner or 10% of the estimated cost of care of the prisoner for 2 years, whichever is less, the attorney general shall seek to secure reimbursement for the expense of . . . the cost of care of that prisoner.⁶⁰

The statute also expressly reserves ninety percent of the inmate's assets "for purposes of securing costs and reimbursement under th[e] act,"⁶¹ and the attorney general has broad power to seek this ninety percent.⁶² The Act succinctly provides:

[I]n seeking to secure reimbursement under this act, the attorney general may use any remedy, interim order, or enforcement procedure allowed by law or court rule including an ex parte restraining order to restrain the prisoner or any other person or legal entity in possession or having custody of the estate of the prisoner from disposing of certain property pending a hearing on an order to show cause why the particular property should not be applied to reimburse the state⁶³

As long as the prisoner resides in a Michigan correctional facility, the state may seek compensation.⁶⁴ The state "may commence proceedings under [the Correctional Facility Reimbursement Act] until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department."⁶⁵

(iii) A money judgment received by the prisoner from the state as the result of a civil action in which the department [of corrections] was a named defendant and found to be liable.

(iv) Money saved by the prisoner from wages and bonuses paid the prisoner while he or she was confined to a state correctional facility.

Id. § 800.401a(a) (emphasis added).

59. § 800.403(a) states: "(1) A prisoner shall fully cooperate with the state by providing complete financial information for purposes under this act. (2) The failure of a prisoner to fully cooperate as provided in subsection (1) may be considered for purposes of a parole determination under . . . section 791.235 of the Michigan Compiled Laws." *Id.* § 800.403a(1)-(2).

60. *Id.* § 800.403(2).

61. *Id.* § 800.403(3).

62. *Id.* § 800.403(1).

63. MICH. COMP. LAWS § 800.404a(1) (West Supp. 1994).

64. *Id.* § 800.404(8).

65. *Id.*

C. Contributions at the Federal Level

In the federal system, the United States Code makes broad, peripheral references to prison costs and a concern for the scope of determination for reasonable correctional expense.⁶⁶ No specific mention is made of inmate contribution as a method of easing the financial burden on the United States Treasury.⁶⁷ It is provided, however, that "[t]he Attorney General shall allow and pay only the reasonable and actual cost of the subsistence of prisoners in the custody . . . of the United States, and shall prescribe such regulations for the government of the marshals as will enable him to determine the actual and reasonable expenses incurred."⁶⁸ The Code further requires the United States Treasury to pay "[t]he expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them"⁶⁹

The Revision Note to title 18, section 4007 of the United States Code recognizes the issue at hand and specifically alludes to prisoner contribution as a potential means for reducing federal prisons' financial encumbrances.⁷⁰ The 1988 Note assigns the United States Sentencing Commission the task of "study[ing] the feasibility" of a federal correctional institution reimbursement scheme which would require inmates "to pay some or all of the costs incident to the prisoner's confinement."⁷¹ The Commission responded with section 5E1.2 of the United States Sentencing Guidelines.⁷² Through subsection (i) of 5E1.2, the sweeping provision requires *mandatory* imposition of an additional fine "that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered."⁷³ "Ability to pay" limitations on this court imposed contribution appear in subsection (f),⁷⁴ which states in part:

If the defendant establishes that (1) he is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine required . . . , or (2) imposition of a fine would unduly bur-

66. 18 U.S.C. § 4006 (1994).

67. *Id.* § 4007.

68. *Id.* § 4006.

69. *Id.* § 4007.

70. *Id.*

71. *Id.*

72. U.S.S.G. § 5E1.2 (1994). "The court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine." *Id.*

73. *Id.* § 5E1.2(i). See Application Note 7 to U.S.S.G. § 5E1.2, which reads: "In making a determination as to the amount of any fine to be imposed under [subsection (i)] . . . , the court may be guided by reports published by the Bureau of Prisons and the Administrative Office of the United States Courts concerning average costs." U.S.S.G. § 5E1.2 (1994). Subsection (i) reads in full: "Notwithstanding of the provisions of subsection (c) of this section, but subject to the provisions of subsection (f) herein, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered." *Id.* § 5E1.2(i).

74. *Id.* § 5E1.2(f).

den the defendant's dependents, the court may impose a lesser fine or waive the fine.⁷⁵

Section 5E1.2 places a reimbursement obligation upon the convicted federal offender in the form of a fine at the point of sentencing rather than as a post conviction remedy.⁷⁶ Although the timing mechanism in section 5E1.2 works quite differently from the state statutes discussed above, it addresses the same problem and ultimately procures a nearly identical result: contribution by inmates toward their confinement expenses.

A number of challenges have emerged with respect to this sentencing provision because "the Sentencing Reform Act . . . which established the guidelines system, doesn't mention the subject [of additional federal reimbursement fines], which appears in the guidelines as one of the ways in which judges are directed to calculate fines."⁷⁷ The Sentencing Reform Act of 1984 mandates that the guidelines be consistent with the sentencing purposes set forth in sections 3553(a)(2) and 3572(a) of the United States Code.⁷⁸ Both sections delineate broad factors which serve as focal points of the sentencing process.

In addition to the specific provisions enunciated in the Federal Sentencing Guidelines, other federal statutes operate *indirectly* to withhold otherwise accessible funds from inmates. For example, title 42 of the United States Code, section 402(x)(1) suspends social security disability benefits for incarcerated felons.⁷⁹ The rationale behind this provision is because prisoners' basic needs are provided for in the prison setting, they have no direct or immediate need for such entitlements.⁸⁰ Although this provision does not operate to directly reimburse correctional facilities for the prisoners' cost of confinement, it indirectly alleviates the federal financial burden by eliminating unnecessary entitlement payments. Title 42 of the United States Code is one of the many, albeit indirect, tools requiring inmates to surrender earnings, entitlements, or other assets to pay their own way through this nation's correctional system.⁸¹

75. *Id.* Subsection (f) continues: "In these circumstances, the court shall consider alternative sanctions in lieu of all or a portion of the fine, and must still impose a total combined sanction that is punitive. Although any additional sanction not proscribed by the guidelines is permissible, community service is the generally preferable alternative . . ." *Id.*

76. See generally U.S.S.G. § 5E1.2 (1992) (providing guidelines as to when courts shall impose fines and establishing minimum and maximum ranges for the fines according to offense levels); compare with *supra* notes 34-59.

77. Groner, *supra* note 9, at 6.

78. Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984).

79. 42 U.S.C. § 402(x)(1) (1993 & Supp. 1994).

80. See *Peeler v. Heckler*, 781 F.2d 649, 651 (8th Cir. 1986).

81. See *infra* text accompanying notes 110-43 for a discussion of prisoners' surrender of assets.

III. STATUTE APPLICATION AND FORMS OF INMATE CONTRIBUTION

A. *Scope of Application*1. *Introduction*

Prison reimbursement statutes as described in Part II, have been broadly applied within the correctional system, in part because the encompassing reimbursement language typified by the Revision Note to title 18, section 4007 of the United States Code does not specify which prisoner assets or earnings are "fair game."⁸² This carte blanche approach to asset forfeiture has led to a number of legal challenges requiring courts to consider the scope and propriety of prison reimbursement statute application.

2. *State v. Van Hoff*⁸³

For example, in *State v. Van Hoff*, the court focused its attention on the inmate's "ability to pay" argument.⁸⁴ Van Hoff was convicted in Iowa on two counts of murder and sentenced to a term of life imprisonment.⁸⁵ Van Hoff challenged a restitution plan requiring him to reimburse the county for the cost of his incarceration with twenty percent of his prison earnings.⁸⁶ Although the Iowa Supreme Court conceded an inmate's "reasonable ability to pay is a constitutional prerequisite for a criminal restitution order such as that provided by [the] Iowa Code,"⁸⁷ it determined that "[a] defendant who seeks to upset a restitution order . . . has the burden to demonstrate either the failure of the court to exercise discretion or an abuse of that discretion."⁸⁸ The *Van Hoff* court ultimately held in cases of long term incarceration, the constitutional "reasonableness" test should be based on the inmate's ability to satisfy the installment payments rather than his apparent lack of ability to pay the entire amount specified in the restitution order.⁸⁹

3. *State Treasurer v. Cuellar*⁹⁰

Using similar reasoning as the *Van Hoff* court, the Michigan Court of Appeals refined the scope of its reimbursement statutes in a manner that disallows an indigent or nearly indigent inmate to escape statutorily directed

82. See *supra* note 22.

83. *State v. Van Hoff*, 415 N.W.2d 647 (Iowa 1987).

84. *Id.* at 648.

85. *Id.*

86. *Id.*

87. *Id.*; see *State v. Haines*, 360 N.W.2d 791, 797 (Iowa 1985); *State v. Harrison*, 351 N.W.2d 526, 529 (Iowa 1984).

88. *State v. Van Hoff*, 415 N.W.2d 647, 648 (Iowa 1987).

89. *Id.* at 649.

90. *State Treasurer v. Cuellar*, 476 N.W.2d 644 (Mich. Ct. App. 1991).

contribution.⁹¹ At the same time, the court's reasoning provided state officials with a level of discretion, apparently aiding in the efficient application of the statute and allowing recovery even in situations in which only a small percentage of the cost would likely be recoverable.⁹² In *State Treasurer v. Cuellar*, the attorney general filed suit under the State Correctional Facility Reimbursement Act⁹³ seeking the costs incurred by housing the defendant in a state correctional facility.⁹⁴ The defendant claimed section three of the Michigan Act barred the suit because the state could not recover ten percent or more of his estimated cost of care while in the facility.⁹⁵ The *Cuellar* court held:

[T]he Attorney General *must* seek reimbursement when the assets of the prisoner are such that a recovery of not less than ten percent of the cost of care is possible. The language [of the statute] does not bar a lawsuit for reimbursement when the possible recovery would be less than ten percent of the cost of care. In those cases, we believe that the Attorney General has discretion to seek reimbursement.⁹⁶

4. *State v. Henson*⁹⁷

Notwithstanding the broad judicial application of reimbursement statutes, some courts have adopted a narrower view of the statutes' applicability. In *State v. Henson*, the State suspended the defendant's prison sentence, but nonetheless directed him to contribute under the state's prison reimbursement law.⁹⁸ On appeal, the *Henson* court concluded the statute, which allowed judges and local authorities to demand inmate contribution toward confinement costs in relation to their financial ability, applied only to county and municipal correctional facilities and not to state institutions.⁹⁹ Thus, the provision of the statute did not authorize the trial court to require Henson to pay for the costs associated with his state institution incarceration.¹⁰⁰ Furthermore, because execution of his sentence was suspended and no incarceration resulted, the trial court could not make the defendant pay his incarceration costs as a condition of probation.¹⁰¹

5. *State v. Turner*¹⁰²

91. *State Treasurer v. Cuellar*, 476 N.W.2d 644, 645 (Mich. Ct. App. 1991).

92. *Id.*

93. MICH. COMP. LAWS ANN. § 800.401 (West Supp. 1995).

94. *State Treasurer v. Cuellar*, 476 N.W.2d at 644.

95. *Id.* at 645.

96. *Id.* (emphasis added).

97. *State v. Henson*, 500 N.E.2d 899 (Ohio Ct. App. 1985).

98. *Id.* at 901.

99. *Id.* at 902.

100. *Id.*

101. *Id.*

102. *State v. Turner*, 312 N.W.2d 418 (Mich. Ct. App. 1981).

State v. Turner depicts a more stringent approach. Turner, a resident of Southern Michigan State Prison, received a check for \$4035.49 as earned contributions to a pension fund which concluded upon his incarceration.¹⁰³ State prison officials discovered the check after opening Turner's incoming mail and attempted to seize the check under the Prison Reimbursement Act, seeking to restrain Turner from negotiating or transferring it.¹⁰⁴ The circuit court denied the State's request to keep Turner from negotiating the check, holding the seizure tantamount to a prejudgment garnishment.¹⁰⁵ The court recognized that a prejudgment property seizure may violate due process when it occurs "without a bond requirement and without opportunity for a prompt hearing."¹⁰⁶ The court also noted that in *Fuentes v. Shevin*,¹⁰⁷ the United States Supreme Court indicated "summary seizure of property is allowed to collect governmental revenues" under narrowly-defined circumstances.¹⁰⁸ The *Turner* court, finding the state's reimbursement statute served an important governmental interest, determined that the "unusual situation referred to by the *Fuentes* Court" existed and held the "issuance of an *ex parte* temporary restraining order [was] justified."¹⁰⁹

B. Forms of Reimbursement: Assets and Earnings

1. Hogan v. Arizona Board of Pardons & Paroles¹¹⁰

Correctional department authorities have used reimbursement statutes to target prison payroll checks as another inmate resource available for seizure. In *Hogan v. Arizona Board of Pardons & Paroles*, the Arizona Supreme Court found the State Department of Corrections possessed authority to confiscate payroll checks of individuals living at correctional halfway houses.¹¹¹ The Maricopa

103. *Id.* at 419.

104. *Id.*

105. *Id.*

106. *Id.* at 421.

107. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

108. *State v. Turner*, 312 N.W.2d 418, 421 (Mich. Ct. App. 1981) (citing *Fuentes v. Shevin*, 407 U.S. at 90-91 (emphasis added)). The *Turner* court went on to explain its decision and the rationale used in *Fuentes*:

Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.

Id. (quoting *Fuentes v. Shevin*, 407 U.S. at 90-91) (footnote omitted).

109. *Id.* at 422.

110. *Hogan v. Arizona Bd.*, 501 P.2d 944 (Ariz. 1972).

111. *Id.* at 947; see also *Buckley v. Barlow*, 997 F.2d 494 (8th Cir. 1993). The *Buckley* court upheld the deduction of one-half of inmates' "idle pay" pursuant to the disciplinary committee's restitution order, even though the forfeiture deprived the inmate of the ability to purchase

County Superior Court of Arizona sentenced Hogan to seven to nine years in the Arizona State Prison after he pled guilty to an armed robbery charge.¹¹² Three months prior to his scheduled release, the state transferred Hogan to a halfway house where he found employment with a nearby company.¹¹³ During his stay at the halfway house, he complied with the requirement that he turn over his payroll earnings to the Department of Corrections.¹¹⁴ After state authorities arrested Hogan on a minor charge in late February 1972, the Board of Pardons and Paroles reincarcerated Hogan and applied "a substantial portion of his earnings" to the room and board expenses he incurred "while living at the halfway house."¹¹⁵

In his suit, Hogan questioned the propriety of the Department of Corrections' seizure and application of his payroll checks, contending the Department did not have authority to confiscate his checks and apply his earnings to defray the costs associated with maintaining the halfway house and its inhabitants.¹¹⁶ The *Hogan* court, relying upon Arizona law, upheld the Department's actions regarding Hogan's earnings.¹¹⁷ Arizona's prison reimbursement statute, applied in conjunction with the state's work furlough statute,¹¹⁸ specifically provides that "the director may require the inmate to reimburse the State in whole or in part for expenses incurred by the State in connection [with work furlough

various personal hygiene items. *Id.* at 945. In *Ervin v. Blackwell*, 733 F.2d 1282 (8th Cir. 1984), the inmate brought a due process challenge to a prison reimbursement statute after his work release earnings were seized. *Id.* at 1283-84. The court upheld the seizure stating that under Missouri law, an inmate cannot assert a legitimate claim of entitlement to the full amount of his salary earned through a work release program because "Missouri regulations specifically condition participation in the program on the payment of maintenance costs, and carrying out that condition is hardly an 'arbitrary action of government' demanding of due process protection." *Id.* at 1286 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

112. *Hogan v. Arizona Bd.*, 501 P.2d at 945.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 945, 947.

117. *Id.* at 947. The *Hogan* court relied in part on Arizona statute 31-233(B), which provides: "When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection therewith." ARIZ. REV. STAT. ANN. § 31-233(B) (Supp. 1994).

118. The Arizona Work Furlough Program states in pertinent part:

A. The work furlough administrator shall provide that all earnings of a prisoner be transmitted to the work furlough administrator.

B. From the earnings, the work furlough administrator shall pay the prisoner's board and personal expenses both inside and outside the detention facility. The work furlough administrator shall also, upon authorization from the court, make payments toward the support of the prisoner's dependents, if any, and toward any restitution ordered by the court. If there are any remaining funds, the work furlough administrator may, upon authorization of the prisoner, pay in full or in part the preexisting debts of the prisoner. Any balance shall be retained until the prisoner is discharged and thereupon shall be paid to him.

ARIZ. REV. STAT. ANN. § 31-334 (1986).

expenses]."¹¹⁹ Consequently, the court held the Arizona Department of Corrections had authority to confiscate payroll checks of individuals living at state operated halfway houses.¹²⁰

2. State v. Turner

Assets other than payroll earnings are also subject to seizure by the state.¹²¹ In *Turner*, the court considered the State's attempt to use an *ex parte* restraining order to restrain an inmate from negotiating or transferring a pension check.¹²² The *Turner* court ultimately upheld the State's restriction, holding Michigan law "imposes a statutory duty on a resident of a state penal institution to pay for the cost of his incarceration."¹²³

The court found the requested restraining order an appropriate method of preventing the inmate from disposing of his assets prior to a hearing which would ascertain whether "he has property which 'ought to be subjected to the claim of the state,'" and further stated that "th[e] provision [of the state reimbursement statute] is not unlike other *ex parte* restraining orders issued to prevent disposal of property while a case is pending."¹²⁴ In conclusion, the *Turner* court instructed:

An important governmental interest, a clearly expressed legislative intent that residents of correctional institutions reimburse the state for their incarceration if they are financially able to do so, is involved. . . . [S]ecurity is not required where the state is an applicant [for such a restraining order

119. Hogan v. Arizona Bd., 501 P.2d 944, 947 (Ariz. 1972).

120. *Id.*

121. State v. Turner, 312 N.W.2d 418 (Mich. Ct. App. 1981); *see supra* text accompanying notes 102-09.

122. State v. Turner, 312 N.W.2d at 419.

123. *Id.* at 420 n.1 (citing MICH. COMP. LAWS § 800.404 (1993)). Section 404 of the Michigan reimbursement statute provides:

Whenever it shall be found that any person has been admitted to any . . . state penal institution[], as a prisoner, the auditor general, or the prosecuting attorney of the county from which said person was so sentenced, shall, if such person or prisoner be possessed of any estate, or shall thereafter while he shall remain in such institution become possessed thereof, petition in the circuit court . . . stating that . . . he has good reason to believe . . . that the said prisoner has assets. . . . [I]f it appears that the prisoner has any assets which ought to be subjected to the claim of the state under this act, the court shall . . . appoint a guardian of the person and estate of such prisoner . . . to appropriate and apply such estate to the payment of so much . . . as may appear to be proper toward reimbursing the state for the expenses theretofore incurred by it on behalf of such prisoner. . . . [but the] reimbursement shall not be in excess of the per capita cost of maintaining prisoners in the institution in which said prisoner is an inmate. . . .

MICH. COMP. LAWS § 800.404 (1993) (emphasis added), *amended by* MICH. COMP. LAWS § 800.404 (1995).

124. State v. Turner, 312 N.W.2d at 421 (quoting MICH. COMP. LAWS § 800.404 (1993)).

because], the restrained party is protected by the state's financial responsibility. . . . [Therefore] issuance of an *ex parte* temporary restraining order is justified.¹²⁵

3. Burns v. State¹²⁶

Inmates' unearned assets may also be subject to forfeiture for the incarcerating institution's benefit. In *Burns v. State*, Burns, an inmate of the Arkansas Department of Correction, had started serving consecutive sentences for theft and breaking and entering, when Arkansas filed a suit pursuant to the State Prison Inmate Care and Custody Reimbursement Act,¹²⁷ seeking seizure of a sizable inheritance recently deposited in his bank account.¹²⁸ Arkansas was initially successful in its attempt; the circuit court awarded the State a \$55,888.76 judgment as reimbursement for Burns's care and maintenance while incarcerated.¹²⁹ The Arkansas Supreme Court affirmed the circuit court's decision to grant the State compensation for the inmate's cost of care, but reduced the compensatory award by nearly \$50,000, which "reflect[ed] the actual amount of Burns's estate on account . . . noted at the time of his trial."¹³⁰ Although the Supreme Court reduced the State's initial award by the lower court, it upheld the seizure attempt itself, reasoning that a facially neutral statute supported the State's attempt to claim the inheritance.¹³¹ In addition, the court noted the provisions of the law in question did not add new punishment to Burns's conviction even though he was convicted prior to the date on which the Arkansas Prison Inmate Care and Custody Reimbursement Act took effect.¹³²

C. Forms of Reimbursement: Entitlements

1. Introduction

Federal entitlements such as social security and disability benefits present an attractive seizure opportunity due to their disbursement regularity. Correctional departments have experienced limited success, however, in their attempt to secure such entitlements as reimbursement for prison costs.¹³³ Difficulties in seizing prisoners' social security benefits may arise as a result of

125. *Id.* at 421-22. The issuance of the restraining order was contingent upon whether the verified complaint or affidavit of the state fully complied with the applicable statutory requirements. *Id.* at 422 (citing Gov't Cont. Rep. 1963, 718.2(1)).

126. *Burns v. State*, 793 S.W.2d 779 (Ark. 1990).

127. ARK. CODE ANN. §§ 12-29-501-507 (Michie 1987).

128. *Burns v. State*, 793 S.W.2d at 779-80.

129. *Id.* at 780.

130. *Id.*

131. *Id.* (citing ARK. CODE ANN. §§ 12-29-503(b) (Michie 1987)).

132. *Id.* at 780-81.

133. See *infra* text accompanying notes 139-143.

courts' application of the Federal Supremacy Clause,¹³⁴ but this view has not controlled the result in every challenge to federal benefit seizure attempts.¹³⁵

2. State Treasurer v. Brown¹³⁶

In the case of *State Treasurer v. Brown*, the Michigan Court of Appeals authorized the State to claim a prisoner's social security benefits under Michigan's Prison Reimbursement Act.¹³⁷ The court observed the Michigan Department of Corrections provided for the prisoner's care and maintenance, so the prisoner had no need for the federal benefits; therefore, "reimbursement of the state from . . . [the inmate's] benefits would not offend the policies underlying the Social Security Act or, more specifically, 42 U.S.C. § 407."¹³⁸

3. Bennett v. Arkansas¹³⁹

Bennett v. Arkansas stands in contrast to the holding in *State Treasurer v. Brown*, as the United States Supreme Court reversed the Arkansas high court's decision allowing the Department of Corrections to attach a state prisoner's social security benefits.¹⁴⁰ The Arkansas statute authorized seizure of an inmate's property or estate to help pay for prison system costs incurred on the inmate's behalf.¹⁴¹ Although the Arkansas Prison Inmate Care and Custody Reimbursement Act's¹⁴² definition of "estate" includes federal social security benefits, the Supreme Court held the State could not put itself in the prisoner's position and act, in essence, as a beneficiary of the prisoner's social security benefits.¹⁴³

134. See *Bennett v. Arkansas*, 485 U.S. 395 (1988) and text accompanying notes 165-82 for a discussion of constitutional challenges to the seizure of social security benefits based upon Supremacy Clause issues. Article VI of the Constitution states: "Th[e] Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the judges in every state shall be bound thereby." U.S. CONST. art. VI, cl. 2.

135. See *State Treasurer v. Brown*, 337 N.W.2d 23 (Mich. Ct. App. 1983).

136. *State Treasurer v. Brown*, 337 N.W.2d 23 (Mich. Ct. App. 1983).

137. See MICH. COMP. LAWS § 800.401 (1993).

138. *State Treasurer v. Brown*, 337 N.W.2d at 25; see also *Peeler v. Heckler*, 781 F.2d 649, 652 (8th Cir. 1986) (finding a rational connection between the suspension of an inmate's social security benefits in accordance with an amendment to the Social Security Act (42 U.S.C.A. § 402(x)(1)) and a nonpunitive goal regulating the distribution of disability benefits).

139. *Bennett v. Arkansas*, 485 U.S. 395 (1988).

140. *Id.* at 398.

141. *Id.* at 396.

142. ARK. CODE ANN. § 12-29-501 to -505 (Michie 1987) (statute was struck down as violative of the Supremacy Clause in *Bennett v. Arkansas*, 485 U.S. 395 (1988)).

143. *Bennett v. Arkansas*, 485 U.S. at 398.

IV. BASES OF CONSTITUTIONAL CHALLENGES

A. *Due Process*1. *Introduction*

Due to the very nature of prison reimbursement statutes, which seize assets that may be unrelated to the impetus behind the prisoner's incarceration, inmates have challenged such statutes from a variety of constitutional angles. The due process protection guaranteed by the United States Constitution provides inmates facing asset forfeiture one obvious means of attack. The Fifth Amendment to the United States Constitution reads in part: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."¹⁴⁴ Prison reimbursement statutes, through their involuntary forfeiture and seizure mechanisms, undeniably effect a "taking";¹⁴⁵ thus, in the context of such laws, the constitutional question rests upon whether the state accomplished the seizure via due process and with "just compensation"¹⁴⁶ to the inmate.

2. *Ervin v. Blackwell*¹⁴⁷

In *Ervin v. Blackwell*, the United States Court of Appeals for the Eighth Circuit considered whether a forfeiture occurring under Missouri law deprived the inmate of constitutional due process.¹⁴⁸ The court stated resolution of the issue turned on whether the prisoner possessed "a protectable property interest—'a legitimate claim of entitlement'—to the full amount of the salary he earned while enrolled in the [work release] program."¹⁴⁹ For approximately three of the ten years he was subject to the custody of the Missouri Division of Corrections, Ervin participated in the Division's work release program.¹⁵⁰ During that time, Ervin earned \$33,857.58, but state regulations¹⁵¹ authorized deductions totaling \$7986.63 from this amount as government compensation for care and maintenance costs while incarcerated.¹⁵² After the state authorized his parole, Ervin brought an action based upon title 42, section 1983 of the United States Code,¹⁵³

144. U.S. CONST. amend. V.

145. *Id.*

146. *Id.*

147. *Ervin v. Blackwell*, 733 F.2d 1282 (8th Cir. 1984).

148. *Id.*

149. *Id.* at 1285 (quoting *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex*, 442 U.S. 1, 7 (1979) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972))); see also *Peck v. Hoff*, 660 F.2d 371, 373 (8th Cir. 1981) (holding that state statute designating a prisoner classification did not create a legal entitlement to establish a due process claim).

150. *Ervin v. Blackwell*, 733 F.2d at 1284.

151. MO. ADMIN. CODE § 20-103.010(3) (1978) (rescinded 1978), replaced by MO. ADMIN. CODE § 20-103.011(3) (1978).

152. *Ervin v. Blackwell*, 733 F.2d at 1284.

153. 42 U.S.C. § 1983 (Supp. V 1993).

seeking full recovery of the amount deducted from his earnings.¹⁵⁴ Ervin claimed the seizure constituted a deprivation of his property without due process of law.¹⁵⁵

The court considered the status of Ervin's property interest in his salary while enrolled in the work release program: "Ervin received . . . [the salary] only by virtue of his participation in the work release program. We therefore [must] look to the state law creating the program to determine if Ervin possessed . . . a [protectable] property interest."¹⁵⁶ Explicit statutory authority for the work release program did not exist during Ervin's participation in the program, but the court noted the "general grant of authority to the Division of Corrections provided sufficient authority to establish the program."¹⁵⁷ Because the work release regulations specifically conditioned program participation upon maintenance cost payment, the court ultimately held "Ervin c[ould] assert no legitimate claim of entitlement to the full amount of his salary. . . . [C]arrying out th[e] condition [of maintenance cost reimbursement] is hardly an 'arbitrary action of government' demanding of due process protection."¹⁵⁸

3. State v. Turner

The court in *State v. Turner* also addressed the issue of whether seizure of inmate property contravenes the Fifth Amendment's Due Process protection.¹⁵⁹ Turner's due process challenge focused on the view of prejudgment property seizures as seen in the United States Supreme Court case of *Fuentes v. Shevin*.¹⁶⁰ Relying upon the *Fuentes* rationale, the *Turner* court agreed that "seizure of property in which the claimant has no interest without a bond requirement and without an opportunity for a prompt hearing to test the merits of the claim and the validity of the seizure [is] a violation of due process."¹⁶¹ Under narrowly defined circumstances, however, "summary seizure of property is allowed to collect governmental revenues."¹⁶² In the instant case, "[a]n important governmental interest, a clearly expressed legislative intent that residents of correctional institutions reimburse the state for [the cost of] their incarceration if they are financially able to do so, [was] involved."¹⁶³ Therefore, the *Turner* court rejected

154. *Ervin v. Blackwell*, 733 F.2d 1282, 1284 (8th Cir. 1984).

155. *Id.*

156. *Id.* at 1285 (citing *Parratt v. Taylor*, 451 U.S. 527, 529 n.1 (1981), *overruled by Daniels v. Williams*, 474 U.S. 327 (1986)).

157. *Id.* (citing MO. REV. STAT. § 216.115(3) (1978) (repealed 1982)). Section 216.115(B) was replaced by MO. REV. STAT. § 217.435 (1983), which specifically authorized the Missouri work release program and provided for the deduction of maintenance costs from participating inmates' salaries. *Id.* at n.3.

158. *Id.* at 1286 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

159. *State v. Turner*, 312 N.W.2d 418, 421 (Mich. Ct. App. 1981); see text accompanying notes 96-101 for a complete discussion of the facts of the case.

160. *Id.*; see *Fuentes v. Shevin*, 407 U.S. 67 (1972).

161. *Id.* (citing *Fuentes v. Shevin*, 407 U.S. at 90-91).

162. *Id.* (emphasis added) (citing *Fuentes v. Shevin*, 407 U.S. at 90-91); see *supra* note 108.

163. *Id.*

the claimant's due process challenge and upheld the state's *ex parte* restraining order used in the asset seizure effort.¹⁶⁴

B. Supremacy Clause

1. Bennett v. Arkansas

Incarcerated individuals may constitutionally challenge the reimbursement statute on a second ground: claiming the Supremacy Clause¹⁶⁵ of the United States Constitution preempts the state law in question. This argument appears to be particularly persuasive when the assets to be seized by state correctional authorities include federal entitlements.¹⁶⁶ In *Bennett v. Arkansas*, a prisoner used this approach when the State filed an action to attach his social security benefits as reimbursement for his prison costs.¹⁶⁷ Under the provisions of Arkansas's State Prison Inmate Care and Custody Reimbursement Act,¹⁶⁸ the State attempted to attach Bennett's social security benefits.¹⁶⁹ Although the Arkansas Supreme Court upheld the State's federal benefit seizure, the United States Supreme Court determined otherwise, stating:

We think—contrary to the conclusion of the Supreme Court of Arkansas—that there is a clear inconsistency between the Arkansas statute and 42 U.S.C. § 407(a) (1982 ed., Supp. III). Section 407(a) unambiguously rules out any attempt to attach Social Security benefits. The Arkansas statute just as unambiguously allows the State to attach those benefits. As we see it, this amounts to a 'conflict' under the Supremacy Clause—a conflict that the State cannot win.¹⁷⁰

164. *Id.* at 422; see also *Flowers v. Smith*, 496 N.Y.S.2d 149 (App. Div. 1985) (“[c]ompelling prison inmates to reimburse the State for the cost of excess postage does not deprive them of their property without due process.”), *aff'd*, 494 N.E.2d 455 (N.Y. 1986).

165. U.S. CONST. art. VI, cl. 2. “Th[e] Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” *Id.*

166. But see *supra* text accompanying notes 136-38 for a discussion of a case in which the court upheld state seizure of an inmate's social security benefits.

167. *Bennett v. Arkansas*, 485 U.S. 395, 396 (1988).

168. ARK. CODE ANN. §§ 12-29-501 to 507 (Michie 1987).

169. *Bennett v. Arkansas*, 485 U.S. at 396.

[The] Arkansas [statute] . . . provides that the estate of a person incarcerated in a penal facility of the Arkansas Department of Correction “may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner.” It defines “estate” as “any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever.”

Id. n.1 (quoting ARKANSAS STAT. ANN. § 46-1704(a) (Supp. 1985)).

170. *Id.* at 396 (citing *Rose v. Arkansas State Police*, 479 U.S. 1 (1986)).

Due to the "clear intent of Congress that Social Security benefits not be attachable,"¹⁷¹ the *Bennett* Court ultimately held the inmate's federal benefits were immune from state seizure.¹⁷²

2. *Hankins v. Finnel*¹⁷³

A state prisoner also utilized a Supremacy Clause attack in the case of *Hankins v. Finnel*. Finnel, an employee of the Missouri Department of Corrections, taught school at the Missouri State Penitentiary where Hankins was an inmate.¹⁷⁴ After finding Finnel sexually molested Hankins, a jury awarded Hankins \$3000 in punitive damages.¹⁷⁵ Pursuant to the Missouri Incarceration Reimbursement Act,¹⁷⁶ the State of Missouri brought an action seeking to seize ninety percent of Hankins' award as reimbursement for the costs of his incarceration.¹⁷⁷ The *Hankins* court opined, "[u]nder the Supremacy Clause, state law is preempted whenever it 'contradicts or interferes with an Act of Congress.'" ¹⁷⁸ "Preemption in this instance will arise when 'state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" ¹⁷⁹

Hankins based his original molestation action and received his subsequent judgment under title 42, section 1983 of the United States Code.¹⁸⁰ For this reason, the court struck down the State's attempt to seize Hankins' judgment, stating:

[S]ection 1983 preempts the Missouri Incarceration Reimbursement Act as it is applied in this case. To the extent that the Act permits the State to recoup the very monies it has paid to satisfy a section 1983 judgment against one of its employees, the Act is invalidated under the Supremacy Clause.¹⁸¹

171. *Id.* at 398.

172. *Id.*

173. *Hankins v. Finnel*, 964 F.2d 853, 854 (8th Cir. 1992).

174. *Id.*

175. *Id.*

176. MO. ANN. STAT. §§ 217.825-.841 (Vernon 1995).

177. *Hankins v. Finnel*, 964 F.2d at 854.

178. *Id.* at 861 (citing *Rose v. Arkansas State Police*, 479 U.S. 1 (1986) and quoting *Hayfield Northern R.R. Co. v. Chicago & Northwestern Transp. Co.*, 467 U.S. 622, 627 (1984)).

179. *Id.* (quoting *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941))).

180. *Id.* at 854; 42 U.S.C. § 1983 (1988).

181. *Hankins v. Finnel*, 964 F.2d 853, 861 (8th Cir. 1992).

C. *Ex Post Facto*: Peeler v. Heckler¹⁸²

Article One of the United States Constitution maintains in part: "No Bill of Attainder or ex post facto Law shall be passed."¹⁸³ In *Peeler v. Heckler*, a Missouri inmate brought suit challenging the suspension of his social security benefits pursuant to a 1980 Social Security Act amendment prohibiting payment of disability benefits for incarcerated felons.¹⁸⁴ The inmate, Peeler, began serving his sentence in 1978, and received disability benefit payments until nearly one full year after enactment of the 1980 amendment, even though the Social Security Administration was aware of Peeler's incarceration.¹⁸⁵ In June of 1981, the Social Security Administration demanded that Mr. Peeler repay all of the benefits he had received during the nine months since the amendment had become effective.¹⁸⁶

Peeler argued that the statute served to "reach back in time," punishing his acts which occurred prior to the statute's enactment; in short, he claimed it constituted an ex post facto law.¹⁸⁷ The court accepted Peeler's definition, conceding "a penal statute may also be an *ex post facto* enactment if it adds a new punishment to the one that was in effect when the crime was committed."¹⁸⁸ Although Peeler contended the enactment in question satisfied these criteria because the sanctions were "triggered by the past commission of a felony," the court stated it "may not hold that . . . [the statute] imposes *ex post facto* penalties unless the law was enacted for a punitive purpose."¹⁸⁹ "The mere denial of a noncontractual government benefit (such as disability payments) without a showing of penal intent, does not fall within the *ex post facto* prohibition."¹⁹⁰ In its determination that the law did not constitute an ex post facto enactment, the court stated:

[D]espite some indications that Congress intended § 402(x)(1) to be at least in part punitive, it is not an *ex post facto* law, since there is a rational connection between the provision and the nonpunitive goal of regulating the distribution of disability benefits. . . . People in prison have their subsistence needs taken care of by the imprisoning jurisdiction. For this reason, it was entirely rational for Congress to suspend federal disability payments to this group of beneficiaries.¹⁹¹

182. *Peeler v. Heckler*, 781 F.2d 649 (8th Cir. 1986).

183. U.S. CONST. art. I, § 9, cl. 3.

184. *Peeler v. Heckler*, 781 F.2d at 650 (citing Pub. L. No. 96-473, § 5(b), 94 Stat. 2263, 2265 (1980) (codified as amended at 42 U.S.C. § 402(x) (1988)).

185. *Id.* at 650-51.

186. *Id.* at 651.

187. *Id.*

188. *Id.* (citing *Ex Parte Garland*, 71 U.S. 333, 377 (1866)).

189. *Id.* (citing *Flemming v. Nestor*, 363 U.S. 603, 613-14 (1960)).

190. *Id.* (citing *Flemming v. Nestor*, 363 U.S. at 617).

191. *Id.* at 651-52 (citing *Jensen v. Heckler*, 766 F.2d 383, 386 (8th Cir.), *cert. denied*, 474 U.S. 945 (1985)); *see also Burns v. Arkansas*, 793 S.W.2d 779, 781 (Ark. 1990) (relying on the rationale in *Peeler*, the court held application of the State Prison Inmate Care and Custody

V. CONCLUSION

"[A]bsolute responsibility is . . . simply the logical requirement of the consequences of our freedom."¹⁹² In a free society, such as the United States, individuals who work, live, succeed, and err must take full responsibility for their actions—absolute responsibility. Imprisonment of convicted criminals does not insure freedom. Rather, accepting absolute responsibility for one's actions necessarily includes embracing all of the ramifications of one's deeds. In other words, the popular phrase "paying one's debt to society" should embody two connotations: (1) incarceration, and (2) acceptance of the resulting fiscal burdens.

When a state houses convicted criminals in correctional or detention facilities of any sort, the state and federal taxpayers shoulder, albeit indirectly, the costs associated with maintaining the facilities and their inhabitants. The cruel irony is that law abiding citizens are forced to provide for the care, maintenance, and support of criminals—many of whom, it is safe to assume, have preyed upon the family, friends, and neighbors of the very taxpayers who now foot a significant portion of the inmates' living expenses.

Prison reimbursement statutes provide welcome relief from the "three free hots and a cot" perception many habitual offenders may develop when faced with the prospect of serving time in a local, state, or federal correctional facility. Although many states currently utilize reimbursement laws in an effort to reduce the financial burden on their correctional departments, increasingly stringent efforts need to be taken. States that have not yet enacted comprehensive prison reimbursement statutes, such as those used by Michigan, should do so without delay. States that have already passed such laws should focus considerable effort and attention on the strict enforcement and application of these principled statutory enactments, notwithstanding the potential constitutional problems inherent in some forfeiture laws. Anything less than a state's best effort to fully implement these laws will result in a continually inadequate source of prison upkeep funds. With regard to the effort to effectively implement and enforce prison reimbursement statutes, if a state accepts mediocrity, it embraces failure.

Even if potential criminals and society at large are made aware of the financial responsibilities incurred by convicts as a result of their actions and subsequent incarceration, utilization of these statutes may not necessarily serve as a deterrent to prospective offenders. Nonetheless, prison reimbursement laws are unquestionably a step in the right direction. If the purpose of incarceration is punishment, why not truly punish the prisoner rather than merely house convicted offenders while punishing the state and ultimately, the taxpayers? If, on the other hand, the purpose of incarceration is rehabilitation, what is wrong with requiring

Reimbursement Act did not amount to an *ex post facto* law because there was "a rational connection between the act provisions and the nonpunitive goal of reimbursement to the State for care and custody expenses from state prison inmates. [The] Act . . . is not unconstitutional as an *ex post facto* law as it is not focused on the crimes committed by [the inmate], nor is it additional punishment").

192. JEAN-PAUL SARTRE, *EXISTENTIALISM AND HUMAN EMOTIONS* 53 (Hazel E. Barnes trans., Philosophical Library, Inc. 1957) (1946).

the recipient of this benevolent attention to contribute to the cost of his or her own federal or state sponsored rehabilitation program?

S. P. Conboy