

August 19, 2016

To the Honorable Members of
The Illinois Senate,
99th General Assembly:

We should be proud of the steps we have taken together to reform our criminal justice system. These efforts will reduce incarceration and recidivism rates, help incarcerated individuals to reenter the community and obtain gainful employment, and reduce costs to taxpayers. I thank the members of the General Assembly for being partners in this work.

Current law permits the Attorney General to bring legal action against formerly incarcerated individuals to recover incarceration-related expenses on behalf of the Department of Corrections. Senate Bill 2465 would stop this practice altogether. Today I return the bill with specific recommendations for change.

Proponents believe that collection efforts hinder an individual's successful reentry into the community. Many ex-offenders have few if any assets and struggle to find jobs to care for themselves or their families.

In practice, though, the State's power to recover costs is rarely used: the State collected approximately \$355,000 total in Fiscal Year 2015. While I agree that this power should be used sparingly and judiciously, there are circumstances when it is warranted. Violent offenders with significant assets should compensate their victims and the State. For example, the State used this power to stop serial killer John Wayne Gacy from profiting while in prison.

The changes recommended below would protect low-income persons, while still enabling the State to pursue wealthier or violent offenders. The Department would establish a standard for determining whether a person has sufficient means, whether recovery by the State would inhibit the person's reintegration into the community, and whether the nature of the crime (such as a violent crime) warrants recovery efforts. The Department's proposed rules would be subject to public comment and review by the Joint Committee on Administrative Rules. The State would then be prohibited from pursuing recovery from persons except as allowed by that rule. This strikes the proper balance between protecting taxpayers and facilitating successful post-incarceration reentry.

Therefore, pursuant to Section 9(e) of Article IV of the Illinois Constitution of 1970, I hereby return Senate Bill 2465, entitled "AN ACT concerning criminal law", with the following specific recommendations for change:

On page 1, by replacing line 5 with the following, "changing Section 3-7-6 as follows:"; and

On page 1, by replacing lines 6 through 23 with the following:

“(730 ILCS 5/3-7-6)

Sec. 3-7-6. Reimbursement for expenses.

(a) Responsibility of committed persons. For the purposes of this Section, "committed persons" mean those persons who through judicial determination have been placed in the custody of the Department on the basis of a conviction as an adult. Committed persons shall be responsible to reimburse the Department for the expenses incurred by their incarceration at a rate to be determined by the Department in accordance with this Section.

(1) Committed persons shall fully cooperate with the Department by providing complete financial information for the purposes under this Section.

(2) The failure of a committed person to fully cooperate as provided for in clauses (3) and (4) of subsection (a-5) shall be considered for purposes of a parole determination. Any committed person who willfully refuses to cooperate with the obligations set forth in this Section may be subject to the loss of sentence credit towards his or her sentence of up to 180 days.

(a-3) The Department shall establish by rule a standard for determining when to seek recovery of incarceration costs. The purpose of the standard is to protect persons convicted of non-violent offenses without substantial assets or income from recovery efforts that could inhibit their successful reintegration into the community, while enabling the Department to seek recovery from persons who were convicted of violent offenses or who have sufficient assets or income that could be applied to pay for the costs of their incarceration. Notwithstanding any other provision of law to the contrary, neither the Attorney General nor the Department shall seek to recover incarceration costs except as permitted by the standard established by rule.

(a-5) Assets information form.

(1) The Department shall develop a form, which shall be used by the Department to obtain information from all committed persons regarding assets of the persons.

(2) In order to enable the Department to determine the financial status of the committed person, the form shall provide for obtaining the age and marital status of a committed person, the number and ages of children of the person, the number and ages of other dependents, the type and value of real estate, the type and value of personal property, cash and bank accounts, the location of any lock boxes, the type and value of investments, pensions and annuities and any other personalty of significant cash value, including but not limited to jewelry, art work and collectables, and all medical or dental insurance policies covering the committed person. The form may also provide for other information deemed pertinent by the Department in the investigation of a committed person's assets.

(3) Upon being developed, the form shall be submitted to each committed person as of the date the form is developed and to every committed person who thereafter is sentenced to imprisonment under the jurisdiction of the Department. The form may be resubmitted to a committed person by the Department for purpose of obtaining current information regarding the assets of the person.

(4) Every committed person shall complete the form or provide for completion of the form and the committed person shall swear under oath or affirm that to the best of his or her knowledge the information provided is complete and accurate.

(b) Expenses. The rate at which sums to be charged for the expenses incurred by a committed person for his or her confinement shall be computed by the Department as the average per capita cost per day for all inmates of that institution or facility for that fiscal year. The average per capita cost per day shall be computed by the Department based on the average per capita cost per day for the operation of that institution or facility for the fiscal year immediately preceding the period of incarceration for which the rate is being calculated. The Department shall establish rules and regulations providing for the computation of the above costs, and shall determine the average per capita cost per day for each of its institutions or

facilities for each fiscal year. The Department shall have the power to modify its rules and regulations, so as to provide for the most accurate and most current average per capita cost per day computation. Where the committed person is placed in a facility outside the Department, the Department may pay the actual cost of services in that facility, and may collect reimbursement for the entire amount paid from the committed person receiving those services.

(c) Records. The records of the Department, including, but not limited to, those relating to: the average per capita cost per day for a particular institution or facility for a particular year, and the calculation of the average per capita cost per day; the average daily population of a particular Department correctional institution or facility for a particular year; the specific placement of a particular committed person in various Department correctional institutions or facilities for various periods of time; and the record of transactions of a particular committed person's trust account under Section 3-4-3 of this Act; may be proved in any legal proceeding, by a reproduced copy thereof or by a computer printout of Department records, under the certificate of the Director. If reproduced copies are used, the Director must certify that those are true and exact copies of the records on file with the Department. If computer printouts of records of the Department are offered as proof, the Director must certify that those computer printouts are true and exact representations of records properly entered into standard electronic computing equipment, in the regular course of the Department's business, at or reasonably near the time of the occurrence of the facts recorded, from trustworthy and reliable information. The reproduced copy or computer printout shall, without further proof, be admitted into evidence in any legal proceeding, and shall be prima facie correct and prima facie evidence of the accuracy of the information contained therein.

(d) Authority. Except as provided in subsection (a-3), ~~the~~ The Director, or the Director's designee, may, when he or she knows or reasonably believes that a committed person, or the estate of that person, has assets which may be used to satisfy all or part of a judgment rendered under this Act, or when he or she knows or reasonably believes that a committed person is engaged in gang-related activity and has a substantial sum of money or other assets, provide for the forwarding to the Attorney General of a report on the committed person and that report shall contain a completed form under subsection (a-5) together with all other information available concerning the assets of the committed person and an estimate of the total expenses for that committed person, and authorize the Attorney General to institute proceedings to require the persons, or the estates of the persons, to reimburse the Department for the expenses incurred by their incarceration. The Attorney General, upon authorization of the Director, or the Director's designee, shall institute actions on behalf of the Department and pursue claims on the Department's behalf in probate and bankruptcy proceedings, to recover from committed persons the expenses incurred by their confinement. For purposes of this subsection (d), "gang-related" activity has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

(e) Scope and limitations.

(1) No action under this Section shall be initiated more than 2 years after the release or death of the committed person in question.

(2) The death of a convicted person, by execution or otherwise, while committed to a Department correctional institution or facility shall not act as a bar to any action or proceeding under this Section.

(3) The assets of a committed person, for the purposes of this Section, shall include any property, tangible or intangible, real or personal, belonging to or due to a committed or formerly committed person including income or payments to the person from social security, worker's compensation, veteran's compensation, pension benefits, or from any other source whatsoever and any and all assets and property of whatever character held in the name of the person, held for the benefit of the person, or payable or otherwise deliverable to the person. Any trust, or portion of a trust, of which a convicted person is a beneficiary, shall be construed as an asset of the person, to the extent that benefits thereunder are required to be paid to the person, or shall

in fact be paid to the person. At the time of a legal proceeding by the Attorney General under this Section, if it appears that the committed person has any assets which ought to be subjected to the claim of the Department under this Section, the court may issue an order requiring any person, corporation, or other legal entity possessed or having custody of those assets to appropriate any of the assets or a portion thereof toward reimbursing the Department as provided for under this Section. No provision of this Section shall be construed in violation of any State or federal limitation on the collection of money judgments.

(4) Nothing in this Section shall preclude the Department from applying federal benefits that are specifically provided for the care and treatment of a committed person toward the cost of care provided by a State facility or private agency.”; and

By deleting pages 2 through 18.

With these changes, Senate Bill 2465 will have my approval. I respectfully request your concurrence.

Sincerely,

Bruce Rauner
GOVERNOR