

Assembly Hearing Slip

(Please print plainly)

Date: 1/12/00

Bill No. AB 603

Or
Subject _____

(Name) Rep Montgo Mery

(Street Address or Route Number) _____

(City & Zip Code) _____

(Representing) _____

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 1-12-00

Bill No. AB 603

Or
Subject _____

(Name) Paul VORNDT

(Street Address or Route Number) 305 E. Walnut

(City & Zip Code) Brown Bay, VT 54301

(Representing) Brown County

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 1-12-00

Bill No. AB 603

Or
Subject _____

(Name) Sen. Cowles

(Street Address or Route Number) _____

(City & Zip Code) _____

(Representing) _____

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 1-12-00

Bill No. AB 603

Or

Subject: _____

Sarah Diedrick Kasdorf
(Name)

100 River Pl Site 101

(Street Address or Route Number)

Menawa 53716

(City & Zip Code)

Wisconsin Counties Assoc.
(Representing)

Speaking *in favor*:

Speaking *against*:

Registering *in favor*:

Registering *against*:

Speaking *for information only*:
Neither *for nor against*:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Wednesday, Jan. 12, 2000
10 AM – Room 328 NW

- I. Call to Order
- II. Roll Call
- III. Public Hearing
 - A. **AB 603** (*Montgomery/Breske*)
Relating to: prisoner reimbursement to county for booking costs.
- IV. Announcements
 - A. Next meeting – January 26?
- V. Adjournment

ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

AGENDA

Wednesday, Jan. 26, 2000
2 p.m. or Upon Adjournment of Session
Room 328 NW

- I. Call to Order
- II. Roll Call
- III. Executive Session
 - A. **AB 603** (*Montgomery/Breske*)
Relating to: prisoner reimbursement to county for booking costs.
- IV. Public Hearing
 - A. **AB 633** (*Urban/George*)
Relating to: the involuntary commitment of prisoners for mental health treatment.
- V. Announcements
 - A. Next meeting – Feb. 23?
- VI. Adjournment

1999 Session

FISCAL ESTIMATE

DOA-2048 N(R06/99)

X ORIGINAL
CORRECTED
UPDATED
SUPPLEMENTAL

LRB Number
- 3792/1

Bill Number
AB603

Subject
Prisoner reimbursement to counties for booking costs

Amendment No. if Applicable

Administrative Rule Number

Fiscal Effect

State: X No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
Or affects a sum sufficient appropriation.

- Increase Existing Appropriation
Decrease Existing Appropriation
Create New Appropriation
Increase Existing Revenues
Decrease Existing Revenues

- Increase Costs - May be possible to Absorb Within Agency's Budget
Decrease Costs

Local: No local government costs

- 1. X Increase Costs
2. Decrease Costs
3. X Increase Revenues
4. Decrease Revenues
5. Types of Local Governmental Units Affected:
X Counties

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under current law, a county may obtain reimbursement for certain expenses incurred in confining a person. A person sentenced to a county jail or confined in a county jail as a condition of probation may be assessed these charges and the county may make deductions from the prisoner's canteen account.

This bill authorizes counties to recoup the cost of fingerprinting, photographing, assessing and evaluating a person and collecting information from the person at the start of the person's confinement in the jail. If the prisoner has an institutional account, the jailer may deduct any jail processing assessment fees charged to the prisoner. The money collected shall be deposited in the county treasury.

This proposed bill will have no fiscal impact on the Department of Corrections. If counties begin to charge for booking costs, they will experience increased costs and should also experience increased revenues. The increased costs would be associated with the start-up of a system for assessing a booking fee. There would also be increased costs due to increased collections. It is not possible to determine the likelihood of cost recovery, and therefore it is not possible to calculate the amount of revenue that will be generated by counties. Because each county will experience different cost increases and revenue increases, we are not able to estimate the local government fiscal effect of this legislation.

Long-Range Fiscal Implications

Prepared by: Dawn Woeshnick

Telephone No. 266-0569

Agency Department of Corrections

Authorized Signature: Robert Margolies

Telephone No. 266-2931

Date 11/29/99

Vote Record

Assembly Committee on Corrections and the Courts

Date: 1/26/2000
 Moved by: unanimous consent
 AB: 603 SB: _____
 AB: _____ SJR: _____
 AJR: _____ SR: _____
 A: _____ Other: _____

A/S Amdt: 1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Scott Walker, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	_____	_____	_____	_____

Motion Carried Motion Failed

Vote Record

Assembly Committee on Corrections and the Courts

Date: 1/26/2000
 Moved by: Goetsch
 AB: 603
 AB: _____ SB: _____
 AJR: _____ SJR: _____
 A: _____ SR: _____

Seconded by: Suder
 Clearinghouse Rule: _____
 Appointment: _____
 Other: _____

A/S Amdt: 1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrency |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Scott Walker, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>12</u>	<u>0</u>	<u>0</u>	<u>0</u>

Motion Carried Motion Failed

Vote Record

Assembly Committee on Corrections and the Courts

Date: 1/26/2000
 Moved by: Suder Seconded by: Hoven
 AB: 603 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ SR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Scott Walker, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>12</u>	<u>0</u>	<u>0</u>	<u>0</u>

Motion Carried

Motion Failed



FEB 07 2000

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: February 7, 2000

TO: REPRESENTATIVE SCOTT WALKER AND MEMBERS OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

FROM: Anne Sappenfield, Staff Attorney

SUBJECT: 1999 Assembly Bill 603, Relating to Prisoner Reimbursement for Booking
Costs and Assembly Amendment 1 to the Bill

This memorandum describes 1999 Assembly Bill 603, relating to prisoner reimbursement to counties for booking costs and Assembly Amendment 1 to the bill.

The bill was introduced on November 24, 1999, by Representative Montgomery and others; cosponsored by Senator Breske and others. The Assembly Committee on Corrections and the Courts held a public hearing on the bill on January 12, 2000, and voted unanimously on January 26, 2000 to recommend adoption of Assembly Amendment 1 and passage of the bill, as amended.

A. CURRENT LAW

Under current law, a county may seek reimbursement for any expenses incurred by the county in relation to the crime for which a person was sentenced to a county jail or for which the person was placed on probation and confined in jail. Specifically, a county may seek reimbursement of not more than the actual per-day cost of maintaining that prisoner, as set by the county board by ordinance, for the entire period of time that the person is or was confined in the jail, including any period of pretrial detention. The county may also seek reimbursement for the expenses of investigating the financial status of the person and any other expenses incurred in collecting the payments.

A jailer (i.e., a sheriff, superintendent or other keeper of a jail) may charge a prisoner for the above-described expenses while he or she is a prisoner. If the jailer maintains an institutional account for a prisoner's use for payment for items of canteen, vending or similar services ("canteen account"), the jailer may make deductions from that account. In addition, the county where a jail is located may also commence a civil action in circuit court within 12 months after

the release of a prisoner from jail to obtain a judgment for the expenses. Any payments collected by either method must be deposited in the county treasury.

B. ASSEMBLY BILL 603

Assembly Bill 603 allows a jailer or county to collect reimbursement for the costs it incurs in booking a person in the same manner as the costs of maintaining a prisoner are collected under current law. Under the bill, "booking" includes fingerprinting, photographing, assessing and evaluating a person and collecting information from the person at the start of the person's confinement in the county jail.

The bill also provides for the collection of a *jail processing assessment* from a person confined in a county jail. The bill specifies that the amount of the assessment may not exceed the county's average booking costs per prisoner. Under the bill, if the jailer maintains a canteen account, the jailer may deduct from that account any jail processing assessment levied with respect to the prisoner's current or past periods of confinement.

Under the bill, a prisoner may be required to reimburse the booking costs both as provided under current law and in the form of a jail processing assessment. However, the total amount collected may not exceed the county's actual costs in booking the prisoner.

Any money collected, as provided in the bill, must be deposited in the county treasury.

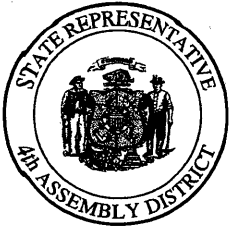
C. ASSEMBLY AMENDMENT 1 TO THE BILL

Under Assembly Amendment 1 to the bill, a county must return any jail processing fee collected in connection with a person's confinement *unless* one of the following occurs:

1. The person is convicted of a crime based on the conduct that led to the person's confinement.
2. While the criminal complaint based on the conduct that led to the person's confinement is pending, the person is charged with another crime and is convicted of that other crime.

If you would like any further information on this subject, please feel free to contact me at the Legislative Council Staff offices.

AS:rv;ksm



Phil Montgomery

Serving the Communities of Allouez, Ashwaubenon, De Pere and Green Bay

ASSEMBLY BILL 603

**TESTIMONY BEFORE ASSEMBLY
COMMITTEE ON CORRECTIONS &
THE COURTS**

JANUARY 12, 2000

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR HEARING ASSEMBLY BILL 603 TODAY.

RIGHT NOW, COUNTIES MAY OBTAIN REIMBURSEMENT FROM INMATES FOR ACTUAL PER-DAY COSTS OF MAINTAINING THEM IN THE COUNTY JAIL.

AB-603 COMES AT THE REQUEST OF BROWN COUNTY AND WILL ALLOW ALL COUNTIES TO OBTAIN REIMBURSEMENT FOR BOOKING AN INMATE (fingerprinting, photographing, assessing, and evaluating a person and collecting information from the person). THE BOOKING FEE CREATED BY THE BILL CANNOT EXCEED THE COUNTY'S AVERAGE BOOKING COSTS PER PRISONER. IN BROWN COUNTY, THIS FEE IS ESTIMATED AT \$25.24 PER INMATE. BROWN COUNTY OFFICIALS ESTIMATE THAT THIS FEE WILL GENERATE OVER \$225,000 NEXT YEAR.

THE AMENDMENT I ASK YOU TO CONSIDER PROVIDES THAT THE FEE WILL BE REFUNDED IF A PERSON WHO IS "BOOKED" IS NOT CHARGED WITH A CRIME OR IS FOUND INNOCENT. THE AMENDMENT IS IDENTICAL TO SENATE AMENDMENT 1 to SENATE BILL 292, A COMPANION BILL WHICH WAS PASSED BY THE SENATE COMMITTEE ON INSURANCE,

**TOURISM, TRANSPORTATION AND CORRECTIONS WITH A 5-2 VOTE
(Senators Grobschmidt and Baumgart voting No).**

**AFTER CONSIDERING THE MERITS OF THIS BILL, I ASK MEMBERS OF
THE COMMITTEE FOR THEIR FAVORABLE SUPPORT.**

THANK YOU FOR YOUR TIME TODAY.



County of Milwaukee

Office of the Sheriff

Leverett F. Baldwin

Sheriff

January 10, 2000

Honorable Scott Walker, State Representative
State Capitol
P. O. Box 8953
Madison, Wisconsin 53708

RE: 1999 ASSEMBLY BILL 603

Dear Representative Walker:

I have reviewed 1999 Assembly Bill 603 and strongly support its' passage with amendments. As currently drafted, this bill authorizes counties to recoup the cost of fingerprinting, photographing, assessing, and evaluating a person, in addition to collecting information from an individual at the start of that person's confinement in jail. If the prisoner has an institutional account, the jail may deduct any jail processing assessment fees charged to that prisoner with monies deposited in the county treasury.

I would suggest this bill be amended to allow collection of fees, not only in the previously-described manner, but also "added on" to the amount of fines paid or bail money posted to secure the release of the prisoner.

In the long run, this bill will provide some relief to taxpayers who fund jail operations and appropriately direct some of the costs, associated with arrest and jail processing, to the arrested individual.

I have also been informed that a possible amendment has been discussed that would allow for return of the assessment fee should the arrested individual ultimately be found not guilty of all charges subject to that specific arrest. I have no objection to that amendment as it appears to be based on fundamental fairness.

Please feel free to contact me if you require additional information regarding this matter.

Very truly yours,

Leverett F. Baldwin, Sheriff
Milwaukee County, Wisconsin

ab603

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**STATE BAR
of WISCONSIN**

5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Assembly Committee on Corrections and the Courts
From: Ray Dall'Osto, Chair of Criminal Law Section
Date: January 12, 2000
Re: Assembly Bill 603

The Criminal Law Section of the State Bar of Wisconsin is currently reviewing Assembly Bill 603, which would require prisoners to pay for the costs of bookings.

We expect that we will take a position on the bill at our January meeting in late January.

In reviewing it, I have identified two problems that may raise constitutional questions.

1. The bill would impose costs even if the prisoners charges are dismissed or if the prisoner is found not guilty,
2. If someone goes to jail on one charge, but two or three others are dismissed, booking charges are still imposed.

Both of these problems violate the Giaccio rule (attached).

The Senate Committee on Insurance, Tourism, Transportation and Corrections adopted an amendment to the companion bill, Senate Bill 292, that addresses these concerns. We hope that you will take these concerns into consideration as you review Assembly Bill 603.

If you have any questions or concerns for our membership (which includes prosecutors, judges, and defense attorneys) feel free to contact Cory Mason, Government Relations Coordinator at the State Bar of Wisconsin at 1/800-444-9404 x6128, email at 'cmason@wisbar.org'; or Attorney Ray Dall'Osto, Chair of the Criminal Law Section at 414/271-1440, email at 'dallosto@execpc.com.'

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2 Court was correct
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*[382 US 399]
*JAY GIACCIO, Appellant,

STATE OF PENNSYLVANIA

382 US 399, 15 L ed 2d 447, 86 S Ct 518

[No. 47]

Argued December 6, 1965. Decided January 19, 1966.

SUMMARY

Notwithstanding defendant's acquittal of a charge of a misdemeanor, the jury, in a Pennsylvania state court, assessed costs against him pursuant to a statute authorizing it to do so. The trial court set aside the jury's verdict imposing costs on the defendant, holding that the statute was void for vagueness (30 Pa D & C2d 463), but the Pennsylvania Superior Court reversed the trial court (202 Pa Super 294, 196 A2d 189), and the Pennsylvania Supreme Court affirmed the judgment of the Superior Court (415 Pa 189, 202 A2d 55).

On appeal, the Supreme Court of the United States reversed. In an opinion by BLACK, J., expressing the views of seven members of the Court, it was held that the statute was so vague as to violate the due process clause of the Fourteenth Amendment.

STEWART, J., concurred, finding the due process violation in the fact that the statute allowed a jury to punish a defendant after finding him not guilty.

FORTAS, J., concurred on the same ground.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Statutes § 15 — criminal — vagueness state statute which provides that in all cases of acquittals by the petit jury for offenses other than felonies the jury shall determine whether defend-

ANNOTATION REFERENCES

Indefiniteness of language as affecting validity of criminal legislation. 96 L ed 374, 87 L ed 203.
Illustrations as to when statute defining criminal offense is subject to attack as vague, indefinite, or uncertain. 83 L ed 893.

Vagueness or indefiniteness of statute as rendering it unconstitutional or inoperative. 70 L ed 322.
Items of costs of prosecution for which defendant may be held. 65 ALR2d 864.

spect," "improper," outrageous to "morality and justice," or that his conduct was "not reprehensible enough for a criminal conviction but sufficiently reprehensible to deserve an equal distribution of costs" or that though acquitted "his innocence may have been doubtful." In this case the trial judge instructed the jury that it might place the costs of prosecution on the appellant, though found not guilty of the crime charged, if the jury found that "he has been guilty of some misconduct less than the offense which is charged but nevertheless misconduct of some kind as a result of which he should be required to pay some penalty short of conviction [and] . . . his misconduct has given rise to the prosecution."

appellant guilty of "some misconduct" less than that charged against him, it was authorized by law to saddle him with the State's costs in its unsuccessful prosecution. It would be difficult if not impossible for a person to prepare a defense against such general abstract charges as "misconduct," or "reprehensible conduct." If used in a statute which imposed forfeitures, punishments or judgments for costs, such loose and unlimited terms would certainly cause the statute to fail to measure up to the requirements of the Due Process Clause. And these terms are no more effective to make a statute valid which standing alone is void for vagueness.

[382 US 405]

[1] "We hold that the 1860 Act is constitutionally invalid both as written and as explained by the Pennsylvania courts." The judgment against appellant is reversed and the case is remanded to the State Supreme Court for further proceedings not inconsistent with this opinion.

Reversed and remanded.

SEPARATE OPINIONS

Mr. Justice Stewart, concurring.

I concur in the Court's determination that the Pennsylvania statute here in question cannot be squared with the standards of the Fourteenth Amendment, but for reasons somewhat different from those upon which the Court relies. It seems to me that, despite the Court's disclaimer,† much of the reasoning in its opinion serves to cast grave constitutional doubt upon the settled

practice of many States to leave to the unguided discretion of a jury the nature and degree of punishment to be imposed upon a person convicted of a criminal offense. Though I have serious questions about the wisdom of that practice, its constitutionality is quite a different matter. In the present case it is enough for me that Pennsylvania allows a jury to punish a defendant after finding him not guilty. That, I think, violates the

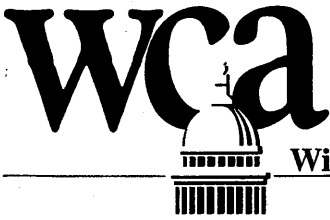
7. The foregoing quotations appear in a number of Pennsylvania cases including Commonwealth v Tilghman, 4 S & P 127; Baldwin v Commonwealth, 26 Pa 171; Commonwealth v Daly, 11 Pa Dist 527 (Q. S. Clearfield); and in the opinion of the Superior Court in this case, 202 Pa Super 294, 196 A2d 189.

8. In so holding we intend to cast no doubt whatever on the constitutionality of the settled practice of many States to leave to juries finding defendants guilty of a crime the power to fix punishment within legally prescribed limits.
† See n 8. supra.

nt him. The Act, with- a single condition, lim- contingency on a jury quitted a defendant sim- urors "shall determine, dict, whether t, shall pay the costs" e trial judge is told he ith pass sentence to nd order him [defend- mitted to the jail of here to remain until he gives security for the nly one of the basic he Due Process Clause en to protect a person g the Government im- upon him except in ac- the valid laws of the t in this constitutional the premise that the ne that carries an un- meaning with legal t courts must enforce. t as written does not meet this constitution-

State contends that would have been void as it was originally quent state court in- ave provided stand- that cure the former deficiencies. We do of the so-called court- ions and standards : jury such broad and r in imposing costs on dants that the jurors terminations of the should be instead of nsylvania decisions to time said express- implied, that juries

US 404] efendant not *guilty ts upon him if they duct, though not un- hensible in some re-



MEMORANDUM

TO: Honorable Members of the Assembly Committee on Corrections and the Courts

FROM: Sarah Diedrick-Kasdorf, Legislative Associate *SK*

DATE: January 12, 2000

SUBJECT: Support for Assembly Bill 603

The Wisconsin Counties Association supports Assembly Bill 603 which authorizes counties to recoup the cost of fingerprinting, photographing, assessing and evaluating a person and collecting information from the person (booking) at the start of the person's confinement in the county jail.

During the 1995-96 legislative session, WCA strongly supported AB 444, the "pay for stay" bill, which allowed counties to charge prisoners for costs associated with confinement. Assembly Bill 603 expands upon the language contained in 1995 AB 444 by allowing counties to recoup their costs associated with booking an individual into the county jail.

Few counties across the state of Wisconsin are currently charging prisoners for their stay in the county jail. This is certainly not due to the fact that counties do not need the revenue but, instead, current statutes require that counties determine the financial status of the prisoner, which can be cumbersome and time-consuming. Additionally, it is difficult for counties to collect payments from county jail inmates once they have been released from the jail and given the likelihood of collection, it is not cost effective for many counties to implement "pay for stay".

Assembly Bill 603 eases the process for county collections by: (1) charging each individual booked in the jail a single jail processing assessment; (2) allowing counties to make deductions from the prisoner's canteen account; (3) not requiring counties to assess the prisoner's financial status prior to collection.

Booking inmates into the county jail can take considerable time when done properly. With counties across the state looking at implementing objective jail classification for the protection of the public, county jail staff and county jail inmates, passage of Assembly Bill 603 will greatly assist counties in achieving this goal. In addition, the revenue

WCA Memo
January 12, 2000
Page 2

collected from the booking fee can be used to offset the costs of inmate services, such as programming or educational activities.

WCA urges you to support Assembly Bill 603.

Thank you for considering our comments.



ROBERT L. COWLES

Wisconsin State Senator • 2nd Senate District

WRITTEN TESTIMONY ON ASSEMBLY BILL 603 BY SENATOR COWLES

Assembly Committee on Corrections and Courts

JANUARY 12, 2000

328 NW, STATE CAPITOL

Representative Walker and members of the Committee, thank you for providing a hearing on Assembly Bill 603 today, relating to prisoner reimbursement to counties for booking costs.

The driving force behind Assembly Bill 603 is the immediate concern of Brown County to collect a one-time fee to cover the costs of booking inmates in county jails. The one-time fee would be applied to the costs incurred in the booking process of the inmate. With enactment of this bill, counties would be able to recoup the cost of finger printing, photographing, assessing and evaluating a person at the start of a person's confinement in the county jail.

Under current law, counties can pursue cost reimbursement for daily room and board expenses. Assembly Bill 603 simply broadens the scope of current law to include inmates to be held responsible for paying further for their incarceration costs. It is the concern of the counties that those individuals who are sentenced to county jails should reimburse the county taxpayers for the cost of their expenses while serving jail time.

(more)

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The legislation will provide the counties the flexibility to collect this segregated fee to offset operating costs of the county jails, which is ultimately borne by taxpayers. It is not the responsibility of the taxpayers to pay for incarceration costs of inmates.

I believe that there should be some mechanism put in place that would require inmates not found guilty to receive their booking fee back. To address this concern, Representative Montgomery has provided an amendment to Chairman Walker that would require counties to return all money collected for the related prisoner processing costs, should the incarcerated inmate be found not guilty.

The companion bill, Senate Bill 292 was amended unanimously and passed out of the Senate Committee on Insurance, Tourism, Transportation and Corrections on a 5 to 2 vote. It is currently available for scheduling in the State Senate.

I hope that the Committee would support Assembly Bill 603 with the above mentioned amendment.

Thank you.

Jail/County to consider proposal requiring inmates to pay for their stays

From page 1

and-board fees in recent years to offset the high costs of locking up criminals in record numbers. County jails in Missouri, New Hampshire, Iowa, Oklahoma and other states charge fees of varying amounts, while the Illinois state government has sued more than 40 prisoners for the costs of their incarceration.

In Waukeesa County, Sheriff William Krutzki expects to start charging jail inmates a \$15 to \$20 booking fee later this year.

Civil rights leaders have responded to the inmate fees by voicing their objections around the country, and local activist MacCanon Brown attacked the Milwaukee County plan as barbaric.

"This pound of flesh ranks right up there with beheading people, in its tone of barbarism," Brown said.

On a more practical level, she said, "People are going to turn to crime to pay the bill. They're doomed."

County Executive F. Thomas Ament, who supports the fees and collection plan, said the inmates are responsible for being in jail in the first place. And Zielinski views the bill-collecting as a way to improve the criminal justice system as a whole.

"The central issue is that the criminal justice system isn't tough enough right now," Zielinski said. "In order for prevention to work, you have to have accountability, and that's sorely lacking in the criminal justice system today."

As endorsed by the committee, the measure calls for the county to seek proposals from

collection agencies that would pursue the fees after inmates leave the County Jail or House of Correction.

The agencies would keep a percentage of their collections, and return the remaining portion to the county. How much an agency is willing to turn over to the county would be the primary consideration in determining which firm receives the

county contract.

The agency hired to do the work also would have to determine which inmates are indigent, and therefore exempt from the room and board fees. Information gathered by the jailers and the agency would be used in determining whether an inmate is financially able to pay.

"We will only go after the inmates who have the ability to

pay," Zielinski said.

Brown, the executive director of Repairers of the Breach, still sees the plan as a way to "kick people when they're down."

Too many of the people arrested and sent to the jail or House of Correction are there because of poverty or overzealous police work, and charging them for incarceration exacerbates their plight, Brown said.

Inmates in the Milwaukee County Jail and House of Correction would have to pay for their stays or deal with a private collection agency and possibly lawsuits if a proposal endorsed by a committee Thursday is approved by the County Board.

The measure calls for the county to solicit proposals from private agencies that would collect the room and board fees from prisoners found to have enough assets to be declared non-indigent. The rates: \$16.09 per day in the jail and \$16.88 in the House of Correction.

Those fees could be higher — \$79.38 per day in the jail and \$36.12 in the House of Correction — if the County Board decides to tack on debt service, depreciation and other costs related to the operation and main-

tenance of the facilities. The board will consider the measure Jan. 20.

Supervisor T. Anthony Zielinski has pursued the room-and-board payments for more than 18 months, and was gratified when the Committee on Judiciary, Safety and General Services backed the latest collection plan on a 6-0 vote.

"If a person has the ability to pay for the cost of their incarceration, it's much more fair for them to pay than the citizens and taxpayers, who often have been victims themselves," Zielinski said. "It will serve as something of a deterrent if word gets around that they will be responsible for the cost of their incarceration."

States and local governments across the country have been going after inmates for room-

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By TOM HEID
of the Journal Sentinel staff

County may bill inmates for time spent in jail

States and local governments across the country have been going after inmates for room-

Please see JAIL page 7