

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below			
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill would adopt the Correctional Facility Reimbursement Act.

The Supreme Court estimates that this bill may increase judicial workload, but any impact would not be significant.

The complete fiscal note response of the Nebraska Department of Correctional Services, the State Treasurer, and the Attorney General follows the three tables summarizing their fiscal impact.

The Nebraska Department of Correctional Services (NDCS) estimates the following impact:

ITEMS	FY2011-2012	FY2012-2013	FY2011-2012	FY2012-2013
	Number of Positions		Expenditures	
Corrections Case Manager	-	1.0	0	35,830
Accountant II	-	1.0	0	37,140
Benefits at 40%			0	29,190
Operating (office supplies, printing costs, calculator, phone & phone line costs, computer license costs (connection costs, e-mail licenses)			0	2,000
Capital outlay (desk, computer)			0	2,000
Total		2.00	-	106,160

NDCS Table Notes:

- Corrections Unit Case Manager (who is also a notary public): administer the forms, collect information, prepare the report, and send it to the prosecuting attorney
- Accountant II: create and maintain a database on each inmate regarding the status of any reimbursements, and to assist in gathering information for the reports
- All costs incurred by NDCS would be paid from their cash fund
- NDCS would be fully reimbursed by the State Treasurer by way of the cash funds
- The State Treasurer would also then provide reimbursement of inmate costs up to the \$35 per day where funds were available from the inmates
- The General Funds of NDCS would be reduced equivalent to the inmate reimbursements received

The State Treasurer estimates the following impact:

	FY2011-2012	FY2012-2013	FY2011-2012	FY2012-2013
ITEMS	Number of Positions		Expenditures	
Account II	1.0	1.0	38,000	38,000
Accounting Clerk II	1.0	1.0	26,000	26,000
IT staff	1.0	1.0	40,000	40,000
Benefits			40,000	42,500
Operating (phone services and office supplies)			4,500	3,000
Capital outlay (desk, computer)			4,500	0
Total	3.00	3.00	153,000	149,500

State Treasurer Table Notes:

- Accountant II: process and do the remaining work required by the bill
- Accounting Clerk II: review the paperwork; call and follow-up with courts and jails (68 jails holding over 4,000 prisoners)
- IT Staff: support employees doing the required LB 609 work; write a program for on-line reporting

The Attorney General estimates the following impact:

	FY2011-2012	FY2012-2013	FY2011-2012	FY2012-2013
ITEMS	Number of Positions		Expenditures	
Assistant Attorney General	0.5	0.5	25,000	25,000
Benefits			13,288	13,288
Total			38,288	38,288

Attorney General Table Notes:

- All responsibilities created for prosecuting attorneys become either primary or secondary responsibilities for the AG's Office.

The response of NDCS follows:

LB 609, which adopts the Correctional Facility Reimbursement Act, provides a mechanism for correctional facilities (including juvenile detention facilities and jails) to seek reimbursement from prisoners for the cost of their incarceration.

The cost of care is defined as the cost for providing transportation, room, board, clothing, security, medical and other normal living expenses and the cost to the department or political subdivision for providing college level classes or programs to prisoners.

The Nebraska Department of Correctional Services (NDCS) is to develop a form (within 30 days of the act) which shall be used to obtain information from all prisoners regarding assets of the prisoners. Each prisoner shall complete the form or provide for completion of the form and shall swear or affirm under oath that to the best of his or her knowledge the information provided is complete and accurate.

The NDCS Director shall forward to the prosecuting attorney a report on each prisoner containing a completed form together with all other information available on the assets of the prisoner and an estimate of the total cost of care for that prisoner.

The prosecuting attorney shall investigate or cause to be investigated, as necessary, all reports received under section 4 of this act.

Reimbursement could only be sought by the prosecuting attorney if he/she has good cause to believe that the prisoner has sufficient assets to recover not less than ten percent of the estimated cost of care of the prisoner, or ten percent of the estimated cost of care of the prisoner for two years, whichever is less. Not more than ninety percent of the value of the assets of the prisoner could be sought for reimbursement, with certain assets and obligations excluded.

The court shall issue a show cause order and hold a hearing within 30 days. After the hearing, if the court determines the prisoner has assets which could be subject to this act, the court shall issue an order requiring any person, corporation, or entity to appropriate and apply the assets toward reimbursing the department or political subdivision. The maximum

reimbursement shall not be in excess of the per capita cost of care for maintaining prisoners in the correctional facility, not to exceed thirty five dollars per day.

The fiscal note assumes that where the bill specifies that the Department may commence proceedings under the act (section 7 subsection 8) that it means the Department may request the prosecuting attorney to commence proceedings

The costs of any investigations and of securing reimbursements shall be paid from the reimbursements secured, and the balance of the reimbursements shall be credited to the General Fund.

The State Treasurer may determine the amount due the department or a political subdivision, and render statements thereof.

Impact:

Sentenced Admissions to NDCS have been the following over the last five years:

<u>CY Year</u>	<u>Admissions</u>
2006	2343
2007	2185
2008	2154
2009	2070
2010	2237

1) Costs of developing and administering the form & obtaining information

DCS would develop the form within 30 days of July 1, 2012 and begin administering it to inmates who are sentenced on or after the effective date of the act. Since each prisoner would have to affirm under oath that the form is correct, and since the Department shall furnish to the prosecuting attorney all information and assistance possible to enable the prosecuting attorney to secure reimbursement, NDCS estimates that one additional Corrections Unit Case Manager (who is also a notary public) would be required to administer the forms, collect information, prepare the report, and send it to the prosecuting attorney. One additional Accountant II would also be required to create and maintain a database on each inmate regarding the status of any reimbursements, and to assist in gathering information for the reports.

2) Hearing costs.

The bill specifies that the prosecuting attorney may file a complaint in the court in which a prisoner was sentenced, in order to start the hearing and order process. Unless the specific court allowed videoconferencing, NDCS would incur significant travel costs in transporting the inmate to the sentencing court, assuming the sentencing court was in the same county as the correctional institution. Security or travel costs are not able to be estimated, since it is unknown how many inmates would be required to travel to the hearing.

Note: In cases where the sentencing court is not in the same county as the correctional institution, RRS 25-1233 provides that the prisoner examination be by deposition, unless the court orders the production of the prisoner. The costs of the deposition or the security and transportation of the inmate is to be paid by the party who moved for the production order.

3) Costs of Incarceration

NDCS's most recent annual cost report (for the fiscal year ending June 30, 2010) identified an average cost per inmate of \$34,115/yr, or \$93.47/day if all costs incurred by the department (including administration, security, utilities, all services and programming, etc) are taken into account. The cost per inmate would be less if only certain cost items are to be taken into account.

4) The fiscal note assumes that all costs incurred of any investigations and of securing reimbursements (including staff and travel costs) would be paid from the NDCS cash fund, and that NDCS would be fully reimbursed by the State Treasurer by way of the cash funds. The fiscal note also assumes that the State Treasurer would also then provide reimbursement of inmate costs up to the \$35 per day where funds were available from the inmates. It is unknown how much this reimbursement would be. The fiscal note assumes the General Funds of the Department would be reduced equivalent to the inmate reimbursements received.

The response of the State Treasurer follows:

The passage in the bill would result in a lot of paperwork to review, and a lot of IT support. We estimate that the office would add three positions to accommodate the workload and meet the responsibilities outlined in LB 609.

With 68 jails (2009) holding over 4,000 prisoners, an accounting clerk II would be needed to review the paperwork and to call and follow-up with courts and jails. An accountant II would also be needed to process and do the remaining work required by the bill. The IT person would be needed to support the employees doing the work required in LB 609. Also, with on-line reporting, a program would have to be written and put into place for this to occur.

The cost of additional staff are based on annual salaries of \$38,000 for the accountant II, \$40,000 for the IT staff person and \$26,000 for the accounting clerk II, along with health insurance, retirement benefits and employer payroll taxes. An amount for each position is included in fiscal year 2011-2012 for a desk, computer, phone services and office supplies. Also, for each position in fiscal year 2012-2013 is included cost for phone service and office supplies.

The bill isn't specific about the funding source; it is assumed that a new program would be created and funded by the general fund.

The response of the Attorney General follows:

If LB609 becomes law the Attorney General's Office will face an increase in work equivalent to .5 FTE. The definition of prosecuting attorney in LB609 includes the AG or an AAG. Therefore, all responsibilities created for prosecuting attorneys become either primary or secondary responsibilities for the AG's Office. The investigative, prosecutorial and collections duties created will be voluminous which will require others defined as prosecuting attorneys to seek assistance from the AG's Office. This assistance will be in addition to the extra work the additional investigative, prosecutorial and collection duties causes assistant attorneys general in their own criminal caseloads.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Joe Wilcox	DATE	1/27/11	PHONE	471-2526
COMMENTS					
ATTORNEY GENERAL: No basis to dispute agency analysis relative to the Attorney General.					
DEPARTMENT OF CORRECTIONAL SERVICES: No basis to dispute agency analysis relative to DCS, however, their assumption that the General Funds of the department will be reduced as cash reimbursements are made would not necessarily follow, since the agency will incur costs paid from their Cash Funds, which may be reimbursed.					
STATE TREASURER: The State Treasurer's duties under the Act would be to furnish information and assistance to the prosecuting attorney to secure reimbursement. The State Treasurer <u>may</u> (not shall) determine the amount due the Department of Corrections and render statements. The actual degree to which the Treasurer will be involved is unknown and costs could be covered by the reimbursements secured under the Act (Cash Funds). The funding could be Cash Funds, not General Funds, based on Sec. 11 of the bill. The Treasurer's estimates may be overstated.					