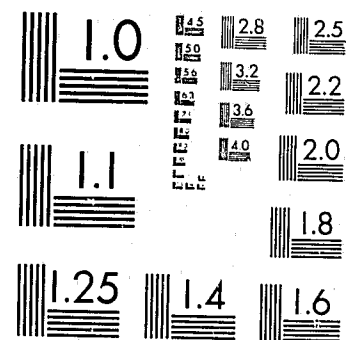


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

7/9/84

3225

43225

Union Calendar No. 267

98th Congress, 1st Session - - - - - House Report No. 98-446

✓
**THE BUREAU OF PRISONS/DISTRICT OF
COLUMBIA DEPARTMENT OF CORRECTIONS
REIMBURSEMENT DISPUTE**

SIXTH REPORT

BY THE

**COMMITTEE ON GOVERNMENT
OPERATIONS**



OCTOBER 27, 1983.—Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

26-060 O

WASHINGTON : 1983

COMMITTEE ON GOVERNMENT OPERATIONS

JACK BROOKS, Texas, *Chairman*

DANTE B. FASCELL, Florida	FRANK HORTON, New York
DON FUQUA, Florida	JOHN N. ERLNBORN, Illinois
JOHN CONYERS, Jr., Michigan	THOMAS N. KINDNESS, Ohio
CARDISS COLLINS, Illinois	ROBERT S. WALKER, Pennsylvania
GLENN ENGLISH, Oklahoma	LYLE WILLIAMS, Ohio
ELLIOTT H. LEVITAS, Georgia	WILLIAM F. CLINGER, Jr., Pennsylvania
HENRY A. WAXMAN, California	RAYMOND J. McGRATH, New York
TED WEISS, New York	JUDD GREGG, New Hampshire
MIKE SYNAR, Oklahoma	DAN BURTON, Indiana
STEPHEN L. NEAL, North Carolina	JOHN R. McKERNAN, Jr., Maine
DOUG BARNARD, Jr., Georgia	TOM LEWIS, Florida
BARNEY FRANK, Massachusetts	ALFRED A. (AL) McCANDLESS, California
TOM LANTOS, California	LARRY E. CRAIG, Idaho
RONALD D. COLEMAN, Texas	DAN SCHAEFER, Colorado
ROBERT E. WISE, Jr., West Virginia	
BARBARA BOXER, California	
SANDER M. LEVIN, Michigan	
BUDDY MacKAY, Florida	
MEL LEVINE, California	
MAJOR R. OWENS, New York	
EDOLPHUS TOWNS, New York	
JOHN M. SPRATT, Jr., South Carolina	
JOE KOLTER, Pennsylvania	
BEN ERDREICH, Alabama	

WILLIAM M. JONES, *General Counsel*
JOHN E. MOORE, *Staff Administrator*
JOHN M. DUNCAN, *Minority Staff Director*

GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE

GLENN ENGLISH, Oklahoma, *Chairman*

STEPHEN L. NEAL, North Carolina	THOMAS N. KINDNESS, Ohio
RONALD D. COLEMAN, Texas	TOM LEWIS, Florida
ROBERT E. WISE, Jr., West Virginia	DAN BURTON, Indiana
BUDDY MacKAY, Florida	
EDOLPHUS TOWNS, New York	

EX OFFICIO

JACK BROOKS, Texas

FRANK HORTON, New York

WILLIAM G. LAWRENCE, *Counsel*
EUPHON L. METZGER, *Clerk*
JOHN J. PARISI, *Minority Professional Staff*

(II)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 27, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's sixth report to the 98th Congress. The committee's report is based on a study made by its Government Information, Justice, and Agriculture Subcommittee.

JACK BROOKS,
Chairman.

(III)

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain/Committee on Government
Operations/U. S. Government

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

CONTENTS

	Page
I. Introduction.....	1
II. Findings.....	2
III. Recommendations.....	3
IV. Discussion.....	3
V. Appendixes.....	6
1. U.S. Code, title 18, § 5003.....	6
2. D.C. statement of accounts payable.....	7
3. D.C. Code, title 24, § 423.....	7

(v)

NCJRS

FEB 27 1984

ACQUISITIONS

Union Calendar No. 267

98TH CONGRESS }
1st Session }

HOUSE OF REPRESENTATIVES

{ REPORT No.
No. 98-446

THE BUREAU OF PRISONS/DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS REIMBURSEMENT DISPUTE

OCTOBER 27, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

SIXTH REPORT

BASED ON A STUDY BY THE GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE

On October 25, 1983, the Committee on Government Operations approved and adopted a report entitled "The Bureau of Prisons/District of Columbia Department of Corrections Reimbursement Dispute." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

The court system of the District of Columbia is unique among the several States in that many of the defendants sentenced by District courts are incarcerated in Federal penal institutions. Under an informal agreement of long standing, the District of Columbia Department of Corrections reimburses the Department of Justice's Federal Bureau of Prisons under an established formula for per diem charges for housing those prisoners.

In 1976 a Department of Corrections auditor discovered errors in the Bureau of Prisons per diem bill, and payment of the disputed charges was suspended. The matter remained in a state of persistent confusion thereafter, with the Department of Corrections alleging error and refusing to pay, and the Bureau of Prisons submitting compounded bills and adding interest to the arrears.

On June 1, 1983, the General Accounting Office (GAO) released a report on this subject¹ which indicated that the amount in dispute now well exceeded \$20 million, and that the parties were still unable to reach an accommodation on their differences.

Each agency, in responding to the findings of the GAO, found thinly veiled satisfaction in the report's finding of fault in the other. It was immediately apparent that objectivity and good will were lacking in the relationship between the parties, and that frustration was developing. Under these circumstances a prompt and fair settlement appeared unlikely.

On June 2, 1983, the Subcommittee on Government Information, Justice, and Agriculture convened a public hearing² to bring together individuals with authority to resolve the dispute.

The witnesses included;

General Accounting Office: Mr. Ronald F. Lauve, Senior Associate Director, General Government Division; Mr. Weldon McPhail, Senior Evaluator, General Government Division; and Mr. Jeffrey A. Jacobson, Attorney, Office of General Counsel.

Department of Justice: Mr. Wade Houk, Assistant Director of Planning and Development, Federal Bureau of Prisons; and Mr. Charles Neill, Deputy Assistant Attorney General, Justice Management Division.

District of Columbia Department of Corrections: Mr. William D. Golightly, Assistant Director for Administration; and Ms. Winifred Myrick, Comptroller.

II. FINDINGS

The Committee finds that:

1. No statute, contract or written procedure contains the elements of the reimbursement relationship between the parties. Rather, a customary arrangement seems to have evolved around the statutory authority of the Attorney General to enter into reciprocal prisoner custody agreements with States and territories, but which is silent concerning the District of Columbia.

2. Neither the Federal Bureau of Prisons nor the District of Columbia Department of Corrections has acted with enthusiasm to resolve the dispute. Information exists in the files of the parties which, if pooled, would be sufficient to resolve the disagreements, but there has not been effective action taken to use it.

3. While the General Accounting Office report found a reimbursement backlog of \$20 million, at the hearing the current arrearage was estimated by the GAO witness to be approaching \$24 million.

4. Each agency has instituted an improved accounting system which will help provide the types of information needed to obviate most disputed charges in the future, but these improvements will not serve to resolve the outstanding issues of the past seven years.

¹ General Accounting Office, "Millions of Dollars in Charges for Housing D.C. Prisoners in Bureau of Prisons' Institutions Are in Dispute" (June 1, 1983), GGD-83-44 [hereinafter referred to as "GAO report"].

² "The Bureau of Prisons/District of Columbia Department of Corrections: Reimbursement Dispute," Hearings before a Subcommittee of the House Committee on Government Operations, 98th Cong., 1st Sess. (1983) [hereinafter cited as "Hearings"].

5. Both the Bureau of Prisons and Department of Corrections witnesses assured the committee that the required information would be exchanged and the matter resolved by the end of September, 1983.

III. RECOMMENDATIONS

The Committee recommends that:

1. The Bureau of Prisons and the Department of Corrections should draft and execute a detailed memorandum of understanding which reduces to writing all agreements and conditions relating to the housing of District of Columbia inmates in Federal penal institutions. This memorandum of understanding should define the documentation which is required to establish custodial responsibility for inmates, and establish the information exchange procedures necessary to protect the positions of each party.

2. Each agency should designate a senior official with authority to settle the dispute, and immediately proceed to identify, locate, and share the required information in its possession.

3. A reasonable number of staff auditors should be made available by both the Bureau of Prisons and the Department of Corrections for such time as will be necessary to process and review the information.

4. A joint Bureau of Prisons/Department of Corrections report should be submitted both to the Chairman of this committee and the Chairman of the Committee on the District of Columbia by no later than October 28, 1983, stipulating the terms of settlement or, should impediments to settlement arise, the nature of the impediments and the steps being taken to resolve them.

5. The joint report required in Recommendation 4 should also contain recommendations, if considered necessary, for legislation to correct statutory or regulatory deficiencies which may have contributed to the confusion over interagency reimbursement.

IV. DISCUSSION

At the time of the hearing there was an average of 1,300 District of Columbia Department of Corrections inmates housed per day in various Federal Bureau of Prisons institutions. Because of the unique status of the District of Columbia as a Federal district that also enjoys home rule, these inmates, though tried in the District of Columbia court system, could have been convicted and sentenced under provisions of either the U.S. Code or the D.C. Code, or both.

If sentenced under the provisions of the U.S. Code, they are considered Federal prisoners and no reimbursement is in order for their support while incarcerated. If sentenced under provisions of the D.C. Code, then the District pays the Bureau of Prisons a subsistence charge for each inmate. Confusion can occur, however, when a defendant is convicted and sentenced for varying periods of years on multiple charges under both codes. In such a case, questions can arise regarding the point in time at which the prisoner ceases to be a ward of the District of Columbia and reverts to Federal custody. In other cases there can be confusion, usually the result of faulty recordkeeping, as to what the inmate's initial custodial status should be.

The Federal Bureau of Prisons and the various State prison systems will, on a reciprocal basis, occasionally house each other's inmates, and the Attorney General is authorized by law to enter into reimbursement contracts with the States for the costs of prisoner support.³ But, according to GAO, when this provision of the U.S. Code was enacted in 1952, the budget and operations of the District of Columbia judicial system were entirely under the control of the Congress, and the District budget was just another part of the Federal budget. Funds could easily be reprogrammed from one account to another. Home rule, with its separate budget and independent sources of income, did not occur for another two decades. Thus, in 1952 the Attorney General was authorized to enter into inmate subsistence contracts with the States and territories, but such contracts with the District were never contemplated, and therefore never authorized.

In fact, a provision of the D.C. Code passed by Congress in 1926 provides that the D.C. Government shall reimburse the Bureau of Prisons for maintenance of D.C. prisoners, and that the sums be paid into the Treasury as miscellaneous receipts.⁴

By mutual agreement, albeit unwritten, the Bureau of Prisons continued to house District inmates under terms similar to those established for the other States. On a quarterly basis the Bureau of Prisons would calculate the amounts owed by the D.C. Department of Corrections and submit its charges for payment.

During the Transition Quarter of 1976, a District auditor detected mathematical errors in the quarterly bill, and the Department of Corrections, never having thought to challenge the bills in the past, decided that all subsequent bills would be audited and verified before payment would be tendered. Because the information necessary to verify the bills was not readily obtainable, and no system existed by which to identify and request it, the delays began and have persisted to this time, mired in a swamp of disputed amounts and unaudited bills.

In its report the GAO succinctly stated the three areas of contention:

Disputed billings.—These are billings the Bureau submitted to the Department of Corrections for individual inmates for whom the Department of Corrections says it has no record. Since October 1976, disputed amounts totaling thousands of dollars have been included in most of the quarterly bills.

Unpaid billings.—Two quarterly bills, the fourth quarter of fiscal years 1978 and 1979, were not paid at all. These amounted to \$1.94 million and \$2.46 million, respectively. The Department of Corrections said it never received the documentation necessary to verify the two bills; the Bureau said it was sent.

Interest charges.—In October 1981, the Bureau began to charge interest on all monies it felt were owed at the then current rate of 16 to 18 percent. According to Bureau records, the District disputes these charges, arguing that interest cannot be charged on debts that the Bureau is responsible for clarifying.⁵

³ U.S. Code title 18, § 5003(a). The entire section is reproduced at appendix 1.

⁴ 24 D.C. Code, § 423. See appendix 3.

⁵ GAO report at 2.

While most charges go through the verification process unchallenged and are paid when due, those which have not been paid have reached an aggregate amount of \$24 million.⁶

The Bureau of Prisons, finding itself unable to collect the challenged funds, felt obligated by Treasury Department regulations to assess interest on the unpaid amounts. The District protested, claiming that the amounts which were in dispute should not have been considered as delinquent and subject to interest charges. Rancor and frustration resulted, thus numbing the chance of amicable resolution.

The issue of interest payments may have become moot, however, having been overtaken by the Debt Collection Act of 1982.⁷ This legislation may prohibit the imposition of interest on a delinquent account owed by a State or local government to the United States. The Bureau of Prisons has requested an opinion from the Comptroller General on this issue.

According to Mr. Houk, "I don't believe the Bureau of Prisons has any inherent desire to assess interest. We have been responding basically to specific regulations of the Treasury Department and possibly in addition to this opinion being sought from the Comptroller General, we can engage in more discussions with the Treasury Department and see if interest charges could be administratively waived."⁸

Mr. Houk's gesture of compromise provides welcome relief to the combative atmosphere of the past few years, and should contribute to the clearing of frustrations on both sides.

In the period since the problem arose seven years ago, each party had made isolated representations to the other in sporadic attempts to gather information, but neither was motivated to provide the vigorous effort required to successfully verify the bills. The GAO report maintained that there was no incentive or sense of urgency at the Department of Justice. The Bureau of Prisons could not have kept any amount they collected, because the law requires such recoveries to be deposited in the general fund of the U.S. Treasury, not in the accounts of the Bureau of Prisons. By contrast, in the case of a State or territory, reimbursements are deposited in the Bureau's account for use in offsetting its operating expenses.⁹

The District of Columbia, for its part, appeared equally unmotivated to urge the matter to settlement. Such an act would require the District to immediately interrupt its already occasionally troubled cash flow to the tune of many millions of dollars.¹⁰

Both the Bureau of Prisons and the Department of Corrections witnesses, while denying any lack of motivation within their respective agencies, also candidly conceded that some outside catalyst, such as the GAO Report and the hearing, was needed to move the matter off dead center.¹¹

⁶ Hearings at 9.

⁷ Public Law 97-365, enacted Oct. 23, 1982.

⁸ Hearings at 26.

⁹ GAO Report at 5.

¹⁰ Hearings at 12, 21-22.

¹¹ Hearings at 24.

Both witnesses assured the committee at the hearing that their agencies are now sufficiently motivated to resolve their differences, and promised to do so promptly. Mr. Houk stated, "The Director of the Bureau of Prisons, Norman Carlson, asked me to convey to this subcommittee his personal commitment to bring the situation to a prompt and final resolution. We will continue to meet with officials of the D.C. Department of Corrections and the D.C. Comptroller's Office to promptly resolve all past bills in dispute and to jointly improve billing and payment procedures for the future."¹²

Mr. Golightly agreed, stating that the information he considered necessary to resolve the issue was now in hand. He submitted an accounting of the funds in dispute¹³ and in response to the statement of Mr. Houk said, "I am thoroughly in agreement with my colleague, we have been doing this long enough and it is time that rather than hurling accusations at one another or account books or anything, it is time for us to get this problem resolved."¹⁴

There was agreement in another vital area, as well. The GAO recommended, and the Bureau of Prisons and Department of Corrections witnesses concurred, that while the law was silent as to the authority of the Attorney General to enter into a contractual relationship with the District of Columbia, this did not prohibit the Bureau of Prisons and Department of Corrections from drafting and executing a memorandum of understanding (as distinguished from a formal contract) to clarify terms for the provision of Federal custodial services.

This memorandum of understanding should be drafted without delay as some problems will undoubtedly continue to exist in the future. For example, while both parties have finally communicated their information needs to the other and established a new billing system, a significant number of claims are still being contested by the Department of Corrections.

GAO reported that, "For the first two quarters that the new system operated, the Department disputed an average of 7.2 percent of the charges compared with a 15.7 percent average for the preceding four quarters."¹⁵ While the new system should be expected to reduce further disputes as it is refined by experience, problems and conflicts will never be eliminated completely. It is only commonsense that the terms of the agreement should be reduced to writing.

V. APPENDIXES

APPENDIX 1.—U.S. CODE, TITLE 18, § 5003

§ 5003. Custody of State offenders

(a) The Attorney General, when the Director shall certify that proper and adequate treatment facilities and personnel are available, is hereby authorized to contract with the proper officials of a State or Territory for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in

¹² Hearings at 12.
¹³ See Appendix 2.
¹⁴ Hearings at 18.
¹⁵ GAO Report at 7.

the courts of such State or Territory: *Provided*, That any such contract shall provide for reimbursing the United States in full for all costs or other expenses involved.

(b) Funds received under such contract may be deposited in the Treasury to the credit of the appropriation or appropriations from which the payments for such service were originally made.

(c) Unless otherwise specifically provided in the contract, a person committed to the Attorney General hereunder shall be subject to all the provisions of law and regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed.

(d) The term "State" as used in this section includes any State, territory, or possession of the United States, and the Canal Zone. (Added May 9, 1952, ch. 253, § 1, 66 Stat. 68, and amended Oct. 19, 1965, Pub. L. 89-267, § 1, 79 Stat. 990.)

AMENDMENTS

1965—Subsec. (d). Pub. L. 89-267 added subsec. (d).

APPENDIX 2.—DISTRICT OF COLUMBIA STATEMENT OF ACCOUNTS PAYABLE

D.C. DEPARTMENT OF CORRECTIONS

[Accounts payable—Federal Bureau of Prisons, as of May 31, 1983]

Period	Total amount billed	Amount paid	Payment in process	Unaudited	Disputed
T.Q. to 3d qtr. FY'81.....	\$39,297,590.54	\$30,046,471.85	\$2,118,036.27	\$6,935,534.87	\$197,547.55
4th qtr.-FY'81.....	4,217,062.25	4,089,777.00	0	0	127,285.25
1st. qtr.-FY'82.....	3,051,947.00	3,015,330.00	0	0	36,617.00
2d. qtr.-FY'82.....	4,154,992.00	4,150,890.00	0	0	4,102.00
3d. qtr.-FY'82.....	4,344,460.00	4,323,246.00	0	0	21,214.00
4th qtr.-FY'82.....	4,573,134.00	0	0	4,573,134.00	0
1st. qtr.-FY'83.....	4,351,600.00	0	0	4,351,600.00	0
Total.....	63,990,785.79	45,625,714.85	2,118,036.27	15,860,268.87	386,765.80

¹ Includes \$4,822,252.29 for which supporting documentation received by this Agency on May 31, 1983.

² A contingent liability has been established for an estimated \$1,134,080 due for bills not received.

APPENDIX 3.—D.C. CODE, TITLE 24, § 423

§ 24-423. Reimbursement of United States.

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the Treasury as "miscellaneous receipts." (Apr. 29, 1926, 44 Stat. 347, ch. 195, title II; 1973 Ed., § 24-423.)

END