

INMATE COMPLAINT

OFFICE USE ONLY

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|---------------|----------------|-----------------------|
| DATE RECEIVED | COMPLAINT CODE | COMPLAINT FILE NUMBER |
|---------------|----------------|-----------------------|

INSTRUCTIONS FOR INMATE: COMPLETE ALL SECTIONS OF FORM. Do not use a highlighter or marker on this form. The form may be returned to you if you submit an incomplete form or if you do not follow the instructions. Print clearly, illegible forms will not be processed. See reverse side for more information.

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|---|-------------------------------------|-------------------------------------|---------------------------|
| INMATE NAME (if group complaint, enter name of spokesperson) MARCUS KERBY | DOC NUMBER 257018 | HOUSING UNIT H EAST | FACILITY P B CI |
| LOCATION OF INCIDENT Dept. Of Adult Institutions | DATE OF INCIDENT On-going | TIME OF INCIDENT On-going | |

ANSWER THE FOLLOWING QUESTIONS IN THE SPACES PROVIDED:
BRIEFLY STATE WHO OR WHAT IS THE ONE ISSUE OF THIS COMPLAINT? **2015 Wis Act 355 is being applied illegally by the department of corrections and the PSC Business Office.**

PRIOR TO SUBMITTING THIS COMPLAINT, HOW DID YOU ATTEMPT TO RESOLVE YOUR ONE ISSUE AND WITH WHOM?
I wrote to the business office and the business office people came to this unit and explained what they are doing and claimed that what they are doing is following DAI directives.

WHAT WAS THE RESULT OF YOUR ATTEMPT TO RESOLVE THE ONE ISSUE?
That the business office will continue to take 50% of moneys for all debts and obligations no matter what inmates have to say about it.

WHAT ARE THE DETAILS SURROUNDING THIS COMPLAINT?
ACT 355 came out of the legislature and D.O.C. legal counsel and others high up in the DAI redid DOC 309.45 (2) deductions, changing them from 25% to 50% under the guise that ACT 355 called for the changes. The D.O.C. is flat wrong in that. First of all, ACT 355 concerns only \$973.20 RESTITUTION. ACT 355 did not state anywhere within it that 50% of an inmates wage, moneys etc, can be taken from the inmate for debts and obligations of any kind. ACT 355 states, that an inmate owing restitution can have a "reasonable amount/percentage" deducted from his wages, moneys etc, for the restitution obligation.

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| SIGNATURE OF INMATE M. Kerby | DATE SIGNED 1-30-17 |
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Continue on reverse if more space is needed.

Exhibit - 1

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| INMATE NAME (if group complaint, enter name of spokesperson) <i>MARCUS KERBY</i> | DOC NUMBER <i>257018</i> | HOUSING UNIT <i>H EAST</i> | FACILITY <i>ORBIT</i> |
| LOCATION OF INCIDENT <i>Dept. of Adult Institutions</i> | DATE OF INCIDENT <i>DN-Going</i> | TIME OF INCIDENT <i>DN-Going</i> | |

ANSWER THE FOLLOWING QUESTIONS IN THE SPACES PROVIDED:
BRIEFLY STATE WHO OR WHAT IS THE ONE ISSUE OF THIS COMPLAINT?

SEE page 1.

PRIOR TO SUBMITTING THIS COMPLAINT, HOW DID YOU ATTEMPT TO RESOLVE YOUR ONE ISSUE AND WITH WHOM?

WHAT WAS THE RESULT OF YOUR ATTEMPT TO RESOLVE THE ONE ISSUE?

WHAT ARE THE DETAILS SURROUNDING THIS COMPLAINT? CONTINUED: ACT 355 violates EX POST FACTO Clause of the U.S. Constitution. EX POST FACTO, paragraph 3 states: "Every law that changes the punishment and inflicts a greater punishment than the law allowed when the crime was committed." Id. Carmel V. Texas, 529 U.S. 513, 120 S.Ct. 1626 (2000). Furthermore, the DOC, in taking 50% rather than the 25% authorized by statute violates those statutes and runs contrary to ACT 355. As stated ACT 355 isn't authorizing the DOC to change percentages from 25 to 50. The DOC did that on its own, without legislative authorization, contrary to Vitarelli V. Seaton, 359 U.S. 535, 79 S.Ct. 968 (1959) which held that: An agency can only act in the manner which it promulgated according to law.

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| SIGNATURE OF INMATE <i>M. Kerby</i> | DATE SIGNED <i>1/30/17</i> |
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| INMATE NAME (if group complaint, enter name of spokesperson) <i>MARCUS KERBY</i> | DOC NUMBER <i>257018</i> | HOUSING UNIT <i>H. EAST</i> | FACILITY <i>ORBIT</i> |
| LOCATION OF INCIDENT <i>Dept. of Adult Institutions</i> | DATE OF INCIDENT <i>On-going</i> | TIME OF INCIDENT <i>On-going</i> | |

ANSWER THE FOLLOWING QUESTIONS IN THE SPACES PROVIDED:

BRIEFLY STATE WHO OR WHAT IS THE ONE ISSUE OF THIS COMPLAINT?

PRIOR TO SUBMITTING THIS COMPLAINT, HOW DID YOU ATTEMPT TO RESOLVE YOUR ONE ISSUE AND WITH WHOM?

WHAT WAS THE RESULT OF YOUR ATTEMPT TO RESOLVE THE ONE ISSUE?

WHAT ARE THE DETAILS SURROUNDING THIS COMPLAINT? Furthermore, debts that have already been converted into civil judgments cannot be collected by the DOC. The civil debt collection agency is responsible for debt collections on those debts. Nothing in ACT 355 allows the DOC state agency to restructure a civil judgment of a court of law. Once debts get converted, its a civil matter and none of the DOC'S business. Furthermore, all moneys taken for multiple obligations must be reimbursed to the account, including counterfeit supervision fees deductions. All time barred debts need to be removed from accounts or changed to a zero, so nobody gets confused in the business offices. Under 304.078, once a person gets the certificate, the DOC cannot act on any debts or obligations from that

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| SIGNATURE OF INMATE <i>M. K.</i> | DATE SIGNED <i>1-30-17</i> |
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Continue on reverse if more space is needed.

ICE REPORT
COMPLAINT NUMBER RGCI-2017-3459
***** ICRS CONFIDENTIAL *****

To: KERBY, MARCUS J. - #257018
UNIT: _HEU -- H219_U
REDGRANITE CORRECTIONAL INSTITUTION
PO Box 925
REDGRANITE, WI 54970-0925

Complaint Information:

Date Complaint Acknowledged: 01/31/2017 Inmate Contacted? No

Date Complaint Received: 01/31/2017

Subject of Complaint: 17 - Inmate Accounts

Person(s) Contacted: Ms. Wuest, FPS

Document(s) Relied Upon: Act 355
DAI 309.45.02

Brief Summary: Act 355 being applied illegally by the DOC and RGCI Business Office

Summary of Facts: ICE reviewed Mr. Kerby's complaint that Act 355 being applied illegally by the DOC and RGCI Business Office.

Act 355 (the Act) amended and created a number of specific statutory provisions. Moreover, the Act affected a number of different entities and individuals and included a number of significant changes. Prior to the implementation of the Act, Wis. Stat. § 301.32(1) expressly authorized a warden or superintendent of a state correctional institution to use a prisoner's money to be paid towards applicable surcharges or for the benefit of the prisoner. Paying down an inmate's lawful debt certainly provides for the benefit of the prisoner. See Wis. Stat. § 301.32(1).

The Act amended Wis. Stat. § 301.32 to expressly authorize a warden or superintendent of a correctional institution to use a prisoner's money to be paid towards applicable surcharges, victim restitution, or the benefit of the prisoner. See Wis. Stat. § 301.32(1)

The Act also resulted in changes to the Wisconsin restitution law. In part, under the Act, Wis. Stat. s. 973.20(11)(c) was created to read:

If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the court order shall require the defendant to authorize the department to collect, from the defendant's wages and from other moneys held in the defendant's prisoner's account, an amount or a percentage the department determines is reasonable for payment to victims.

This revision requires individuals who are currently in state prison or those defendants who are sentenced to a state prison to pay restitution, mandating

ICE REPORT
COMPLAINT NUMBER RGCI-2017-3459
***** ICRS CONFIDENTIAL *****

that the court to ensure both those in prison and those sentenced to a state prison authorize the DOC to collect from all inmate monies at a percentage determined by the DOC to be reasonable for payment to victims.

The DOC's present policy concerning inmate financial obligation is supported both by its statutory authority both prior to the implementation of the Act and continues now after the effective date of the Act.

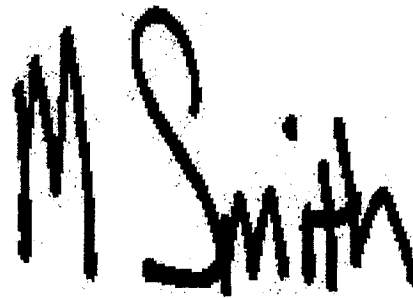
Deductions are being taken in accordance to DAI 309.45.02. No violation is found. Dismissal is recommended.

ICE Recommendation:

Dismissed

Recommendation Date:

03/02/2017



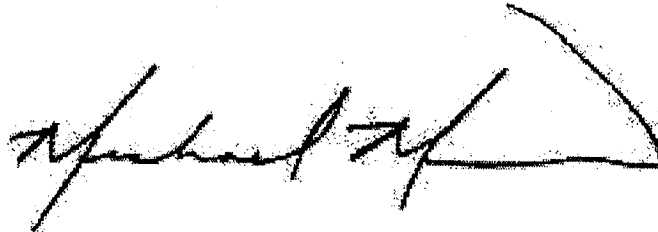
M. Smith - Institution Complaint Examiner

REVIEWING AUTHORITY'S DECISION
COMPLAINT NUMBER RGCI-2017-3459
***** ICRS CONFIDENTIAL *****

To: KERBY, MARCUS J. - #257018
UNIT: _HEU -- H219_U
REDGRANITE CORRECTIONAL INSTITUTION
PO Box 925
REDGRANITE, WI 54970-0925

Complaint Information:

Date Complaint Acknowledged: 01/31/2017
Date Complaint Received: 01/31/2017
Subject of Complaint: 17 - Inmate Accounts
Brief Summary: Act 355 being applied illegally by the DOC and RGCI Business Office
ICE's Recommendation: Dismissed
Reviewer's Decision: Dismissed
Decision Date: 03/05/2017



M. Meisner - Warden

A complainant dissatisfied with a decision may, within 10 calendar days after the date of the decision, appeal that decision by filing a written request for review with the Corrections Complaint Examiner on form DOC-405 (DOC 310.13, Wis. Adm. Code).

CCE REPORT
COMPLAINT NUMBER RGCI-2017-3459
***** ICRS CONFIDENTIAL *****

To: KERBY, MARCUS J. - #257018
UNIT: _HEU -- H219_U
REDGRANITE CORRECTIONAL INSTITUTION
PO Box 925
REDGRANITE, WI 54970-0925

Complaint Information:

Date Appeal Acknowledged: 03/20/2017
Date Appeal Received: 03/15/2017
Subject of Complaint: 17 - Inmate Accounts
Brief Summary: Act 355 being applied illegally by the DOC and RGCI Business Office
Method of Disposition: Review on Record? Yes Investigation? No

CCE's Recommendation: Dismissed
Prior to the implementation of Act 355, Wis. Stat. § 301.32(1) expressly authorized a warden or superintendent of a state correctional institution to use a prisoner's money to be paid towards applicable surcharges or for the benefit of the prisoner. Paying down an inmate's lawful debt certainly provides for the benefit of the prisoner. See Wis. Stat. § 301.32(1).
Act 355 (The "Act") amended Wis. Stat. § 301.32 to expressly authorize a warden or superintendent of a correctional institution to use a prisoner's money to be paid towards applicable surcharges, victim restitution, or the benefit of the prisoner. See Wis. Stat. § 301.32(1)
Included in DOC's statutory authority is its mandatory obligation to remit payment to court ordered surcharges. Specifically, the DOC is the state agency charged with collecting statutory surcharges in criminal actions. See Wis. Stat. §§ 938.34(8d)(c) (delinquency victim and witness assistance surcharge), 973.042(6) (child pornography surcharge), 973.043(4) (drug offender diversion surcharge), 973.045(4) (crime victim and witness assistance surcharge), and 973.046(4) (deoxyribonucleic acid [DNA] analysis surcharge). If an inmate in a state prison, or a person sentenced to state prison, has not paid the surcharge, DOC "shall assess and collect the amount owed from the inmate's wages or other moneys." Id.
The Act also resulted in changes to the Wisconsin restitution law. In part, under the Act, Wis. Stat. s. 973.20(11)(c) was created to read:
If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the court order shall require the defendant to authorize the department to collect, from the defendant's wages and from other moneys held in the defendant's prisoner's account, an amount or a percentage the department determines is reasonable for payment to victims

CCE REPORT
COMPLAINT NUMBER RGCI-2017-3459
***** ICRS CONFIDENTIAL *****

Complaint Information:

the department determines is reasonable for payment to victims.

See 973.20 (11) (c)(emphasis added).

This revision requires individuals who are currently in state prison or those defendants who are sentenced to a state prison to pay restitution, mandating that the court to ensure both those in prison and those sentenced to a state prison authorize the DOC to collect from all inmate monies at a percentage determined by the DOC to be reasonable for payment to victims.

Finally, once a prison term is ordered, control over the care of the prisoner is vested by statute in the DOC. See *State v. Gibbons*, 71 Wis.2d 94, 99, 237 N.W.2d 33 (1976); see also *State v. Lynch*, 105 Wis.2d 164, 168, 312 N.W.2d 871 (Ct.App.1981).

The DOC's present policy concerning inmate financial obligation is supported both by its statutory authority both prior to the implementation of the Act and continues now after the effective date of the Act. It is recommended that this appeal be dismissed.

Recommendation Date:

03/21/2017



B. Hompe - Corrections Complaint Examiner

OFFICE OF SECRETARY DECISION
COMPLAINT NUMBER RGCI-2017-3459
*** ICRS CONFIDENTIAL ***

To: KERBY, MARCUS J. - #257018
UNIT: _HEU -- H219_U
REDGRANITE CORRECTIONAL INSTITUTION
PO Box 925
REDGRANITE, WI 54970-0925

Complaint Information:

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|---------------------------|--|
| Date Appeal Acknowledged: | 03/20/2017 |
| Date Appeal Received: | 03/15/2017 |
| Subject of Complaint: | 17 - Inmate Accounts |
| Brief Summary: | Act 355 being applied illegally by the DOC and RGCI Business Office |
| OOS Decision: | Dismissed |
| Decision Comments: | The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of 03/21/2017 in the above appeal: The attached Corrections Complaint Examiner's recommendation to DISMISS this appeal is accepted as the decision of the Secretary. |
| Decision Date: | 04/03/2017 |



C. O'Donnell - Office of the Secretary