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Civil Lawfare

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ABSTRACT

To offset rising mass incarceration expenses, states adopted strategies to increase revenue, including charging incarcerated individuals pay-to-stay fees, a per diem room and board charge for the cost of their incarceration. In several states, the collection of these fees is done through civil lawsuits where defendants are alleged to be unlawful consumers of state goods and resources resulting from their incarceration. We draw on the case of pay-to-stay collection in Illinois using 102 civil lawsuits, focusing particularly on the state's attempts to collect from the most vulnerable of incarcerated individuals, those with disabilities, to develop the theoretical concept of "civil lawfare." We argue that civil lawfare describes how the state and legal actors weaponize the strictures and procedure of civil law to leverage an assault against vulnerable, disenfranchised populations facing institutional barriers accessing legal resources. We detail the challenges faced by incarcerated individuals with disabilities in navigating this system and how legal actors wage war to facilitate perpetual indebtedness to the state. We position civil lawfare as an understudied legacy of the twentieth century wars on poverty, drugs, and crime which facilitated the decimation and destruction of predominantly Black communities through deploying racialized sentencing laws, targeted policing, and exponential incarceration rates.

Key words: pay-to-stay; civil law; prison reimbursement; monetary sanctions; civil lawfare.

One of the most effective ways to wage war on a population is to bury them in debt. If you can legally defend your right to do this, even better. Deploying an effective strategy to overtake an opponent in court is an intentional act taught to law students, mastered in competitive litigation clinics, and, if they are lucky, perfected during the course of their career. State attorneys general (AG) are trained to be excellent at this. As elected officials, they are recognized for their prowess and tasked with leading legal assaults against alleged bad actors threatening the citizenry of their states. The civil system is their main battleground and inflicting financial damages their main weapon.

Attorneys general are the highest-ranking legal actors within states and are portrayed as a beacon of hope for the victims of predatory practices, particularly for large classes of unrepresented persons seeking financial damages (Provost 2006; Ross 1990). But what happens when the Office of the Attorney General flips their traditional role as citizen and consumer protector, and, in their official capacity, wields the civil legal system to wage war on incarcerated people? Pay-to-stay lawsuits are an example of attorneys general representing the state and Departments of Correction against

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incarcerated individuals alleged to be unlawful consumers of state goods and resources resulting from their incarceration (Friedman, Fernandes, and Kirk 2021).

Pay-to-stay is the practice of charging incarcerated people service specific fees and a per diem for the cost of their incarceration in jail or prison. The statutes justifying this practice were adopted by state legislatures as an innovative solution to the ever-increasing costs of imprisonment. Amid the rising costs of mass incarceration and shrinking state resources, adopting pay-to-stay practices ballooned nationally, and many states implemented austerity efforts seeking out alternative sources of revenue. Civil lawsuits to recoup pay-to-stay fees fall in line with these austere efforts, with the state calculating the costs of room and board for each incarcerated person and then suing those suspected to have any amount of assets (Aviram 2015; Kirk, Fernandes, and Friedman 2020). In this scenario, the attorney general works to protect the predatory financial interests of the state by suing whole sectors of the population unable to defend themselves in civil court because they are not guaranteed an attorney, effectively burying them in debt. Flipping this role by the attorney general counters our traditional understanding of the civil legal system as a pathway for accessing justice, and, instead, reveals how civil law is a weapon of war designed to decimate whole social groups through accusing them of financial damages solely for existing in a cell.

Historically, when Black and Indigenous communities in particular acquire more political representation and financial resources, the state conspires to prevent their ability to thrive, often through overt acts of violence by law enforcement and civilian mobs (Anderson 2016). To this end, the criminal legal system is further wielded as a method of retribution during times of civil rights advancement (Weaver 2007). We position civil lawfare as an understudied legacy of the twentieth century wars on poverty, drugs, and crime which facilitated the decimation and destruction of predominantly Black communities through deploying racialized sentencing laws, targeted policing, and exponential incarceration rates. Once incarcerated, people continued to face strategies of war designed to promote docility, eradicate political opposition, and ultimately silence people's will to fight back (Burton 2023; Friedman 2025). During incarceration and upon release, the threat of a continual battle in the civil legal system looms as a result of pay-to-stay statutes that seek financial damages for time served. Pay-to-stay lawsuits illuminate how the myriad ways the state declares war on incarcerated people are often fought in the civil realm where defendants have few rights or protections when compared to the criminal system that originally triggered their incarceration.

Our comparative content analysis of 102 Attorney General-initiated pay-to-stay lawsuits uncovers evidence of what we term *civil lawfare*, a theoretical concept we introduce to describe how legal actors weaponize the strictures of civil law and procedure to wage an assault against vulnerable, disenfranchised populations facing institutional barriers when trying to access legal resources. We unveil the strategic use of civil law through formal processes to facilitate the defendants' perpetual indebtedness to the state with the intent of state enrichment through asset extraction.

PAY-TO-STAY AND INCARCERATED PEOPLE WITH DISABILITIES

Pay-to-stay fees are a type of monetary sanction, falling under a wide range of legal financial obligations accumulated throughout criminal legal contact, including fines, fees, restitution, surcharges, and interest. The imposition of monetary sanctions has significant implications for inequality (Harris 2016) and socio-legal studies of financialization (Friedman and Pattillo 2019; Pattillo and Kirk 2021). As Friedman, Fernandes, and Kirk (2021) demonstrate, the state targets incarcerated people with suspected assets for reimbursement, mandating the disclosure of said assets through the penalties of the loss of good time credit and delayed parole hearings. After an incarcerated person is determined to have any level of assets, the AG of the state sues the individuals for the per diem cost of room and board, using these figures as evidence of civil debt owed to the state. Scholars view pay-to-stay through the lens of austerity and revenue generation (Eisen 2013; Kirk et al. 2020), consumerism (Aviram 2015; Friedman et al. 2021), rent-seeking (Fernandes, Friedman, and Kirk 2022), unconstitutionality (Eisen 2013), stategraft (Kirk-Werner, Fernandes, and Friedman 2024), and the shadow carceral state (Friedman 2021a; Friedman, Kirk-Werner, and Fernandes 2024). Their research collectively demonstrates how pay-to-stay tethers incarcerated individuals to imprisonment, state treasuries, and the surveillance arm of the state in perpetuity. Suing criminally incarcerated defendants for pay-to-stay fees in civil court provides fertile ground for extending the boundaries of incarceration, yet obscuring it under the guise of just financial compensation (Fernandes et al. 2022).

In this article, we provide an empirical understanding of the interplay between pay-to-stay and civil procedures, with particular attention to the experiences of incarcerated defendants who are considered the most vulnerable, namely those with disabilities. "The defendant could never represent himself as he cannot talk – he is semi-mute and communicates with grunts and noises" (*McDougle v. IDOC* 2001[1]). This quote is from a pay-to-stay lawsuit in our dataset, brought by the state of Illinois to collect money from an incarcerated person with severe disabilities. The state of Illinois, along with nearly every state across the nation, has engaged in the practice of pay-to-stay (Brennan Center 2019). People with disabilities are over-represented in the prison system, with nearly 40 percent of incarcerated individuals reporting at least one disability, and they are often unprotected from the harms of the legal system (Maruschack, Bronson, and Alper 2021).[2] The most recent estimates show 25 percent of individuals in prison have a cognitive disability, with 12 percent reporting an ambulatory disability and 11 percent having a vision-related impairment (Maruschack et al. 2021)[3]. Furthermore, incarcerated people with disabilities face additional difficulties when navigating pay-to-stay collection and defending themselves and their often-negligible assets in these civil proceedings. Thus, focusing on these cases provides insight into the broader harms of pay-to-stay and specifically how civil lawfare occurs even against populations that the state considers particularly vulnerable in other spaces, such as disabled persons. In line with the work of disability scholars and advocates who routinely decry the treatment of people with disabilities in their interactions with law enforcement, court systems, and carceral facilities (ACLU 2017; Ben-Moshe, Chapman, and Carey 2014; Morgan 2021; Vallas 2016;), our article shows the unique difficulties that incarcerated people with disabilities encounter in the hostile civil law landscape.

TOWARD A THEORY OF CIVIL LAWFARE

The relationship between American criminal legal systems and the populace has traditionally been a tenuous one, with systems being seen as adversarial and labyrinthine, particularly by members of historically disenfranchised populations coping with the consequences of state neglect, legal estrangement, and violence (Abrego 2011; Bell 2017; Clair 2021; Gonzalez Van Cleve 2016). Yet civil legal systems are often conceived of as an avenue to resolve personal and business disputes, charge financial damages against bad actors, and, overall, achieve justice for asserted wrongs, even though scholars have shown that the ability to navigate this system effectively is structured by social and economic privilege (Gold 2021; Greene 2015; Rhode 2004; Sandefur 2008, 2019; Young and Billings 2020).

[1] In the findings section we will provide quotes and data from pay-to-stay lawsuits, acquired through FOIA requests from the state of Illinois. If more information on these lawsuits is needed, please contact the corresponding author.

[2] Most scholars assume this an undercount due to the lack of standardization in screening for a variety of disabilities. Meta-analyses show higher percentages and wider ranges across disability types, especially for disabilities where self-reports are insufficient and there are not routine screenings across facilities (Vallas 2016). For instance, a recent study suggests traumatic brain injuries prevalence in prisons range from 23 percent to 88 percent, with estimates for incarcerated women as high as 97 percent (Gorgens et al. 2021). Due to insufficient screenings and assessments in carceral facilities, however, it is difficult to accurately estimate aggregated as well as categorical disability rates. Activists, advocates, and scholars agree that any numbers are grossly underestimated in both jails and prisons, especially for incarcerated people of color as well as incarcerated people who identify as LGBTQIA (Ben-Moshe et al. 2014; Schalk 2022).

[3] Thank you to the anonymous reviewer who asked for more information regarding disability expenditures in prison. There is not much work on the costs associated with disability in prison. However, based on the limited reports available, prisons and jails likely spend more money on incarcerated individuals with disabilities. First, accommodations, such as assistive devices (e.g., canes, wheelchairs, glasses, hearing aids, CPAP machines, and other mobility aids, etc.), can be costly to the prison, due not only to the costs of the material device but also because they often require specialized doctors' visits outside of the prison, which requires additional transportation and personnel costs. Second, people with disabilities are more likely to be held in administrative confinement (ACLU 2017; Schlanger 2017) as a "protective" measure, according to prison officials, which increases the amount of money spent on confinement. Third, for incarcerated people with chronic illnesses or other impairments requiring on-going care, these medical expenses can increase the per diem cost of being incarcerated. However, research has also shown that prison personnel can and do deny access to needed medications and accommodations, so even though the potential for additional costs are there, it is not clear which costs the facilities actually incur as a result of disability (Schlanger 2017; Seevers 2016; Human Rights Watch 2015). In addition, as we have seen our research and other related studies, family members, partners, and friends often provide funds for these accommodations, thereby reducing the financial cost to departments of corrections Relatedly, we cannot assert definitively that the motivation for the attorney general's office or the Department of Corrections in Illinois to activate pay-to-stay is due to the potential for higher costs for individuals with disabilities. A solid proportion of people subject to pay-to-stay in Illinois did not have any identifiable disabilities. But we do think that it can be included in a host of factors that spur the state to bring such lawsuits.

The assumed distinctions between criminal and civil law lie within a conception of criminal law as punishment and civil law as compensation for loss or damages. Yet legal scholars assert that such binaries are misleading, because in practice civil law can operate in a punitive fashion with the imposed separation between the two belying the damages existing within the civil law space, where engagement can result in sanctions that mirror the criminal sphere (Coffee 1991; Fellmeth 2005; Mann 1991). Legal scholars discuss the criminal-civil divide in procedure, often citing the substantial barriers inherent in the civil process that prohibit citizens from participating equitably and fairly in the proceedings (Coffee 1991). From lack of access to public defenders to the procedural complexity of the system, the civil process is mired in obscurity, resulting in a dearth of legal and constitutional protections for defendants (Coffee 1991).

Civil processes and laws have increased in their ubiquity, being used to a greater extent by jurisdictions as a tool to sidestep criminal courts and as a mechanism of reimbursement and revenue collection beyond the traditional bounds of criminal law. The intertwining of civil and administrative law with criminal procedure created the foundation for a shadow carceral state, constructing obscured pathways to justice, with civil law being used to increase levels of punishment and bind individuals to carceral institutions in perpetuity (Beckett and Murakawa 2012. Legal scholars refer to such a liminal space as "punitive civil law," which retains characteristics of civil law with more punitive aims and impacts (Fellmeth 2005; Mann 1991).

Our theory of civil lawfare goes beyond solely recognizing the punitiveness of civil law to further underscore how the state in practice, both intentionally and strategically, wields the law to gain operational advantages against system-ensnared defendants, positioning them as opponents to be defeated in a decades-long war against criminality, with financial enrichment of the state and the infliction of perpetual indebtedness markers of victory. The term "lawfare" first emerged in the 1950s to acknowledge the presence of aggression in legal proceedings and how the law can be used as a weapon; recently, it has referred to the law's military use as an important weapon of war, specifically to decimate the assets of political opponents (Dunlap 2011, 2017).[4] Civil lawfare illuminates the intentional manipulation of the legal process by jurisdictional legal actors, meaning the strategic use of civil law to extract political, social, and economic resources from an opponent without regard to the principles of fairness and equity in civil legal matters, with such disregard being particularly harmful for all defendants, but especially for defendants belonging to protected legal classes, such as those with disabilities.

Practically, civil lawfare manifests in the form of strategically disregarding equity by targeting defendants with known procedural information asymmetries, without access to legal knowledge, who face institutional and ableist barriers to self-representation, and whose assets for potential legal representation are either non-existent or seized by the state, preventing their use for legal defense. Our work suggests civil lawfare is preferred by legal actors when these conditions are present, creating an opponent that is easy to defeat in civil court, rather than a worthy opponent able to fight back. We argue the use of pay-to-stay is a form of civil lawfare that extends beyond the boundaries of punishment to effectively trap the incarcerated defendant into an indebtedness that results in an economic and social death; as in warfare, civil lawfare's goals are "the destruction of the enemy's ability to fight and will to fight" (Department of the Army 2022:7-1). In civil lawfare, the death is not physical, yet the weapons used and the consequences of perpetual indebtedness result in an eradication of personhood through debt, leaving current and former incarcerated people without recourse or appeal or the necessary monetary and legal resources to fight and defend themselves against these civil suits.

We suggest this sociological phenomenon requires attention beyond the potential punitiveness of civil law on the books, by zeroing in on how legal actors wield civil law in action for predatory gain, knowingly disregarding equity and fairness in their application of civil procedure. We assert civil lawfare produces an intentional slaying of its victims, yet normalized cumulative consequences for defendants, resulting in what Menjívar and Abrego (2012) refer to as "legal violence," with this violence manifesting as a debt to the state in perpetuity and ultimately resulting in a social death at the hands

[4] Recent scholarship acknowledges the expansive use of the term and argues that two interrelated types of lawfare have emerged in the literature: "'instrumental lawfare' - the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from kinetic military action and 'compliance-leverage disparity lawfare'- lawfare designed to gain advantage from the greater influence that law and its processes exert over an adversary" (Kittrie 2016).

of civil law (Friedman 2021a). The process and end result of civil lawfare extends beyond the bounds of punitive civil law, which asserts punishment as the end point. In our conception of civil lawfare, the state weaponizes the tenets of civil law, preying upon defendants with limited legal and economic resources, most of which are controlled and withheld by the state and its agents, resulting in perpetual indebtedness to the state. Indebtedness then begets increased surveillance and further ties to the state, through monitoring bank accounts and by increasingly pervasive collection procedures that can extend until death and beyond, especially for dependents and family members. Our research demonstrates how the state wields civil law as a weapon against incarcerated people in an effort to mobilize what Tiefenbrun (2010) refers to as "tacit consent." We propose the concept of civil lawfare to fully capture the state's intention, the law in practice, and the resulting harm of this phenomenon, and, in this article, we draw from cases in our dataset where defendants have disabilities to demonstrate that civil lawfare spares no one, even populations with special legal protections. While this case provides a particularly clear example of civil lawfare, this concept can be extended to other instances where the state draws on civil law to indebt vulnerable populations for predatory gain, such as in civil asset forfeiture, civil liens, blight claims, and FEMA reimbursement lawsuits alleging the victims' misuse of government funds.

DISABILITY AND LEGAL SYSTEMS

For individuals with disabilities, the very nature of legal systems has stymied the basic tenets of access, interaction, and comprehension, making equal access to due process and justice difficult, if not impossible (Ben-Moshe et al. 2014; Beqiraj, McNamara, and Wicks 2017; Coumarelos, Pleasence, and Wei 2013; Flynn 2013; Nović 2017). People with disabilities are at a distinct disadvantage when they are forced to come into contact with the courts and its agents (Dowse, Baldry, and Snoyman 2009). Add a carceral sentence and barriers increase exponentially due to the constraints of carceral institutions meeting the strictures of civil court procedure. This is the reality for incarcerated people with disabilities who are subject to pay-to-stay lawsuits, being sued by the state in civil court for incarceration costs.

Access to the legal space is routinely hindered for people with disabilities because the process, procedure, language, and physical structure of American legal systems are at odds with the needs, demands, and accommodations of those with disabilities who must interact with courts and justice centers (Blanck 2016; Larson 2014; Mor 2017). These barriers constitute a separation between people with disabilities and the law, making it difficult for individuals or their representatives to attain access, let alone obtain any modicum of justice, due to the pervasiveness of ableist assumptions of access, communication, and comprehension (Brunson 2008; Fernandes and Kurdyla 2021; Jacobs 2015; Maher et al. 2018 Vallas 2016). Any individual with a disability is met with barriers to interacting with the court and fair adjudication erected through the physical design of the buildings, which is continued through a confusing set of procedural scripts being played out in the courtroom and rapid-fire side-talk between attorneys and judges and their clients, myriad procedural rules that disallow certain behaviors, actions, or speech, and which require sitting and standing for extended periods of time (Miller and Vernon 2001; Morse 2011; Nović 2017; Pant, McAnnany, and Belluscio 2015; Wood 1984;). Despite the Americans with Disabilities Act statutes that mandate access and accommodations, individuals with disabilities routinely report court facilities are often not physically accessible, American sign language interpreters are not available, hearing and sight impairments are not acknowledged, nor are other appropriate accommodations made for those with existing disabilities (Maroto and Pettinicchio 2014; Ribet 2009; Schlanger 2017; Stevens 2005).

For incarcerated individuals with disabilities, their engagement with the law is severely hindered due to the institutional restrictions on their consistent and ready access to basic legal resources, such as law libraries, legal clerks, and typewriters or computers. While states are legally mandated to provide such resources, the conditions of these facilities and the access to them are often left to the discretion of prison personnel. Anecdotal accounts detail missing or damaged law books, typewriters, and computers, and strict time constraints, with law library access restricted or prohibited during lockdowns and other security measures, which can mean days, weeks, or months without entry

(Vallas 2016). These limits on access represent an added burden for incarcerated individuals with disabilities, which furthers their isolation from the law and its protections.

Impact of Carceral Contact

Within state and federal prison facilities, nearly 40 percent of incarcerated people report the presence of a disability (Maruschak et al. 2021). From solitary confinement to the lack of suitable access to diagnosis and treatment within prisons to the very essence of carceral life as loud and infused with potential threats, the carceral environment can engender conditions that set the stage for creating and sustaining physical and mental health impairments (Ben-Moshe et al. 2014; Schalk 2022; Schlanger 2017; Seevers 2016). Carceral institutions, with their austere design and ableist assumptions of full mobility, are often the site of creating or exacerbating physical disabilities, whether through accidental or intentional injury or the lack of proper living quarters or the attendant stresses and strains of institutional living (ACLU 2017; Blanck 2016; Dolovich 2011; Resnik, Baumgartel, and Kalb 2015; Stewart and Russell 2001). Additionally, the consequences of long-term incarceration can compound such impacts with formerly incarcerated people with disabilities facing additional obstacles in the labor and housing markets, the educational sphere, health care and public benefits systems, placing additional financial and emotional stress and increasing disadvantage for family members, partners, and caregivers (Bengali et al. 2021; Feist-Price, Lavergne, and Davis 2014; Maschi and Dasarathy 2019; Richardson and Flower 2014; Thompson et al. 2018). The existing barriers to reentry for formerly incarcerated people with disabilities can then be compounded by further challenges, such as pay-to-stay, to their livelihoods and reentry success.

DATA AND METHODOLOGY

This project draws on data from pay-to-stay lawsuits collected and compiled by the authors from the state of Illinois as part of a broader research project on pay-to-stay practices. We analyze case files of 102 lawsuits brought against current and former incarcerated people from 1997 to 2015. These cases represent a random sample collected from the 159 lawsuits brought against the state during this time period. The total list of cases was obtained through two FOIA requests to the Illinois AG's office for all pay-to-stay lawsuits cases maintained in the state's electronic case management from 1980 to 2016. Individual cases files were then requested from individual county courthouses which include the initial complaint, original attachment order, and documents filed back and forth between the two parties.[5] This rich dataset highlights the processes and arguments the AG's office deploys in pay-to-stay lawsuits and how the civil legal process unfolds. We draw on the full data set to inform our theory of civil lawfare, but will focus on the 16 cases brought against individuals with disabilities as exemplary of these dynamics.[6] Illinois is an ideal case study to understand the dynamics of the creation, increased use, and ultimately, dissolution of pay-to-stay in 2019 due to media coverage of the practice (see Mills and Lighty 2015). Given the lack of data available on pay-to-stay fees and their collection, it is difficult to compare across states. Based on our research to date, there is considerable discretion in pay-to-stay collection and each state varies somewhat in their determinations as to when and how to collect. Illinois is not a particularly egregious state when it comes to pay-to-stay in terms of frequency,[7] but it

[5] In the state of Illinois, the process of pay-to-stay begins with the order of attachment sent to the incarcerated defendant, which establishes the state's right to sue for the costs of incarceration based on the services provided by the Department of Corrections. Within this order, the state states the amount owed to them based on incarceration tenure and asserts that the incarcerated person is believed to have assets that can satisfy this debt. After this initial order, the state offers an official accounting of the costs of incarceration by date and location of confinement. For some cases, affidavits are requested from financial institutions to confirm asset holdings. The incarcerated defendant then has a period of 30 days to respond to this initial attachment order. The lawsuits at this point can proceed in a number of different directions, depending on the strategies employed by the incarcerated defendant or their legal representative. The practice began in Illinois in 1981 as a result of budget shortfalls and decreased federal funding towards state carceral institutions (see Kirk et al. 2020 and Friedman et al. 2021 for a more comprehensive history of pay-to-stay, its origins in Michigan, beginning in 1935, and the adaptations and justifications made by states like Illinois to adopt the practice).

[6] These cases, in both process and resolution, are not vastly different from all of the pay-to-stay lawsuits in Illinois. The difference we are highlighting here centers on how the institutional barriers to representation and access to financial and legal resources are compounded by disability status. In addition, the practice of countersuing for settlement amounts appears to be focused directly on incarcerated defendants with either acquired or existing disabilities, which, we argue, allows for an extension of the civil lawfare concept.

[7] In response to an anonymous reviewer inquiry, our previous research shows that between the period of 1996 to 2015, the state of Illinois was awarded about $1.5 million in pay-to-stay costs by the courts, while they assessed a little over $11 million (Friedman et al. 2021). We do not know the exact amount of money collected by the state because the lawsuits provide only limited information on collections.

is among a subset of states that use civil lawsuits and the broad powers of collection afforded through this legal mechanism to recoup these fees.

Analysis

The authors analyzed the lawsuits by first reading through them and manually coding observations, patterns, and connections.[8] The authors crafted separate analytic and substantive memos on these lawsuits and then convened for an iterative process of comparing, contrasting and identifying themes, divergences, and repeating commonalities. The findings emerged inductively from the data, reflecting a grounded theory approach. We did not sample based on disability status, but noticed the unique dynamics of these cases through the coding process and were surprised by their prevalence, considering that defendants in these lawsuits argued they were exempt from this law under the state's own civil procedures (see 735 ILCS 5/2-619[9]). While there are similarities in the initial orders for attachment, there is quite a bit of variation in how the lawsuits proceed and how the state chooses to approach legal pushback from incarcerated defendants. Lawsuits against incarcerated people with disabilities were identified if the defendant mentioned their disability or any injury leading to disability in the course of the back and forth between the state as plaintiff and the incarcerated person as defendant. Relying on self-report undoubtedly results in an undercount[10] of pay-to-stay lawsuits; others might have been reticent to disclose their disability or do not identify as a person with a disability, even though they would fit a broad definition of living with a disability.

FINDINGS: EVIDENCE OF CIVIL LAWFARE

For the pay-to-stay lawsuits, the state and IDOC cast a narrow net, suing current and former incarcerated people with assets. Within this net are often individuals with disabilities, ranging from cognitive and developmental to physical and psychological, who are subject to being sued under the state's civil reimbursement statute. These individuals often held assets subject to collection due to the nature of their disabilities, including through lawsuits due to personal injury or medical malpractice. Within the following sections, we will detail how the practice of suing incarcerated people with disabilities under a civil pay-to-stay system represents an intentional and systemic weaponization of the law, with the state crafting the language and process of the lawsuits without regard to the extraordinary challenges people with disabilities face within carceral institutions and during reentry. Due to the civil nature of the suits, incarcerated individuals often cannot amass the resources necessary within the limited time requirements to sufficiently and successfully defend their interests while countering the lawfare machinations of the state. For those with disabilities, the task is riddled with increasing obstacles due to their conditions that can then magnify the existing difficulties lawsuit defendants face. As a group particularly vulnerable to civil lawfare, we draw on this subset of pay-to-stay lawsuits in Illinois to highlight this process. The connection between lawfare and pay-to-stay is starkly represented by a number of cases, where the state essentially adds insult to injury, by countersuing incarcerated people for settlements made with the state and IDOC for personal injury cases due to police or correctional officer brutality. In the answers to the pay-to-stay lawsuits, incarcerated people with disabilities detail the detrimental consequences of the tools of lawfare used against them in the suits and the reverberating impacts on their families and their own reentry process.

[8] In response to an anonymous reviewer inquiry about our methods, we did not use any computerized system for analyzing the lawsuit data. We each manually coded the lawsuits iteratively throughout the process. For this manuscript, we used only a subset of the total number of cases, therefore, we found that this was the most effective way to grasp the nuances of the data both within and between individual cases.

[9] From Illinois state statute. Full text is accessible here: https://www.ilga.gov/legislation/ilcs/documents/073500050K2-619.htm.

[10] In addition, there are a number of lawsuits in which the incarcerated defendant never answers the state's initial attachment order, thereby resulting in a default judgment. It is quite possible a number of these were brought against incarcerated individuals with disabilities who could not respond on their own or could not marshal the resources for a response from a private attorney or an incarcerated peer. The population represented here are most likely the best-resourced defendants with disabilities, those who have access to either legally proficient incarcerated peers or outside counsel or who are themselves able to provide their own defense against these lawsuits.

Pay-to-Stay Lawsuits and Disability

1). The defendant would oppose any proceedings against him as he is not capable of making decisions.
2). Defendants [sic] I.Q. is about 10-20. The defendant is housed in the Big Muddy Correctional Center ICU Unit.
3). The defendant would object to any proceedings against him as he is incapable of reading or writing.
4). The defendant would request that this honorable court appoint him some sort of counsel to handle his affairs, as he has nobody in society to help him.
5). It should also be made aware of that the defendant is primarely [sic] bed-ridden, he “drools” continuously and has a host of psychiatric medications and other perscriptions [sic] that he is on.
6). The defendant could never represent himself or even know what to do, as he cannot talk – he is semi-mute and communicates with grunts and noises. (*McDougle v. IDOC* 2001)[11]

The state of Illinois and the Illinois Department of Corrections (IDOC) brought pay-to-stay lawsuits against at least sixteen incarcerated individuals with disabilities between 1997 and 2015. While the extent and severity of the disabilities ranged, the state sued individuals without regard to the nature of their disability nor to their ability to understand the details of the lawsuit or the capacity to defend themselves against the attachment orders for their assets. In the case of Mr. McDougle and his comorbid disability impairments, it becomes clear he cannot represent himself and his interests adequately. The state and IDOC are no doubt aware of his condition, and yet bring the suit due to the assets Mr. McDougle possesses in his inmate trust fund account ($13,671.39).

In a similar case, a former inmate law clerk and friend of the incarcerated individual being sued offers their assessment:

> I am aware that Mark Turner is both afflicted with a mental handicap and afflicted with a mental disorder that has existed for a period of not less than one year.... Because of Mark Turner’s mental afflictions, I am frankly unsure of whether or not Mr. Turner truly grasps the implications of the suit against him, and I am likewise unsure of whether or Mr. Turner is legally qualified to sign, under penalty of perjury, or indeed to understand, the motions I have prepared on his behalf. (*Turner v. IDOC* 2002)

For the state, the case files demonstrate that the holding of any assets that makes an incarcerated person subject to the lawsuits; all other contingencies, such as the ability to comprehend the case against them, are deemed irrelevant. Given the extraordinary challenges faced by those with disabilities both inside carceral facilities and in society, does their possession of assets actually constitute an ability to pay, or, rather, is the possession of money needed to sustain them where institutional accommodations and resources fall short? These questions become germane to investigating the practice of suing incarcerated people with disabilities and the role of the state in initiating these practices.

Mr. Turner’s law clerk points to the complex nature of these interactions:

> The Director of the Illinois Department of Corrections is thus simultaneously Defendant’s guardian, designated as such for the purpose of representing Defendant’s interests, and Plaintiff in a suit against Defendant, which suit is manifestly contrary to Defendant’s interests in that it was brought in an attempt to confiscate Defendant’s property. (*Turner v. IDOC* 2002)

Herein lies an essential contradiction in the role the state purports to uphold for incarcerated people, acting as guardian in fulfilling its statutory duties to its charges to provide for care, custody, treatment or rehabilitation while confined. For the state, however, the suing of incarcerated individuals, even

[11] The answers from Mr. McDougle were composed by a fellow incarcerated person, aiding him in his defense.

those with disabilities, is not in conflict with their duties as stewards of confined people. Instead, the state envisions these lawsuits as part of the carceral experience, teaching personal and fiscal responsibility to prepare the individual for their eventual reentry: "Requiring inmates who have payment capability to pay for their care and maintenance furthers the legitimate interest of promoting inmate responsibility and prudent management of money, conserving the resources of the State, and defraying the burgeoning cost of inmate care" (*Garcia v. IDOC* 2002). The state, in essence, conceives of these lawsuits as a service to the state and its citizens, and to the incarcerated individual as well. For those individuals with disabilities, especially those as severe as Mr. McDougle's and Mr. Turner's, this service may come at an enormous cost, with the intended benefit being lost in the maelstrom of increasing disadvantage and the loss of funds to pay for necessary accommodations.

In actuality, there is a provision within the pay-to-stay law that suggests that lawsuits should be dismissed for people with disabilities, a fact the AG's Office knows but strategically disregards, which is aptly noted in this response from Mr. Turner's incarcerated peer:

> 14. Further, Defendant, who is severely mentally handicapped and who also suffers from a mental disorder that has existed for more than one year, is developmentally disabled by the definition set forth at 755 ILCS 5/11a-1.
> 15. Since Defendant is developmentally disabled, Defendant has no legal capacity to be named as a party in the instant action, per 735 ILCS 5/2-619.
> 16. Further, as Defendant is civilly committed as per 125 ILCS 205/1 et seq., the Director of the Illinois Department of Corrections has, in accord with the said act, been appointed guardian for Defendant and has been charged with the duty to keep Defendant safely. (*Turner v. IDOC* 2002)

In its own civil court statutes, the state details the process for dismissals for civil cases, which include when the defendant has a disability:

> Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds:
> (8) That the claim asserted against defendant is unenforceable because of his or her minority or other disability. (735 ILCS 5/2-619)

Therefore, lawsuits being brought against incarcerated people with documented and declared disabilities should be dismissed on those grounds of their status. However, in line with civil lawfare efforts, this point is disregarded in the state's response. The state is not concerned about the bounds of legal statute in their pursuit of these funds. Rather, the implementation of pay-to-stay through a civil lawfare framework necessitates the state and its actors to bring the lawsuits as a method of extraction, absent any concern about the ability of the defendant to comprehend or respond to the legal action. Therefore, the presence of disability is not germane to the pursuit of financial resources and the expansion of punishment through on-going indebtedness. Rather, the state goes through efforts to deny the rights of incarcerated people with disabilities for the purpose of institutional enrichment, appointing the Office of the Attorney General as the arbiter of which conditions and impairments constitute a "true" disability.

The decision whether to summarily dismiss the case or continue to seek the assets seems to lie in how the state defines disability. The state seems to wield their own definition of disability, which affects their decision to proceed with the lawsuits. When the incarcerated person with a disability or their representatives present evidence of disability, the state neither acknowledges nor addresses these facts of the case. For those with the most severe disabilities, such as Mr. Turner and Mr. McDougle, the state eventually decides on a summary dismissal without providing a reason. But for others, especially those with physical or mental health impairments, the state continues in their monetary pursuits, undeterred by the state statute or the incarcerated person's entreaties about equal justice and inability to properly defend themselves against a wealth of state resources. This level of discretion by the state, to choose which level of disability "counts" underneath their own statute and to initiate lawsuits for those with physical disabilities or mental health impairments but dismiss others, speaks to the state's efforts to mobilize civil law as a tool for financial extraction, pursuing assets at any cost, without regard to who is being sued and the moral, legal and social implications of the suits.

Denied Access to Counsel

The civil nature of pay-to-stay, prohibiting the right to legal representation for indigent defendants, is used as a weapon against incarcerated people with disabilities, denying them access to counsel and putting them at a distinct disadvantage. The institutional hindrances of the prison environment extend the barriers incarcerated people must overcome to mount any defense, let alone a successful one. Civil lawfare is wielded on the court and carceral levels, limiting or prohibiting the access to legal knowledge and resources – the basic means to begin a defense. There is a recognition by incarcerated people of this lawfare strategy, knowing lack of representation will severely disadvantage them, leaving them mostly defenseless against a well-resourced state. Therefore, the first request in most of the lawsuits, especially for disabled defendants, is for a court-appointed attorney, with the need embedded in reasons both financial and related to disability:

> Now comes, defendant, Harold Oliver, "pro-se" and respectfully moves this honorable court for an order appointing counsel to represent him in this case.... In support thereof, defendant states:
> 1. Defendant declares he is unable to hire a lawyer, and request this honorable court to appoint counsel herein.
> 2. The imprisonment of defendant will greatly limit his ability to litigate this case. This case involves substantial investigation and discovery. Also, defendant has limited access to the law library.
> 3. The issues in this case are complex. A lawyer would help defendant to apply the law properly before this honorable court, which involves intricate factual issues.
> 4. A trial in this case will likely be necessary and involve conflicting testimony. A lawyer would assist defendant in the presentation of evidence, and the cross examination of any opposing witness.
> 5. This matter involves complex issues regarding the calculation of the actual cost of defendant incarceration where the monies is [sic] appropriated from, etc. which involves the discovery of documents defendant has no access too [sic], as well as complex legal arguments regarding the constitutionality of the selective enforcement of this statute. (*Oliver v. IDOC* 2002)

In Mr. Oliver's statement, the necessity of a lawyer to adequately and sufficiently attend to the complexities of the civil cases is paramount. He makes clear their knowledge of the law and their ability to comprehend the proceedings are hindered; therefore, the request for counsel is reasonable. Along with the request for a court-appointed attorney is often a filing of indigence, declaring themselves without sufficient funds to hire a private attorney and requesting the state provide one to represent them. Civil lawfare creates a web where defendants are bound and strategically prevented from mounting a defense. The irony, for many, is that the state is suing them for assets that would allow them to hire a private attorney to defend themselves; however, the order of attachment freezes the assets until the resolution of the lawsuit, thereby making the incarcerated individual dependent on the state for legal representation.

In answer to these requests for court-appointed counsel, the state reminds the incarcerated individual this is a civil case and the state is not bound by constitutional duty to provide legal representation: "As stated within Wolfolk v. Rivera …'There is no constitutional or statutory right for an indigent to have counsel appointed in a civil case'" (*Mosley v. IDOC* 2004).[12] For incarcerated people with disabilities, the prohibitions on public legal counsel for civil lawsuits often leaves them either to defend themselves pro se or to rely on an incarcerated peer to aid in their defense, both of which come

[12] An anonymous reviewer asked about if and how the Mathews standard applies in this case for access to counsel. To our knowledge, there is no existing scholarship linking the Mathews test to pay-to-stay nor was there mention of the standard in the lawsuit transcripts. From our reading, we claim that the Illinois Attorney General would have continued to assert that due process for the incarcerated defendant would not be affected due to the nature of the argument that the state makes in these lawsuits. The first clause deals with a consideration of impact on the person subject to the seizing of money. The state of Illinois frames the incarcerated defendants as not negatively or detrimentally affected by pay-to-stay provisions nor by the seizing of their assets. The state maintains, as others who have challenged under Mathews, that incarcerated people have all of their needs satisfied by the IDOC and are, therefore, suffering "no brutal need" (Fernandes et al. 2022) and do not have right to their money or to an attorney. In addition, as we see in the quotes in this manuscript, the state asserts that it provides sufficient legal recourse; therefore, the assistance of counsel is not needed. The state of Illinois makes the case in the lawsuits that their need to be reimbursed for the astronomical costs of incarceration supersedes incarcerated defendants' claims to their own assets. In this way, the state insulates itself from being subject to the Mathews test in this matter.

with substantial costs.[13] The state and its court agents are fully aware of the complexities of obtaining legal representation, but yet they feign ignorance, placing the burden on the incarcerated defendant with disabilities to defend themselves without counsel, without resources, and without access to legal knowledge. The logic pervading the civil process speaks to the operation of lawfare pay-to-stay, mobilizing of extractive law to garner financial reimbursement without regard for the barriers for incarcerated defendants.

When incarcerated individuals with mental health concerns are forced to represent themselves, making reasoned arguments about judicial bias or undue hardship, their disability is often used against them in proceedings as evidence they are not providing sound arguments in their own defense against the state:

> Williams' motion in larger part rehashes arguments that he unsuccessfully made in the circuit court, which is not the proper function of a section 2-1401 motion. As the case law cited above demonstrates, Defendant must present enough new facts by form of evidentiary affidavit to raise both a [meritorious] defense to the judgment entered and show due diligence in the original proceeding in not raising the meritorious defense. (*Williams v. IDOC* 2001)

Civil lawfare creates scenarios where defendants are belittled for their efforts to self-represent. In the lawsuits, incarcerated people are often chastised for not following proper procedure in their response or in substantiating their claims. In addition, there are instances when the incarcerated do respond, but not in the legally appropriate manner recognized by the civil process. Therefore, their handwritten letters or memos are deemed insufficient and default judgments are entered, when, in fact, the defendants did respond and were engaged with the process and were attempting to defend themselves and their assets (*Garcia v. IDOC* 2002).

During a hearing, Mr. Garcia's interaction with the judge typifies the response given to many defendants, whether in answer to motions or in open court:

> *Mr. Garcia:* Well, your Honor, I didn't prepare these motions that I have here. A paralegal … prepared these motions …
> *Judge:* He did a bad job... well, only because it misses the point. The point is not to take your money.

Here the judge highlights one of the main points of confusion for incarcerated people in relation to the lawsuits – they assume the first motion is to seize their assets, but in fact, it is to establish the facts of the case in regards to their incarcerated status and the length of time they have been incarcerated, which gives the state permission, in accordance with state statute, to proceed with future filings to garnish assets. When the incarcerated individuals argue about exemption at this phase, it is deemed not germane to the proceedings because the issue of money is not explicitly at issue. This is the essence of lawfare—to obscure the very basis of the process and procedure, allowing incarcerated individuals with disabilities to expend time and energy preparing and submitting motions that are legally ineffectual. In the sphere of lawfare, legal knowledge is wielded as a weapon against incarcerated adversaries, with the state controlling not only the civil process, but also the access to resources to obtain and further legal proficiency. But such knowledge generation does not serve the interests of the state and, therefore, is hindered at every turn.

In the cases where incarcerated people are successful in their motions, the state continues to deride them for their missteps, suggesting to the court such errors are grounds for reversing the court's earlier decision in favor of the defendant:

[13] An anonymous reviewer raised the potential solution embedded within the calls for a civil Gideon (Sweet 1998), an extension of the *Gideon v. Wainwright* decision granting access to counsel to indigent defendants in criminal cases, to expand constitutional access to legal counsel to civil defendants. We have not seen legal scholarship that addresses civil Gideon in regards to pay-to-stay, even though such connections would be apt. We do agree with Hill (2015) that an expansion of a civil Gideon to incarcerated populations in the form of federally funded prison lawyers would be a first step in ensuring the access to counsel in civil matters, while also focusing on more wide-sweeping reforms to increase access to justice (Barton 2010).

> 3. In his Motion to Dismiss, Defendant Custer alleged several reasons that he should be excused from paying all or part of a judgment including claiming a personal property exemption and exemption as the monies received were in the nature of a payment for personal bodily injury.
> 4. In his Motion to Dismiss, Defendant Custer failed to cite any of the nine grounds pursuant to 735 ILCS 5/2-619(a) on which a Court may involuntarily dismiss a case. Nor did he make a claim of defective pleadings under 735 ILCS 5/2-615.
> 5. After a brief hearing, and over the State's objection, the Court granted Defendant's Motion to Dismiss based on the evidence showing that the monies sought were, in fact, proceeds from a claim of bodily injury.
> 6. Because an involuntary dismissal generally acts as an adjudication on the merits, this dismissal would bar the State from future collection actions for the cost of Defendant's incarceration from 2005 through July 2013, should another source of funds become available to Defendant. (*Custer v. IDOC* 2013)

Even with delays in responding, Mr. Custer made a convincing argument to the judge and won a dismissal. In the state's filing, they assert that not following the letter of legal procedure should nullify the motion to dismiss made by Mr. Custer, therefore suggesting that following such procedure rises above just and fair assessment of the case. In addition, in point five, the state appears to distance itself from the culpability for the bodily injury, again erasing disability from the lawsuits to further their aims of fiscal recapture of any and all funds. Such erasures dilute the herculean efforts incarcerated people with disabilities have to mount to overcome the resource and access barriers to their defense within carceral institutions. Finally, point six points to the stakes of these lawsuits, with a successful judgment for the state resulting in collection procedures for not just current asset holdings but future assets obtained, ostensibly debt seizure in perpetuity, which raises the dire need for legal resources above and beyond attorneys.

Access to Law Libraries and Legal Resources

Within the lawsuits, the state asserts the IDOC's responsibility, in theory, in providing for access to legal resources for incarcerated individuals:

> As stated within Bounds v. Smith…"We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." (*Mosley v. IDOC* 2004)

In all legal proceedings, incarcerated people are at a distinct disadvantage, without knowledge, without ready access to legal materials, and without the resources to secure private counsel. Access to law libraries, if available, is determined by a host of factors, ranging from the day of the week to lockdown status to disciplinary measures. Therefore, it can be difficult for incarcerated individuals, with or without disabilities, to gain access to the basic materials needed to understand and respond to these attachment orders.

Most are pro se, representing themselves, or relying on the efforts of incarcerated peers, who are also working under the same resource limitations. Civil lawfare facilitates the intentional gaslighting of incarcerated people, with the state claiming to provide sufficient access to the necessary resources even when, in practice, the state is violating its own laws protecting individuals with disabilities. Therefore, the onus is on the incarcerated defendant with a disability to educate themselves on the law and mount a successful defense against pay-to-stay lawsuits. In the case of Mr. Williams, the state goes further to assert that knowledge of the law is universal: "All individuals are presumed to know the law… so Williams was on notice that such an exemption existed. Further, there was adequate time for him to discover the existence of this exemption through legal research while this matter was pending in the circuit court" (*Williams v. IDOC* 2001). The state contends the incarcerated defendant should have engaged in the legal research necessary to properly defend himself, and his negligence in not doing so was part and parcel of the failure of his defense strategy. The state here presupposes equal and full access to legal knowledge and the resources necessary to conduct legal research for incarcerated people with disabilities. However, incarcerated individuals make abundantly clear this is not their lived reality:

> Inmates at Western Illinois Correctional Center are allowed to go to the law library only on Monday or Tuesday of each week, vie [sic] a request slip, for one hour or a hour or fifthteen [sic] minutes. Defendant talked to the librarian, and she assured him that she would call him to the law library, especially since he had a August 17, 2004 deadline. However, the librarian failed to call defendant so that he could have his motion zeroxed [sic]... (*Mosley v. IDOC* 2004)

While library facilities were available to Mr. Mosley, he does not have the freedom to access them on his own volition, and he and other incarcerated individuals must rely on correctional personnel to grant them permissions to access these resources. As Mr. Mosley's case demonstrates, these requests are not always granted in a timely manner, especially in line with the time demands of their respective cases. For others, the library facilities are inaccessible due to physical damage:

> The law library has been closed due to the roof caving in flooding in the building and other area of Stateville C.C. The flooding revealed black mold and other unsafe/hazardous conditions. This has crippled the defendant giving him no access to the courts in a situation where he is already at a disadvantage with out [sic] counsel. (*Spaulding v. IDOC* 2015)

In addition, other institutional barriers may interfere with library access, such as lockdowns or disciplinary measures: "The appellant's failure to file a notice of appeal within the 30 days was not due to his culpable negligence because he did not receive the order of judgment until 08-20-05, and the Law Library is not opened on the week-end or lock-down status" (*Bloomingburg v. IDOC* 2005). Mr. Bloomingburg is countering the perception of incarcerated people with disabilities as negligent in their failure to respond in a timely manner, speaking to the number of barriers, including delayed mail delivery, they face when attempting to comply with restrictive response deadlines.

In direct contrast to the state supposition that legal knowledge should be universal, Mr. Mosley asserts the opposite: "Defendant do not know any law, and the law clerks at the library is forbidden to help inmates. Plaintiffs posted a memo a year ago that states that law clerks cannot help inmates with their legal work." In this quote, Mr. Mosley details the dearth of resources incarcerated individuals with disabilities face when attempting to answer the pay-to-stay lawsuits. They confront not only their lack of legal knowledge and legal precedent but strategic roadblocks that have been erected by the very parties suing them for the per diem costs of their incarceration. The state whittles away at the potential means that could serve incarcerated people with disabilities in preparing and executing their defense. The IDOC is in prime position to hinder the ability of incarcerated people from working in their own defense due to its role in creating and governing the rules and procedures of law libraries, mail delivery, and legal material possession:

> The Plaintiffs' forced Defendant to send home all the records, notes, pleadings, motions, letters and documents pertaining to the case at hand. This was done intentionally by Captain Smith…Captain Smith feels that my legal pleadings are contraband... without a copy of the pleadings and records of the case... this Defendant cannot defend himself pro se, and, cannot be ready for trial. (*Smith v. IDOC* 1997)

The institutional restrictions paired with civil process strictures erect substantial barriers for incarcerated people to actively and successfully contribute to their own defense against the pay-to-stay lawsuits. While these barriers exist for all incarcerated people, those with disabilities face heavier burdens in terms of access and the personal and legal resources needed to sufficiently defend themselves against pay-to-stay lawsuits. In viewing this through the lens of civil lawfare, the IDOC is leveraging institutional and informal policies to restrict resources, leaving incarcerated people defenseless against these lawsuits, taking away their will and ability to fight. Such obstacles to legal resources for incarcerated people with disabilities suggest equal access to the law applies in theory but not in practice in carceral institutions.

Insult to Injury

Within the sample of pay-to-stay lawsuits brought against incarcerated individuals with disabilities are a subset that exemplify parallel streams of predation and civil lawfare: individuals who have received personal injury settlements, often from the state and/or IDOC for brutality cases or civil rights violations. Here the state countersues to seize those funds. For most of these individuals, these settlements stem from physical injuries resulting in permanent disabilities, including mobility issues, chronic pain, and traumatic brain injuries.

For those who settled with the state and IDOC, these individuals detail the extent of the physical and psychological damage done by the initial attack in police or institutional custody, setting the stage for how the lawsuit then doubles down on the damage done by state agents:

> Defendant submits that under Illinois law he held a sufficient interest concerning the monies that was attached in these proceedings as that they are monies that were received resultingly [sic] from a recently settled lawsuit involving personal bodily injury to defendant where excessive force was used against him by officers at the Lake County Jail. (*Williams v. IDOC* 2001)
>
> In fact, this Defendant, Jeryme Morgan, sustained serious bodily injuries in separate and distinct attacks upon him while he was a pretrial detainee at Cook County Jail, and one of the incidents directly involved excessive force upon him by Cook County Department of Corrections personnel. (*Morgan v. IDOC* 2011)
>
> I obtained a broken nose, hand, and 7 stiches [sic] on my face, I see spots in my eye I still have pain in my shoulder & I have a scare [sic] and a chiped [sic] bone on my right shin… I was severly [sic] beaten by Peoria Co. Jail & Peoria City Police. They broke my hand, nose, rib, dug huge gash out of my shine [sic] and split my head open… I still need nose and nasal cavity repaired that where the [$]10,000 check IDOC is trying to [seize]. (*Custer v. IDOC* 2013)

In these quotes, the physical damage and resulting injury done by the various correctional and law enforcement agents is apparent. The insult comes into play with the resulting pay-to-stay lawsuit, which seeks to recapture those settlement funds to make the state whole. In these lawsuits, the state and IDOC knowingly sue those who have been awarded settlements by the state for damages and injuries suffered at the hands of correctional or law enforcement personnel. However, similar to their denial of disability in the earlier cases, the state does not acknowledge this contradiction, but proceeds in one of two ways: denying settlement funds are subject to exemption from pay-to-stay lawsuits or filing for summary dismissal of the cases. In terms of summary dismissal, no reason or justification is given for the decision. Regardless, to target individuals who have been injured and temporarily and permanently disabled by the state for their settlement funds is in direct violation of the spirit of the statute that purports to be centered on fiscal reimbursement. Rather, these pursuits signal punishment and retribution, both for amassing assets but also for successfully suing the state for civil rights violations. To reclaim these funds won through personal injury by claiming state damages under pay-to-stay is yet another strategic ploy used by the state to conduct civil lawfare and claim no violation of constitutional rights.

For the pursued cases, the state stakes claim to the assets based on providing for room and board for the incarcerated individual:

> Due to his incarceration, the inmate is currently a public charge. Acting in loco parentis, the State of Illinois already provides the defendant with the basic necessities.... Besides providing the prisoner with care and maintenance, the State of Illinois would be burdened further if the defendant's property is exempted from reimbursing the plaintiff for the costs of the defendant's incarceration. (*Huerta v. IDOC* 2006)

The state asserts it is acting in "loco parentis," fulfilling its statutory duty and that the incarcerated person with a disability has no need for the money due to the care provided by the state and that he also has an obligation to reimburse the state due to these expenditures. Within this narrative, the state denies the needs of disability accommodations or aid after release but rather focuses on assets that can be garnished and seized: "By operation of law, the underlying Act creates a right of reimbursement in the government while a statutory obligation is concomitantly created in the individual. The statute has as its purpose the shifting of the financial burden of the incarceration expenses from the public to the inmate…The liability is absolute" (*Garcia v. IDOC* 2002). The liability for payment supersedes any and all consideration for the origin and nature and severity of the disability; the concern for the state lies only in their narrow definition of the ability to pay and in the moral and fiscal culpability of the incarcerated person, disabled or not. The state eschews their responsibility in inflicting said injuries, making these details of the case irrelevant in the proceedings by consistently downplaying or not acknowledging them.

Consequences

The legal proceedings can create or exacerbate existing mental health concerns, especially given the extraordinary barriers incarcerated people with disabilities face in trying to defend themselves without adequate aid or resources. Mr. Evans' response speaks to the strain that occurs from having the entirety of one's life savings threatened by a pay-to-stay lawsuit:

> Defendant-Affiant is experiencing an extreme level of depression and stress as a result of relief sought by Plaintiff. The origin of Defendant's financial status, by which the Plaintiff adamently [sic] avoids to mention to this Court, is derived from Defendant having lost his biological parent, his mother. Given her untimely departure, Defendant is continually grieved, however, due to his mother's insurance policy, and pension plan, Defendant was named beneficiary, thereby, amount Defendant received from his lost [sic] has now been targeted by Plaintiff, contrary to 735 ILCS 5/12-1001. (*Evans v. IDOC* 2001)

As noted in Fernandes et al. (2022), incarcerated individuals are often concerned about the ramifications of these lawsuits on their ability to provide for themselves while incarcerated and during reentry. Here, Mr. Evans speaks about the compounding of trauma and grief, both over the loss of his mother and now the impending loss of the money she had bequeathed him, money he was hoping would sustain him after his release from prison. Similar to work highlighting the "mad-making" or disablement potential of prisons (Ben-Moshe et al. 2014; Ribet 2009), the lawsuits constitute yet another condition that heightens the tension and stress of the carceral experience, thrusting individuals into the civil court landscape without the necessary resources, knowledge base, or sufficient aid, while simultaneously targeting their livelihoods inside and outside of prison walls. The stress and strain of the proceedings and the uncertainty of the process can be mentally and physically taxing for incarcerated individuals with disabilities, resulting in further health complications in the midst of losing control of their remaining financial assets, leaving them financially dependent on the state.

The lawsuits and the garnishments impinge on the ability for incarcerated individuals to support their families and loved ones while in prison and hinder their eventual paths to reentry. In his answers to the attachment orders, Mr. Clanton refers to being the sole earner for his household upon his release, thereby indicating the increased burden on him but also highlighting the need for the assets within his possession:

> 2) Affiant is presently 42 years of age, with a number of medical conditions heart and foot problems.
> 3) The affiant currently has a release date of Feb 18, 2006 with no place of employment set up.
> 4) Affiant is also presently married with 4 minor children who will be dependant [sic] upon affiant now and upon release.
> 5) With such a huge responsibility facing the affiant, he is unable to pay the request amount that the plaintiff is presently sueing [sic] him for at this time.
> 6) During the affiant's incarceration, the affiant relied heavily upon his [deceased] mother to assist him with some of his expense for himself and his children. (*Clanton v. IDOC* 2004)

In this statement, Mr. Clanton expounds on the substantial burdens he faces for his impending release, including chronic health conditions and physical impairments, and a family relying solely on him for expenses. The assets being seized from incarcerated people in pay-to-stay lawsuits often represent the entirety of their savings. And due to the substantial impediments to employment for those being released from prison, these savings become essential to the survival of the incarcerated person and their families. For incarcerated people with disabilities, their sole source of income is often from Social Security Disability payments: “They have done everything in there [sic] power to steal my money. I am and have been on social security disabled [sic] all of my adult life. I have nothing. I have paid dearly already…” (*Custer v. IDOC* 2013). Incarcerated individuals like Mr. Custer view this as theft, with the state using their power and legal resources to take assets and leave them with nothing to support themselves or their families. Mr. Custer highlights a common refrain from incarcerated defendants, asserting that the state is attempting to extract more from them when they have given of their freedom and paid into a system that holds them captive.

Without these funds, provided often through inheritances or family trust payouts, the reentry process becomes fraught with additional levels of financial precarity hindering a successful and sustained reintegration:

> A prime goal of corrections is that after a offender has completed his or her sentence of incarceration, that offender will become rehabilitated and become a decent citizen. The rehabilitative task of a offender upon release is often difficult. Placing a substantial financial burden on a offender at that time is counter productive and the legislation did not intend to pass a bill for purpose… It is obvious that the legislation did not intend for sec 3-7-6 of the code, to be used as a vehicle to leave defendant or those similarly situated in a condition that would leave defendant in a position where he could not support himself or his family. It is the intent of this defendant to take those proceeds for the immediate use in taking care of this family. (*Clanton v. IDOC* 2004)

While Mr. Clanton’s statement clearly outlines the outstanding need of incarcerated people for these funds, the state often pushes back on this need, asserting no need exists. The state then goes further, especially when incarcerated individuals suggest their assets are exempt:

> Entitlement to exemption is not automatic…Solely as a result of his conduct, the individual has been incarcerated. Acting in loco parentis, the Department of Corrections provides the prisoner with care and maintenance. As the basic necessities are currently provided, no inmate has any reasonably foreseeable present needs. The wrongful death proceeds would merely supplement, rather than substitute for, the inmate’s basic needs. (*Knox v. IDOC* 2005)

While the state argues incarcerated individuals with assets are not in need of these funds due to the resources the state and IDOC provide, from the statements of the incarcerated individuals with disabilities, it is clear not all needs are met equally. While incarcerated individuals without disabilities make it abundantly clear their needs are not being met by the IDOC, individuals with disabilities report basic issues of mobility and communication are consistently unfulfilled, leading to isolation, injury, and increased sanctioning.

DISCUSSION AND CONCLUSION

In the pursuit of compensation for the rising costs of incarceration, the state of Illinois, in conjunction with nearly all states across the nation, seized upon the practice of pay-to-stay at the prison level, suing incarcerated people – and by extension their dependents, partners, and extended family members – for room and board within state prison facilities. For those with any amount of assets, the state focuses the full arsenal of their substantial state legal resources to capture pension benefits, inheritances, personal injury, and civil rights settlements. Among those caught within the web of the state’s efforts are incarcerated people with disabilities, who face even greater obstacles in navigating pay-to-stay lawsuits. Focusing on the additional barriers and particularly egregious practices of pay-to-stay collection experienced by incarcerated individuals best illuminates how pay-to-stay collections illustrate the dynamics of what we term *civil lawfare*. We argue bringing pay-to-stay lawsuits against incarcerated people constitutes civil lawfare that seeks to leverage the legal and resource inequities inherent for confined populations. Bringing such suits against people with disabilities provides a particularly telling example of the lengths that the state goes to enact social and economic death on incarcerated defendants, with the state going beyond predation by countersuing incarcerated people with existing and acquired disabilities for their personal injury funds and settlements collected from successful civil rights lawsuits for police and correctional officer brutality.

Civil lawfare necessitates that the state ready its substantial arsenal of civil law resources to defend its claim to the assets of incarcerated individuals, without regard to the pervasive consequences of the lawsuits. Instead, we contend that civil lawfare demonstrates intentionality with regard to racialized asset extraction and the prevention of intergenerational wealth transfer for the very same communities riddled with state violence as a result of mass incarceration. Given the substantial institutional and legal barriers to defense, the supposition that incarcerated people – with or without disabilities – should be able to adequately or successfully defend against such suits is linked to the same logic that assumes access to legal knowledge and resources is universal and absolute, when even in a non-captive population, research has shown that this is not remotely the case (see Clair 2021). The incarcerated defendant is dependent on the state for any and all legal and logistical resources to help in their case, with the state exercising their strategic advantage by hindering or denying access to law libraries, typewriters, and mail service. It is war, disguised as legally justified actions by the state, bolstered by state statute and upheld by the outsized barriers to representation and justice for incarcerated people, especially those with disabilities. But incarcerated individuals see these actions for what they are as demonstrated in their often handwritten letters to the court: "I am beggin' you to put an end to this scam that IDOC is running" (*Custer v. IDOC* 2013). Mr. Custer insightfully refers to this phenomenon as a scam – a well-orchestrated, practiced set of protocols used to disadvantage and conquer in the legal arena and to socially and financially bury in the outside realm – reaching past incarceration, past reentry, snatching freedom, and any modicum of liberty by ensnaring incarcerated people with disabilities into a perpetual financial and moral indebtedness.

The language and actions of war have loomed large in how states and the federal government control and contain their citizenry, especially the most marginalized among them (Hartmann-Mahmud 2002; Jefferson-Jones 2018). Political, financial, and institutional violence are part and parcel of how states conceive of solutions to entrenched social issues or to "problem" populations, using the weapons of policy, law, indebtedness, and brute force to defeat, contain, eradicate. Civil lawfare in the form of pay-to-stay becomes yet another example where states marshal the power of civil law to defeat an opponent – in this case, incarcerated people – using all of the legal firepower they can muster, while simultaneously controlling the access to legal resources and recourse for incarcerated defendants, especially those with disabilities. These are intentional actions on the part of the state and follow a long line of "racist intent" structuring social institutions (see Friedman 2021b; Friedman 2025). These are not consequences borne out of legal loopholes or collateral damage due to a broken system. The state is clearly signaling in the language in the lawsuits and their actions in suing incarcerated people, especially those with disabilities caused by state violence, their intentionality on waging war on these populations they deem to be disruptive to fiscal bottom lines and to the financial security and social well-being of a more deserving, non-confined citizenry. And disability scholars would suggest that people with disabilities have continually posed institutional and political challenges to state power, and that through institutionalization and incarceration, the state seeks to rid itself of this burden (Stewart and Russell 2001). The state achieves its aims through civil lawfare, with the mechanisms of pay-to-stay uniquely suited to wage a legal war, against a largely defenseless opponent, depriving them of avenues for redress, for appeal, for a suitable defense against legal onslaught.

The battles of warfare are waged not only in direct combat but with a view to shaping how the conflict should be viewed from an outside vantage point; the goal is also to win hearts and minds for broader support for these efforts. In the case of pay-to-stay, the state needs to go beyond the use of legal weapons to truly defeat their ascribed enemies, especially against opponents who are confined, disabled, and covered under federal protections. Scholars suggest that the dehumanization and moral degradation of opponents is an essential tactic in asymmetrical conflicts (Atuahene 2016; Kelman 1973). In this case, incarcerated people with disabilities, even those harmed by state violence, are cast as fiscal and moral pariah and the state as victim, with civil lawfare as the only logical defense the state can use to fend off budgetary collapse. Through the language of the lawsuits, the state asserts that the needs of the incarcerated person for their own assets are non-existent, suggesting that their personhood exists only within the bounds of confinement. They further minimize the presence and role of incarceration as well as disability within these proceedings, with the state furthering its claim to enrichment, wielding outsized weapons of civil law against "opponents" without the proper means for defense or even comprehension of the rules of engagement. And while the pains detailed by incarcerated individuals are significant, the language used within the lawsuits attempts to erase these pains, making them irrelevant to the state's fiscal pains and to the needs of the state over the needs of incarcerated individuals. The state of Illinois ignores the entreaties of the incarcerated themselves, suggesting the civil victory supersedes all, even the mandated protections of individuals with disabilities within prisons. For under the law, in the eyes of the state, all incarcerated people are culpable, all incarcerated people are responsible for their own incarceration and deserving of such consequences. The presence of a disability does not preclude them from this responsibility or their culpability. And while the state may dismiss their claims, especially for those with the most severe disabilities, it does not erase the initial claim or the logic that underlies it, namely that all incarcerated people owe the state, are indebted to the state, with pay-to-stay becoming the logical solution to the criminalization and over-incarceration of people with disabilities. In this way, the concept of civil lawfare can operate beyond pay-to-stay to other ways that the state uses civil law as a weapon of war, from civil asset forfeiture and evictions to child support and property liens for legal debt and beyond.

The specters of violence take multiple forms in the civil lawfare landscape, from the use of civil law as a weapon to inflict financial harm in the present and future to the assaults on the character of incarcerated people and people with disabilities. The lawfare landscape calls upon the easily accessed imaginings of fear and contempt and burden of those on the other side of state power. For pay-to-stay, the underpinnings and sinister logic of civil lawfare are most evident in the case of incarcerated individuals with acquired disabilities caused by the state and its agents. Through direct violence, the state attempts to physically dominate, knowing full well that legal recourse through mechanisms such as PLRA is severely limited (Ribet 2009; Schlanger 2015). But when the injured and disabled win settlements from the state, this win on the legal and financial battlefield stirs the ire of the state, and prompts its legal agents to begin the process of civil lawfare that seeks to render irrelevant the resulting disabilities and their sustained harms, to erase that violence brought against these individuals at the hands of the state as well as their attendant harms and disabilities. The nature of the funds provided by the state then ensures the collection of monies. The state knows that these funds exist because they dispersed them. Their goal is revenue, punishment, and erasure – revenue for the costs of incarcerating a disabled person, punishment for bringing suit against the state and its agents for brutalities, and erasure of blame and complicity in further brutalizing victims of state violence. The state meets violence with further violence, seeking only to win, to dominate, to eliminate incarcerated people's will to fight again.

In sum, committing civil lawfare in the form of pay-to-stay lawsuits exists within a long history of imagining both incarcerated people and people with disabilities as liabilities rather than citizens, as drains rather than contributors, as undeserving rather than deserving of the services and accommodations of the state. The state fights them instead of providing essential, and in some cases, federally mandated, services. The state extracts rather than accommodates, the state casts them as enemies rather than as citizens in need of resources and rehabilitation. The pay-to-stay system demands pitting the state against the incarcerated, requiring the civil lawfare process to further disadvantage, further marginalize, further in debt, and further criminalize. For incarcerated people, such a system represents a practice that is beyond predatory, bordering on cruel and unusual treatment and a punishment further distancing them from their freedom and their role as citizens. Burying them in debt and silencing them through collections and a lack of viable legal alternatives to defend themselves is an intentional strategy that further entrenches the risk of intergenerational poverty. Pay-to-stay as civil lawfare is just the next logical step in erasing incarcerated people, and is especially heinous with regard to those with disabilities, making their survival a question and their social death a fully realized certainty.

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