

1 SB209  
2 136295-1  
3 By Senator Orr  
4 RFD: Judiciary  
5 First Read: 07-FEB-12

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8 SYNOPSIS: This bill would be known as the Alabama  
9 Prisoner Litigation Reform Act.

10 This bill would establish guidelines for all  
11 civil actions brought by prisoners incarcerated in  
12 any state or local correctional facility in  
13 Alabama.

14 This bill would require the Alabama  
15 Department of Corrections to adopt procedures for  
16 resolving certain claims by prisoners.

17 This bill would establish guidelines for the  
18 court to follow with respect to prisoner's suit,  
19 attorney fees, monetary judgment awards, and oral  
20 argument request.

21 This bill would give Montgomery County  
22 Circuit Court exclusive jurisdiction for all  
23 prisoner actions.

24  
25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

1  
2 To establish the Alabama Prisoner Litigation Reform  
3 Act, relating to civil action and procedures of persons  
4 incarcerated; to award Montgomery County Circuit Court with  
5 exclusive jurisdiction; and to establish court guidelines.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. This act shall be known and may be cited  
8 as the "Alabama Prisoner Litigation Reform Act."

9 Section 2. The provisions of this act shall apply to  
10 all pro se civil actions for money damages brought under the  
11 laws of the State of Alabama, or for injunctive, declaratory,  
12 or mandamus relief, brought by prisoners incarcerated in any  
13 state or local correctional facility.

14 Section 3. For purpose of this act, the following  
15 words have the following meanings:

16 (1) ADMINISTRATIVE REMEDIES. Written policies  
17 adopted by the Alabama Department of Corrections which  
18 establish an internal procedure for receiving, addressing, and  
19 resolving claims by prisoners with respect to the conditions  
20 of confinement or the effects of actions by government  
21 officials on the lives of persons confined in prison.

22 (2) AVAILABLE. All administrative remedies adopted  
23 by the Alabama Department of Corrections which address claims  
24 of the kind asserted by the prisoner even if the  
25 administrative remedies do not allow the prisoner the  
26 particular kind of relief sought.

1                   (3) DEPARTMENT. The Alabama Department of  
2       Corrections.

3                   Section 4. (a) No prisoner incarcerated by the  
4       department shall assert a civil claim under state law until  
5       the prisoner exhausts all administrative remedies available.  
6       If a prisoner files a civil action in contravention of this  
7       section, the court shall dismiss the action without prejudice.

8                   (b) The court shall take judicial notice of  
9       administrative remedies adopted by the department that have  
10      been filed with the clerk of the Circuit Court of Montgomery  
11      County.

12                  (c)(1) The court, on its own motion or on the motion  
13      of a party, may dismiss any prisoner civil action if the court  
14      is satisfied that the action is:

15                  a. Frivolous.

16                  b. Malicious.

17                  c. Fails to state a cause of action.

18                  d. Seeks monetary relief from a defendant who is  
19      immune from such relief.

20                  e. Fails to state a claim upon which relief can be  
21      granted.

22                  (2) If the court makes a determination to dismiss an  
23      action based on the content, or lack thereof, of the petition,  
24      the court may dismiss the underlying claim without first  
25      exhausting administrative remedies.

1           (3) The court, on its own motion, may raise an  
2       exception of improper venue and transfer the action to a court  
3       of proper venue or dismiss the action.

4           (d)(1) Any defendant may waive the right to reply to  
5       any civil action brought by a person confined by the  
6       department or to any prisoner's civil action. Notwithstanding  
7       any other law or rule of procedure, a waiver shall not  
8       constitute an admission of the allegations contained in the  
9       petition or waive any affirmative defenses available to the  
10      defendant.

11          (2) No relief shall be granted to a plaintiff's  
12      civil action unless an answer has been filed. The court may  
13      require any defendant to answer a petition brought under this  
14      section if it finds that the plaintiff has a reasonable  
15      opportunity to prevail on the merits.

16          (e)(1) In any civil action brought with respect to  
17      prison conditions by a prisoner confined by the department, to  
18      the extent practicable, pretrial proceedings in which the  
19      prisoner's participation is required or permitted shall be  
20      conducted by telephone, video conference, or other  
21      communications technology without removing the prisoner from  
22      the facility in which he or she is currently confined.

23          (2) After providing the parties an opportunity to  
24      file supporting and opposing memoranda, a court may rule on  
25      exceptions and motions, without holding a contradictory  
26      hearing.

1           (3) Hearings may be conducted at the facility in  
2       which the prisoner is currently confined subject to agreement  
3       by the state or local entity of government with custody over  
4       the prisoner.

5           (4) The court shall allow counsel to participate by  
6       telephone, video conference, or other telecommunications  
7       technology in any hearing held at the facility to the extent  
8       practicable.

9           (f) No prisoner civil action may assert a claim  
10      under state law for mental or emotional injury suffered while  
11      in custody without a prior showing of physical injury.

12          (g) The exclusive venue for actions for injury or  
13      damages shall be the Circuit Court of Montgomery County.

14          (h) (1) The civil actions of more than one prisoner  
15      may not be cumulated and a prisoner's action that is filed or  
16      prosecuted pro se may not assert a class action.

17          (2) If a civil action names more than one plaintiff  
18      or asserts a pro se class action, the actions of any  
19      plaintiff, other than the first named plaintiff, shall be  
20      dismissed without prejudice.

21          Section 5. (a) (1) A prisoner seeking in forma  
22      pauperis status shall provide the court with a certified copy  
23      of his or her prisoner money on deposit account for the  
24      preceding 12 months.

25          (2) Any prisoner granted leave to proceed in forma  
26      pauperis shall make payments, in equal installments as the

1 court directs, towards satisfaction of the filing fee and  
2 costs.

3 (3) If the court determines the prisoner has had no  
4 deposits in his or her inmate trust account for the preceding  
5 six months, the court shall permit the prisoner to proceed  
6 without paying the filing fee and costs.

7 (4) The filing fee and costs of a civil action of a  
8 prisoner shall be taxed as costs at the end of the case.

9 (5) Any prisoner failing to make any payment when  
10 due shall have his or her case dismissed without prejudice.

11 (b) The court shall deny in forma pauperis status to  
12 any prisoner who has had three or more civil actions or  
13 appeals dismissed by any federal or state court for being  
14 frivolous, malicious, or for failure to state a claim, unless  
15 the prisoner shows that he or she is in imminent danger of  
16 serious physical injury at the time of filing his or her  
17 motion for judgment, or the court determines that it would be  
18 manifest injustice to deny in forma pauperis.

19 Section 6. (a) In any prisoner civil action in which  
20 attorney fees are authorized, such fees shall not be awarded,  
21 except:

22 (1) To the extent that the fee was directly and  
23 reasonably incurred in proving an actual violation of the  
24 plaintiff's rights protected by a statute pursuant to which  
25 fee may be awarded.

26 (2) The amount of the fee is proportionately related  
27 to the court-ordered relief for the violation.

1           (3) The fee was directly and reasonably incurred in  
2 enforcing the relief ordered for the violation.

3           (b) (1) Whenever a monetary judgment is awarded in an  
4 action described in Section 2, a portion of the judgment, not  
5 to exceed 25 percent, shall be applied to satisfy the amount  
6 of attorney fees awarded against the defendant.

7           (2) If the award of attorney fees is not greater  
8 than 150 percent of the judgment, the excess shall be paid by  
9 the defendant.

10           (3) No award of attorney fees in an action shall be  
11 based on an hourly rate greater than the hourly rate  
12 established for payment of court-appointed counsel.

13           (c) Nothing in this section shall prohibit a  
14 prisoner from entering into an agreement to pay an attorney  
15 fee in an amount greater than the amount authorized under this  
16 section, if the fee is paid by the individual rather than the  
17 defendant.

18           Section 7. Notwithstanding any other provision of  
19 law, all prisoner actions shall be filed in the Circuit Court  
20 of Montgomery County. When an action is filed in an improper  
21 venue, upon motion of the defendant or the court suasponte,  
22 the court shall transfer the case to the proper venue.

23           Section 8. (a) (1) In any action in which any  
24 defendant is the State of Alabama or one of its officers,  
25 employees, or agents, upon the grant of in forma pauperis  
26 status or receipt of the filing fee and costs, the court shall



1       serve the office of the Attorney General with a copy of the  
2       motion for judgment and all necessary supporting papers.

3               (2) The office of the Attorney General shall have no  
4       fewer than 60 days from receipt in which to file responsive  
5       pleadings.

6               (3) A prisoner's failure to state his or her claims  
7       in a written motion for judgment plainly stating facts  
8       sufficient to support his or her cause of action, accompanied  
9       by all necessary supporting documentation, may be grounds for  
10      dismissal of the action.

11              Section 9. (a) Oral argument on any motion in any  
12      prisoner civil action shall be heard orally only at the  
13      request of the court; whenever possible, the court shall rule  
14      upon the record before it.

15              (b) No prisoner shall be permitted to request  
16      subpoenas for witnesses or documents, or file discovery  
17      requests, until the court has ruled upon any motion to dismiss  
18      or dispositive motion.

19              (c) Where a case proceeds past the initial  
20      dispositive motions, the court shall require the prisoner  
21      seeking discovery to demonstrate that his or her requests are  
22      relevant and material to the issues in the case.

23              (d) (1) No subpoena for witnesses or documents shall  
24      be issued unless a judge of the court has reviewed the  
25      subpoena request and specifically authorized a subpoena to be  
26      issued.

1           (2) The court shall exercise its discretion in  
2 determining the scope of the subpoena and may condition its  
3 issuance on such terms as the court finds appropriate.

4           (3) The court shall take into account the burden  
5 placed upon the object of the subpoena in relation to the  
6 needs of the case, the amount in controversy, and the  
7 importance of the issues at stake in the litigation.

8           (e)(1) Any time after commencement of a pro se  
9 prisoner civil action, a party may move for summary judgment  
10 on all issues based upon the pleadings, any admissions, and  
11 supporting affidavits.

12           (2) The adverse party may serve supporting  
13 affidavits within 10 days after service of the motion.

14           (3) The summary judgment sought shall be rendered  
15 forthwith if the pleadings, admissions, and affidavits show  
16 that there is no genuine issue of material fact and that the  
17 moving party is entitled to a judgment as a matter of law.

18           Section 10. (a) All records maintained by the  
19 department in the name of the individual prisoners, including  
20 prisoner medical records, shall be the property of the  
21 department.

22           (b) In any civil action subject to this act, where  
23 the State of Alabama, an agency of the State of Alabama, an  
24 employee of the State of Alabama, or a private contractor  
25 providing services to the department is named as a defendant,  
26 the commissioner of the department may share any records

1 maintained in the name of the prisoner filing suit with  
2 counsel representing the above-named defendants.

3 Section 11. (a) Damages awarded to a prisoner in  
4 connection with a civil action brought against any prison or  
5 against any official or agent of such prison shall be paid  
6 directly to satisfy any outstanding restitution orders pending  
7 against the prisoner. Any remaining amounts shall be forwarded  
8 to the prisoner.

9 (b) Prior to payment of any damages, reasonable  
10 efforts shall be made to notify the victims of the crime for  
11 which the prisoner was convicted and incarcerated concerning  
12 the pending payment of any damages.

13 Section 12. Except as specifically prohibited by  
14 federal law, the provisions of this act shall also apply to  
15 all prisoner legal actions in state courts asserting claims  
16 arising under 42 U.S.C. §1983 or other federal laws.

17 Section 13. This act shall become effective  
18 immediately following its passage and approval by the  
19 Governor, or its otherwise becoming law.