

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

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

(3) DEPARTMENT. The Alabama Department of Corrections.

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

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

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

a. Frivolous.

b. Malicious.

c. Fails to state a cause of action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any prisoner granted leave to proceed in forma 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.

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

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

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

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

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

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

Section 8. (a) (1) In any action in which any defendant is the State of Alabama or one of its officers, employees, or agents, upon the grant of in forma pauperis 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.

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

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

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

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

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

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

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

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

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

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

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

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