

1 SB106
2 147420-1
3 By Senator Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 05-FEB-13

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8 SYNOPSIS: This bill would create the Alabama Prisoner
9 Litigation Reform Act to establish guidelines and
10 procedures for all pro se civil actions brought by
11 prisoners incarcerated in any state or local
12 correctional facility in this state, including
13 procedures related to monetary judgment awards,
14 discovery, and oral argument requests.

15 This bill would require a prisoner to
16 exhaust certain administrative remedies prior to
17 filing a pro se civil action.

18 This bill would require prisoners to
19 demonstrate physical injury in order to assert a
20 claim under state law for mental or emotional
21 damage.

22 This bill would provide for the repayment of
23 certain court costs by prisoners proceeding in
24 forma pauperis and would provide additional
25 requirements for prisoners proceeding in forma
26 pauperis.

1 This bill would require the Alabama
2 Department of Corrections and other entities
3 providing correctional services to adopt procedures
4 for resolving certain claims by pro se prisoners.

5 This bill would provide for the maintenance
6 of certain records in civil actions filed by
7 prisoners.

8 This bill would provide that any damages
9 awarded to a prisoner would be first paid to
10 satisfy any outstanding restitution orders.

11 This bill would also provide procedures for
12 certain suits involving prison conditions to be
13 resolved by a three-judge panel.

14
15 A BILL

16 TO BE ENTITLED

17 AN ACT

18
19 Relating to civil actions; to establish guidelines
20 for all pro se civil actions brought by prisoners incarcerated
21 in any state or local correctional facility in this state; to
22 require a prisoner to exhaust certain administrative remedies
23 prior to filing a pro se civil action; to require a showing of
24 physical injury in all claims for mental or emotional injury;
25 to provide for the payment of certain court costs by prisoners
26 proceeding in forma pauperis; to require the Department of
27 Corrections and certain other correctional entities to adopt

1 procedures for resolving certain claims by pro se prisoners;
2 to provide for the maintenance of certain records; to provide
3 that any damages awarded to a prisoner must first be paid to
4 satisfy any outstanding restitution orders; to provide certain
5 procedures for oral argument requests; and to provide
6 procedures for certain suits involving prison conditions to be
7 resolved by a three-judge panel.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 Section 2. This act shall apply to all pro se civil
12 actions for money damages relating to terms and conditions of
13 confinement brought under the laws of this state, or for
14 injunctive, declaratory, or mandamus relief, brought by
15 prisoners incarcerated in any state or local correctional
16 facility. Nothing in this act shall apply to actions brought
17 pursuant to the Alabama Rules of Criminal Procedure or
18 pursuant to Section 15-21-1, Code of Alabama 1975.

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

21 (1) ADMINISTRATIVE REMEDIES. Written policies
22 adopted or approved by the Alabama Department of Corrections,
23 local correctional authorities or jails, and any private
24 company or contractor providing any services within any
25 correctional facility which establish an internal procedure
26 requiring an inmate to file a written complaint to the
27 department, correctional or jail authorities, or any private

1 company or contractor prior to filing a pro se civil action
2 for claims related to the conditions of confinement or the
3 effect of actions by government officials on the lives of
4 prisoners incarcerated in prison.

5 (2) AVAILABLE. All administrative remedies adopted
6 or approved by the department, local correctional authorities
7 or jails, and any private company or contractor providing any
8 services within any correctional facility which address claims
9 of the kind asserted by the prisoner even if the
10 administrative remedies do not allow the prisoner the
11 particular kind of relief sought.

12 (3) DEPARTMENT. The Alabama Department of
13 Corrections.

14 Section 4. (a) The department, local correctional
15 authorities or jails, and any private company or contractor
16 providing any services within any correctional facility shall
17 adopt administrative remedies for prisoners. The
18 administrative remedies shall be prominently posted and
19 published to all prisoners.

20 (b) A prisoner incarcerated by the department may
21 not assert a pro se civil claim under state law until the
22 prisoner exhausts all administrative remedies available. If a
23 prisoner files a pro se civil action in contravention of this
24 section, the court shall dismiss the action without prejudice.

25 (c) The court shall take judicial notice of
26 administrative remedies adopted by the department that have
27 been filed with the Clerk of the Supreme Court of Alabama.

1 (d)(1) The court, on its own motion or on the motion
2 of a party, may dismiss any prisoner pro se civil action if
3 the court is satisfied that the action is any of the
4 following:

5 a. Frivolous.

6 b. Malicious.

7 c. Fails to state a cause of action.

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

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

12 (2) If the court makes a determination to dismiss an
13 action based on the content of the petition, the court may
14 dismiss the underlying claim without first exhausting
15 administrative remedies available to the prisoner.

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

19 (e)(1) Any defendant may waive the right to reply to
20 any pro se civil action brought by a person confined by the
21 department or to any prisoner's pro se civil action.

22 Notwithstanding any other law or rule of procedure, a waiver
23 shall not constitute an admission of the allegations contained
24 in the petition or waive any affirmative defenses available to
25 the defendant.

26 (2) No relief shall be granted to a plaintiff's pro
27 se civil action unless an answer has been filed. The court may

1 require any defendant to answer a petition brought under this
2 section if it finds that the plaintiff has a reasonable
3 opportunity to prevail on the merits.

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

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

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

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

22 (g) No pro se civil action by a prisoner may assert
23 a claim under state law for mental or emotional injury
24 suffered while in custody without a prior showing of physical
25 injury.

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

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

8 (i) No prisoner may file a petition for writ of
9 certiorari more than one year after the incident or omission
10 complained of or one year after any administrative remedy has
11 been exhausted, whichever comes later.

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

16 (2) Any prisoner granted leave to proceed in forma
17 pauperis shall repay any filing fees and pay any taxed costs
18 by making monthly installments, until fully paid, equal to 20
19 percent of the prisoner's average monthly prisoner money
20 balance for the prior 12 months, or a similarly determined
21 amount if 12 months of account activity is not available.

22 (3) If the court determines the prisoner has had no
23 deposits in his or her inmate trust account for the preceding
24 twelve months, the court shall permit the prisoner to proceed
25 without paying the filing fee and costs.

26 (4) In cases where in forma pauperis status is
27 granted, the filing fee of a pro se civil action shall be

1 taxed to the prisoner at the end of the case. The taxing of
2 costs against a non-prevailing prisoner shall be at the
3 court's discretion.

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

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

14 Section 6. (a) (1) In any pro se action in which any
15 defendant is the State of Alabama or one of its officers,
16 employees, or agents, upon the grant of in forma pauperis
17 status or receipt of the filing fee and costs, the prisoner
18 shall serve the office of the Attorney General with a copy of
19 the motion for judgment and all necessary supporting papers.
20 Additionally, if the pro se action named the department or any
21 of its officials, employees, or agents as a respondent or
22 defendant, the prisoner shall also serve the Legal Division of
23 the department with a copy of the action. Nothing in this act
24 shall be construed to eliminate the prisoner's duty under the
25 Alabama Rules of Civil Procedure to personally serve
26 individual defendants or respondents named as parties.

1 (2) The office of the Attorney General or the
2 department shall file responsive pleadings within 60 days of
3 receipt of the notice.

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

9 Section 7. (a) Oral argument on any motion in any
10 prisoner pro se civil action shall be heard orally only at the
11 request of the court. Whenever possible, the court shall rule
12 upon the record before it.

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

17 (c) Where a pro se case proceeds past the initial
18 dispositive motion phase, the court shall require the prisoner
19 seeking discovery to demonstrate that his or her requests are
20 relevant and material to the issues in the case.

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

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

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

5 Section 8. (a) All records maintained by the
6 department in the name of an individual prisoner, including
7 medical records, shall be the property of the department.

8 (b) In any pro se civil action subject to this act,
9 where the State of Alabama, an agency of the State of Alabama,
10 an employee of the State of Alabama, or a private contractor
11 providing services to the department is named as a defendant,
12 the commissioner of the department may share any records
13 maintained in the name of the prisoner filing suit with
14 counsel representing the above-named defendants.

15 Section 9. (a) Damages awarded to a prisoner in
16 connection with a pro se civil action brought against any
17 prison or against any official or agent of such prison shall
18 be paid directly to satisfy any outstanding restitution orders
19 pending against the prisoner. Any remaining amounts shall be
20 forwarded to the prisoner.

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

25 Section 10. (a) In any civil action with respect to
26 prison conditions, no prisoner release order shall be entered
27 unless both of the following are satisfied:

1 (1) A court has previously entered an order for less
2 intrusive relief that has failed to remedy the deprivation of
3 the right sought to be remedied through the prisoner release
4 order.

5 (2) The defendant has had a reasonable amount of
6 time to comply with the previous court orders.

7 (b) In any civil action in state court with respect
8 to prison conditions, a prisoner release order shall be
9 entered by a three-judge court, if the requirements of
10 subsection (f) have been met.

11 (c) In any action required to be heard and
12 determined by a court of three judges, the composition and
13 procedure of the court shall be as follows:

14 (1) Upon the filing of a request for three judges,
15 the judge to whom the request is presented shall immediately
16 notify the Chief Justice of the Alabama Supreme Court, who
17 shall designate one judge, and the presiding judge of the
18 Alabama Court of Criminal Appeals, who shall designate one
19 judge. The judges so designated, and the judge to whom the
20 request was presented, shall serve as members of the court to
21 hear and determine the action or proceeding.

22 (2) A single judge may conduct all proceedings
23 except the trial and enter all orders permitted by the Rules
24 of Civil Procedure except as provided in this subsection. The
25 judge may grant a temporary restraining order on a specific
26 finding, based on evidence submitted, that specified
27 irreparable damage will result if the order is not granted. An

1 order, unless previously revoked by the circuit judge, shall
2 remain in force only until the hearing and determination by
3 the circuit court of three judges of an application for a
4 preliminary injunction. A single judge shall not appoint a
5 master, order a reference, hear and determine any application
6 for a preliminary or permanent injunction or motion to vacate
7 the injunction, or enter judgment on the merits. Any action of
8 a single judge may be reviewed by the full court at any time
9 before final judgment.

10 (d) A party seeking a prisoner release order in
11 state court shall file with any request for such relief a
12 request for a three-judge court and materials sufficient to
13 demonstrate that the requirements of subsection (a) have been
14 met.

15 (e) If the requirements under subsection (a) have
16 been met, a judge before whom a civil action with respect to
17 prison conditions is pending who believes that a prison
18 release order should be considered may sua sponte request the
19 convening of a three-judge court to determine whether a
20 prisoner release order should be entered.

21 (f) The three-judge court shall enter a prisoner
22 release order only if the court finds clear and convincing
23 evidence of both of the following:

24 (1) Crowding is the primary cause of the violation
25 of a right.

26 (2) No other relief will remedy the violation of the
27 right.

1 (g) Any state or local official or unit of
2 government whose jurisdiction or function includes the
3 appropriation of funds for the construction, operation, or
4 maintenance of program facilities, or the prosecution or
5 custody of persons who may be released from, or not admitted
6 to, a prison as a result of a prisoner release order shall
7 have standing to oppose the imposition or continuation in
8 effect of such relief and to seek termination of such relief,
9 and shall have the right to intervene in any proceeding
10 relating to such relief.

11 Section 11. The provisions of this act are
12 severable. If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 12. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.