

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

1 SB106

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to civil actions; to establish guidelines
12 for all pro se civil actions brought by prisoners incarcerated
13 in any state correctional facility in this state; to require a
14 prisoner to exhaust certain administrative remedies prior to
15 filing a pro se civil action; to require a showing of physical
16 injury in all claims for mental or emotional injury; to
17 provide for the payment of certain court costs by prisoners
18 proceeding in forma pauperis; to require the Department of
19 Corrections and certain other correctional entities to adopt
20 procedures for resolving certain claims by pro se prisoners;
21 to provide for the maintenance of certain records; to provide
22 that any damages awarded to a prisoner must first be paid to
23 satisfy any outstanding restitution orders; to provide certain
24 procedures for oral argument requests; and to provide
25 procedures for certain suits involving prison conditions to be
26 resolved by a three-judge panel.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 Section 2. This act shall apply to all pro se civil
4 actions for money damages relating to terms and conditions of
5 confinement brought under the laws of this state, or for
6 injunctive, declaratory, or mandamus relief, brought by
7 prisoners incarcerated in any state correctional facility.
8 Nothing in this act shall apply to actions brought pursuant to
9 the Alabama Rules of Criminal Procedure or pursuant to Section
10 15-21-1, Code of Alabama 1975.

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

13 (1) ADMINISTRATIVE REMEDIES. Written policies
14 adopted or approved by the Alabama Department of Corrections
15 and any private company or contractor providing any services
16 within any correctional facility which establish an internal
17 procedure requiring an inmate to file a written complaint to
18 the department, correctional authorities, or any private
19 company or contractor prior to filing a pro se civil action
20 for claims related to the conditions of confinement or the
21 effect of actions by government officials on the lives of
22 prisoners incarcerated in prison.

23 (2) AVAILABLE. All administrative remedies adopted
24 or approved by the department and any private company or
25 contractor providing any services within any correctional
26 facility which address claims of the kind asserted by the

1 prisoner even if the administrative remedies do not allow the
2 prisoner the particular kind of relief sought.

3 (3) DEPARTMENT. The Alabama Department of
4 Corrections.

5 Section 4. (a) The department and any private
6 company or contractor providing any services within any
7 correctional facility shall adopt administrative remedies for
8 prisoners. The administrative remedies shall be prominently
9 posted and published to all prisoners.

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

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

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

- 22 a. Frivolous.
- 23 b. Malicious.
- 24 c. Fails to state a cause of action.
- 25 d. Seeks monetary relief from a defendant who is
26 immune from such relief.

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

3 (2) If the court makes a determination to dismiss an
4 action based on the content of the petition, the court may
5 dismiss the underlying claim without first exhausting
6 administrative remedies available to the prisoner.

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

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

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

22 (f)(1) In any pro se civil action brought with
23 respect to prison conditions by a prisoner confined by the
24 department, to the extent practicable, pretrial proceedings in
25 which the prisoner's participation is required or permitted
26 shall be conducted by telephone, video conference, or other

1 communications technology without removing the prisoner from
2 the facility in which he or she is currently confined.

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

6 (3) Hearings may be conducted at the facility in
7 which the prisoner is currently confined subject to agreement
8 by the state.

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

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

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

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

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

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

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

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

15 (4) In cases where in forma pauperis status is
16 granted, the filing fee of a pro se civil action shall be
17 taxed to the prisoner at the end of the case. The taxing of
18 costs against a non-prevailing prisoner shall be at the
19 court's discretion.

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

22 (b) The court shall deny in forma pauperis status to
23 any prisoner who has had three or more pro se civil actions or
24 appeals dismissed by any federal or state court for being
25 frivolous, malicious, or for failure to state a claim, unless
26 the prisoner shows that he or she is in imminent danger of
27 serious physical injury at the time of filing his or her

1 motion for judgment, or the court determines that it would be
2 manifest injustice to deny in forma pauperis.

3 Section 6. (a) (1) In any pro se action in which any
4 defendant is the State of Alabama or one of its officers,
5 employees, or agents, upon the grant of in forma pauperis
6 status or receipt of the filing fee and costs, the prisoner
7 shall serve the office of the Attorney General with a copy of
8 the motion for judgment and all necessary supporting papers.
9 Additionally, if the pro se action named the department or any
10 of its officials, employees, or agents as a respondent or
11 defendant, the prisoner shall also serve the Legal Division of
12 the department with a copy of the action. Nothing in this act
13 shall be construed to eliminate the prisoner's duty under the
14 Alabama Rules of Civil Procedure to personally serve
15 individual defendants or respondents named as parties.

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

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

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

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

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

9 (d) (1) No subpoena for witnesses or documents shall
10 be issued unless a judge of the court has reviewed the
11 subpoena request and specifically authorized a subpoena to be
12 issued.

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

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

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

23 (b) In any pro se civil action subject to this act,
24 where the State of Alabama, an agency of the State of Alabama,
25 an employee of the State of Alabama, or a private contractor
26 providing services to the department is named as a defendant,
27 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 9. (a) Damages awarded to a prisoner in
4 connection with a pro se civil action brought against any
5 prison or against any official or agent of such prison shall
6 be paid directly to satisfy any outstanding restitution orders
7 pending against the prisoner. Any remaining amounts shall be
8 forwarded 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 10. (a) In any civil action with respect to
14 prison conditions, no prisoner release order shall be entered
15 unless both of the following are satisfied:

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

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

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

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

4 (1) Upon the filing of a request for three judges,
5 the judge to whom the request is presented shall immediately
6 notify the Chief Justice of the Alabama Supreme Court, who
7 shall designate an active or retired district or circuit judge
8 in good standing, and the presiding judge of the Alabama Court
9 of Criminal Appeals, who shall designate an active or retired
10 district or circuit judge in good standing. The judges so
11 designated, and the judge to whom the request was presented,
12 shall serve as members of the court to hear and determine the
13 action or proceeding.

14 (2) A single judge may conduct all proceedings
15 except the trial and enter all orders permitted by the Rules
16 of Civil Procedure except as provided in this subsection. The
17 judge may grant a temporary restraining order on a specific
18 finding, based on evidence submitted, that specified
19 irreparable damage will result if the order is not granted. An
20 order, unless previously revoked by the circuit judge, shall
21 remain in force only until the hearing and determination by
22 the circuit court of three judges of an application for a
23 preliminary injunction. A single judge shall not appoint a
24 master, order a reference, hear and determine any application
25 for a preliminary or permanent injunction or motion to vacate
26 the injunction, or enter judgment on the merits. Any action of

1 a single judge may be reviewed by the full court at any time
2 before final judgment.

3 (d) A party seeking a prisoner release order in
4 state court shall file with any request for such relief a
5 request for a three-judge court and materials sufficient to
6 demonstrate that the requirements of subsection (a) have been
7 met.

8 (e) If the requirements under subsection (a) have
9 been met, a judge before whom a civil action with respect to
10 prison conditions is pending who believes that a prison
11 release order should be considered may sua sponte request the
12 convening of a three-judge court to determine whether a
13 prisoner release order should be entered.

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

17 (1) Crowding is the primary cause of the violation
18 of a right.

19 (2) No other relief will remedy the violation of the
20 right.

21 (g) Any state unit of government whose jurisdiction
22 or function includes the appropriation of funds for the
23 construction, operation, or maintenance of program facilities,
24 or the prosecution or custody of persons who may be released
25 from, or not admitted to, a prison as a result of a prisoner
26 release order shall have standing to oppose the imposition or
27 continuation in effect of such relief and to seek termination

1 of such relief, and shall have the right to intervene in any
2 proceeding relating to such relief.

3 Section 11. The provisions of this act are
4 severable. If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 12. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

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3 Senate

4 Read for the first time and referred to the Senate
5 committee on Finance and Taxation General Fund ... 05-FEB-13
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7 Read for the second time and placed on the calen-
8 dar 2 amendments..... 14-FEB-13
9
10 Read for the third time and passed as amended 26-FEB-13

11 Yeas 27
12 Nays 0

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15 Patrick Harris
16 Secretary
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