

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 926

(Third Reading File Bill)

AMENDMENT NO. 1

On pages 1 and 2, strike beginning with “requiring” in line 3 on page 1 through “prisoners.” in line 5 on page 2 and substitute “requiring a prisoner who files a civil action relating to the conditions of confinement to pay the full amount of the applicable filing fee; establishing certain exceptions; prohibiting the initiation of certain events until the filing fee is paid in full; requiring a prisoner who files a civil action to submit to the Clerk certain information relating to the prisoner’s account; requiring the Clerk to issue to a prisoner a consent form containing certain information relating to the prisoner’s account; requiring the Clerk to forward a copy of the consent form to the institution or agency that has custody of the prisoner; requiring the prisoner’s custodian, under certain conditions, to remit to the Clerk certain funds from the prisoner’s account; authorizing a custodian, under certain circumstances, to set aside or freeze certain funds deposited into the prisoner’s account; authorizing a court, under certain circumstances, to dismiss a civil action filed under this Act; prohibiting a prisoner from maintaining a civil action under certain circumstances; requiring a prisoner who files a civil action to attach certain information to the initial complaint; requiring a court, prior to a certain event, to review a prisoner’s complaint to identify any cognizable claims; establishing the effect of a dismissal of a prisoner’s civil action; authorizing a court to take certain action if a prisoner has filed a certain number of frivolous complaints; requiring a certain finding to be reflected in the docket entries of a civil action filed under this Act; requiring a court to order a defendant to reimburse a prisoner for court costs and filing fees under certain circumstances; providing for the disposition of compensatory and punitive damages awarded to a prisoner in connection with a civil action filed under this Act; requiring a prisoner’s custodian to notify, in a certain manner, a victim of the prisoner and a recipient of a child support obligation for which the prisoner is responsible of certain information; authorizing a court to rescind any or all of a prisoner’s diminution or confinement credits under certain circumstances; establishing that punitive damages awarded in a civil action filed under this Act may not exceed a certain amount; establishing a transaction fee for payments forwarded to the Clerk from a prisoner’s account; providing that a court is not required to hold a hearing under certain circumstances; defining certain terms; and generally

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relating to civil actions filed by prisoners.”.

On page 2, in line 8, strike “5-506” and substitute “5-511”.

AMENDMENT NO. 2

On pages 3 through 9, strike in their entirety the lines beginning with line 1 on page 3 through line 31 on page 9, inclusive, and substitute:

“(III) A PETITION FOR HABEAS CORPUS RELIEF THAT DOES NOT ATTACK THE VALIDITY OF THE PRISONER’S CRIMINAL CONVICTION;

(IV) ANY TORT CLAIM AGAINST A CUSTODIAN, THE CUSTODIAN’S OFFICERS OR EMPLOYEES, OR ANY EMPLOYEE OR OFFICIAL OF THE DEPARTMENT;

(V) ANY ACTION ALLEGING A VIOLATION OF CIVIL RIGHTS AGAINST A CUSTODIAN, THE CUSTODIAN’S OFFICERS AND EMPLOYEES, OR ANY OFFICIAL OR EMPLOYEE OF THE DEPARTMENT; OR

(VI) ANY APPEAL, APPLICATION FOR LEAVE TO APPEAL, OR PETITION FOR CERTIORARI.

(3) “CIVIL ACTION” DOES NOT INCLUDE A POSTCONVICTION PETITION OR PETITION FOR HABEAS CORPUS RELIEF THAT ATTACKS THE VALIDITY OF A PRISONER’S CRIMINAL CONVICTION.

(D) “CLERK” MEANS THE CLERK OF THE COURT IN WHICH THE CIVIL ACTION IS FILED.

(E) (1) “CONDITIONS OF CONFINEMENT” MEANS ANY CIRCUMSTANCE, SITUATION OR EVENT THAT INVOLVES A PRISONER’S CUSTODY, TRANSPORTATION, INCARCERATION, OR SUPERVISION.

(2) “CONDITIONS OF CONFINEMENT” INCLUDES:

(I) AN ALLEGED TORT COMMITTED AGAINST THE PRISONER BY THE CUSTODIAN, THE CUSTODIAN’S OFFICERS OR EMPLOYEES;

(II) AN ALLEGED CIVIL RIGHTS VIOLATION COMMITTED AGAINST THE PRISONER BY THE CUSTODIAN, THE CUSTODIAN’S OFFICERS OR EMPLOYEES;

(III) A DISPUTE REGARDING THE AWARD OR CALCULATION OF DIMINUTION CREDITS;

(IV) A DISPUTE REGARDING THE CALCULATION OF THE PRISONER'S SENTENCE OR THE SENTENCE EXPIRATION DATE;

(V) A DISPUTE REGARDING THE PRISONER'S MANDATORY SUPERVISION RELEASE DATE; AND

(VI) ANY OTHER DISPUTE THAT RELATES TO THE PRISONER'S CUSTODY OR INCARCERATION.

(3) "CONDITIONS OF CONFINEMENT" DOES NOT INCLUDE A PRISONER'S POSTCONVICTION PETITION OR PETITION FOR HABEAS CORPUS RELIEF THAT ATTACKS THE VALIDITY OF A PRISONER'S CRIMINAL CONVICTION.

(F) "CUSTODIAN" MEANS THE INSTITUTION OR AGENCY THAT HAS CUSTODY OF THE PRISONER.

(G) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

(H) (1) "PRISONER" MEANS A PERSON WHO IS IN THE CUSTODY OF THE DEPARTMENT OR A LOCAL DETENTION CENTER.

(2) "PRISONER" INCLUDES PRETRIAL DETAINEES.

(I) (1) "PRISONER'S ACCOUNT" MEANS A RECORD OF MONEYS MAINTAINED BY THE DEPARTMENT OR ANY OF ITS DIVISIONS, A COUNTY, A MUNICIPALITY, OR ANY OTHER POLITICAL SUBDIVISION ON BEHALF OF THE PRISONER.

(2) "PRISONER'S ACCOUNT" INCLUDES A PRISONER'S SPENDING ACCOUNT AS DEFINED BY ARTICLE 27, § 678B OF THE CODE.

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(3) "PRISONER'S ACCOUNT" DOES NOT INCLUDE AN INMATE'S RESERVE ACCOUNT MAINTAINED UNDER ARTICLE 27, § 678B OF THE CODE.

(J) "WELFARE COMMISSARY LEVEL" MEANS THE AMOUNT OF MONEY THAT A PRISONER'S ACCOUNT BALANCE MUST FALL BELOW BEFORE THE PRISONER IS ISSUED PERSONAL SUPPLIES AT THE EXPENSE OF THE PRISONER'S CUSTODIAN.

5-502.

(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A PRISONER WHO MAINTAINS A CIVIL ACTION SHALL PAY THE FULL AMOUNT OF THE APPLICABLE FILING FEE.

(2) UNTIL ANY APPLICABLE FILING FEE IS PAID IN FULL OR WAIVED UNDER SUBSECTION (D) OF THIS SECTION, SERVICE OF THE COMPLAINT SHALL BE WITHHELD, DISCOVERY MAY NOT COMMENCE, AND OTHER PROCEEDINGS MAY NOT BE CONVENED.

(B) (1) A PRISONER SEEKING TO FILE A CIVIL ACTION SHALL SUBMIT TO THE CLERK A CERTIFIED COPY OF THE TRANSACTION AND BALANCE RECORD OF THE PRISONER'S ACCOUNT FOR THE 6-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT OR NOTICE OF APPEAL.

(2) THE CERTIFIED COPY OF THE TRANSACTION AND BALANCE RECORD SHALL BE OBTAINED FROM THE CUSTODIAN.

(C) (1) ON RECEIPT OF A CIVIL ACTION FILED ON BEHALF OF A PRISONER, THE CLERK SHALL ISSUE A CONSENT FORM TO THE PRISONER FOR THE COLLECTION OF THE COURT'S FILING FEE.

(2) THE CONSENT FORM SHALL CONTAIN:

(I) A STATEMENT OF THE COURT'S FILING FEE;

(II) A STATEMENT THAT THE PRISONER IMMEDIATELY AUTHORIZES THE PRISONER'S CUSTODIAN TO FORWARD TO THE CLERK FOR APPLICATION TOWARD PAYMENT OF THE FEE ALL MONEYS CURRENTLY IN THE PRISONER'S ACCOUNT THAT ARE NOT BELOW THE WELFARE COMMISSARY LEVEL; AND

(III) A SIGNATURE LINE FOR THE PRISONER TO SIGN THE CONSENT FORM.

(3) (I) ON RECEIPT OF A CONSENT FORM SIGNED BY THE PRISONER, THE CLERK SHALL FORWARD A COPY OF THE CONSENT FORM TO THE CUSTODIAN.

(II) ON RECEIPT OF THE SIGNED CONSENT FORM FROM THE CLERK, THE CUSTODIAN SHALL REMIT TO THE CLERK THE FULL FEE DUE IF THE PRISONER'S ACCOUNT HAS SUFFICIENT FUNDS ABOVE THE WELFARE COMMISSARY LEVEL OR ALL FUNDS ABOVE THE WELFARE COMMISSARY LEVEL IF INSUFFICIENT FUNDS FOR FULL PAYMENT ARE AVAILABLE.

(III) 1. IF THE PRISONER DOES NOT HAVE SUFFICIENT FUNDS FOR THE FULL FILING FEE IN THE PRISONER'S ACCOUNT, THE CUSTODIAN SHALL FORWARD TO THE CLERK ALL FUNDS IN THE PRISONER'S ACCOUNT UP TO THE WELFARE COMMISSARY LEVEL AND THE CLERK SHALL APPLY THE SUM AGAINST THE FULL FILING FEE.

2. SUBSEQUENT TO THE CUSTODIAN TAKING ACTION UNDER ITEM 1 OF THIS SUBPARAGRAPH, THE CUSTODIAN SHALL, ON A MONTHLY BASIS, SEND TO THE CLERK ALL FUNDS ABOVE THE WELFARE COMMISSARY LEVEL UNTIL THE FULL FILING FEE IS PAID.

(4) THE CUSTODIAN MAY SET ASIDE OR FREEZE ANY MONEY DEPOSITED INTO THE PRISONER'S ACCOUNT FOR FORWARDING TO THE CLERK EACH TIME THE PRISONER'S ACCOUNT BALANCE EXCEEDS THE WELFARE

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COMMISSARY LEVEL.

(5) A COURT SHALL DISMISS A CIVIL ACTION THAT IS FILED BY A PRISONER WHO DOES NOT SIGN AND RETURN THE CONSENT FORM AS REQUIRED UNDER THIS SUBSECTION.

(D) A COURT MAY WAIVE PAYMENT OF THE REQUIRED FILING FEE FOR A CIVIL ACTION FILED BY A PRISONER ONLY ON A WRITTEN SHOWING UNDER OATH BY THE PRISONER THAT:

(1) THE PRISONER IS INDIGENT;

(2) THE ISSUE PRESENTED IS OF SERIOUS CONCERN;

(3) DELAY IN THE CONSIDERATION OF THE ISSUES PRESENTED WILL PREJUDICE THE CONSIDERATION OF THE CLAIM;

(4) THE PRISONER IS NOT LIKELY TO ACCUMULATE SUFFICIENT FUNDS TO PAY THE REQUIRED FILING FEE WITHIN A REASONABLE PERIOD OF TIME; AND

(5) THE PRISONER POSSESSES A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS OF THE CLAIM.

(E) IF A PRISONER IS A PREVAILING PARTY IN A CIVIL ACTION, THE COURT SHALL ORDER THE DEFENDANT TO REIMBURSE THE PRISONER FOR COURT COSTS AND FILING FEES.

5-503.

(A) (1) A PRISONER MAY NOT MAINTAIN A CIVIL ACTION UNTIL THE PRISONER HAS FULLY EXHAUSTED ALL ADMINISTRATIVE REMEDIES FOR RESOLVING THE COMPLAINT OR GRIEVANCE.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, AN

ADMINISTRATIVE REMEDY IS EXHAUSTED WHEN THE PRISONER HAS PURSUED TO COMPLETION ALL APPROPRIATE PROCEEDINGS FOR APPEAL OF THE ADMINISTRATIVE DISPOSITION, INCLUDING ANY AVAILABLE PROCEEDINGS FOR JUDICIAL REVIEW.

(3) JUDICIAL REVIEW FOLLOWING ADMINISTRATIVE CONSIDERATION SHALL BE THE EXCLUSIVE JUDICIAL REMEDY FOR ANY GRIEVANCE OR COMPLAINT WITHIN THE SCOPE OF THE ADMINISTRATIVE PROCESS, UNLESS THE PRISONER'S COMPLAINT OR GRIEVANCE WAS FOUND TO BE MERITORIOUS AND MONETARY DAMAGES WERE NOT AVAILABLE THROUGH THE ADMINISTRATIVE REMEDY AVAILABLE TO THE PRISONER.

(B) (1) WHEN A PRISONER FILES A CIVIL ACTION, THE PRISONER SHALL ATTACH TO THE INITIAL COMPLAINT PROOF THAT ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED.

(2) THE ATTACHMENT SHALL INCLUDE PROOF:

(I) THAT THE PRISONER HAS FILED A COMPLAINT OR GRIEVANCE WITH THE APPROPRIATE AGENCY;

(II) OF THE ADMINISTRATIVE DISPOSITION OF THE COMPLAINT OR GRIEVANCE; AND

(III) THAT THE PRISONER HAS APPEALED THE ADMINISTRATIVE DISPOSITION TO THE APPROPRIATE AUTHORITY, INCLUDING PROOF OF JUDICIAL REVIEW, IF AVAILABLE.

(3) ON RECEIPT OF A PRISONER'S INITIAL COMPLAINT THAT DOES NOT HAVE ATTACHED TO IT PROOF THAT THE PRISONER HAS FULLY EXHAUSTED THE ADMINISTRATIVE REMEDIES AVAILABLE, THE COURT SHALL DISMISS THE CASE WITHOUT PREJUDICE AND GRANT THE PRISONER REASONABLE LEAVE TO AMEND THE COMPLAINT AND TO PROVIDE THE PROOF NECESSARY TO DEMONSTRATE THAT

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THE PRISONER HAS FULLY EXHAUSTED THE ADMINISTRATIVE REMEDIES.

(C) A COURT SHALL DISMISS A CIVIL ACTION IF THE PRISONER FILING THE ACTION HAS NOT COMPLETELY EXHAUSTED THE ADMINISTRATIVE REMEDIES.

5-504.

(A) (1) PRIOR TO SERVICE OF PROCESS OF THE PRISONER'S CIVIL ACTION, THE COURT SHALL REVIEW THE PRISONER'S INITIAL COMPLAINT AND IDENTIFY ANY COGNIZABLE CLAIMS.

(2) AFTER REVIEWING THE PRISONER'S COMPLAINT, THE COURT MAY DISMISS THE CIVIL ACTION, OR ANY PORTION THEREOF, WITH OR WITHOUT PREJUDICE, IF IT FINDS THAT THE CIVIL ACTION:

(I) IS FRIVOLOUS, MALICIOUS, OR FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED;

(II) SEEKS MONETARY DAMAGES FROM A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF; OR

(III) IS BARRED UNDER § 5-503(A) OF THIS SUBTITLE.

(3) AN ORDER OF DISMISSAL UNDER PARAGRAPH (2)(I) OR (II) OF THIS SUBSECTION MAY BE ISSUED WITHOUT FIRST REQUIRING PROOF OF EXHAUSTION.

(4) (I) THE DISMISSAL OF A CIVIL ACTION UNDER THIS SECTION DOES NOT INVALIDATE THE PRISONER'S CONSENT FOR THE COURT TO COLLECT ITS FILING FEES UNDER § 5-502 OF THIS SUBTITLE AND MAY NOT ABATE THE OBLIGATION OF THE PRISONER FOR FULL PAYMENT OF FEES.

(II) IF THE PRISONER HAS CONSENTED TO PAYMENT AND COLLECTION OF THE COURT'S FILING FEE UNDER § 5-502 OF THIS SUBTITLE, THE CLERK AND THE CUSTODIAN SHALL CONTINUE WITH THE COLLECTION PROCESS

DESCRIBED IN § 5-502 OF THIS SUBTITLE, UNTIL THE FULL FILING FEE OF THE COURT IS PAID, NOTWITHSTANDING THE COURT'S DISMISSAL OF THE PRISONER'S CIVIL ACTION.

(5) THE COURT MAY PERFORM THE JUDICIAL SCREENING PROCESS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION BEFORE FULL PAYMENT HAS BEEN RECEIVED.

(B) (1) A PRISONER WHO HAS FILED THREE OR MORE CIVIL ACTIONS THAT HAVE BEEN DECLARED TO BE FRIVOLOUS BY ANY STATE OR FEDERAL COURT MAY NOT FILE ANY FURTHER CIVIL ACTIONS WITHOUT LEAVE OF COURT.

(2) IF A PRISONER HAS FILED THREE OR MORE CIVIL ACTIONS THAT HAVE BEEN DECLARED TO BE FRIVOLOUS BY ANY STATE OR FEDERAL COURT, A COURT MAY PLACE THE PRISONER'S REMAINING AND FUTURE CIVIL ACTIONS ON AN INACTIVE CASE LIST AND PERMIT THE PRISONER TO PURSUE ONLY ONE CIVIL ACTION OR APPEAL AT A TIME, REGARDLESS OF JURISDICTION.

5-505.

(A) A COURT MAY INCLUDE IN ITS FINAL ORDER OR JUDGMENT IN ANY CIVIL ACTION A FINDING THAT THE ACTION WAS FRIVOLOUS.

(B) A FINDING UNDER SUBSECTION (A) OF THIS SECTION SHALL BE REFLECTED IN THE DOCKET ENTRIES OF THE CASE.

5-506.

(A) (1) ANY COMPENSATORY OR PUNITIVE DAMAGES AWARDED TO A PRISONER IN CONNECTION WITH A CIVIL ACTION SHALL BE PAID DIRECTLY TO SATISFY ANY OUTSTANDING RESTITUTION ORDER OR CHILD SUPPORT ORDER PENDING AGAINST THE PRISONER.

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(2) IF THERE ARE MULTIPLE ORDERS OF RESTITUTION OR CHILD SUPPORT PENDING AGAINST THE PRISONER, ANY COMPENSATORY DAMAGES SHALL BE DISTRIBUTED AGAINST THOSE ORDERS ON A PRO RATA BASIS.

(3) (I) THE STATE, THE DEPARTMENT, AND THE DIVISION OF CORRECTION MAY NOT BE LIABLE FOR ANY FAILURE TO CREDIT AN AWARD AS PROVIDED IN THIS SECTION.

(II) THE STATE, THE DEPARTMENT, THE DIVISION OF CORRECTION, AND ANY COUNTY OR MUNICIPALITY, THROUGH ANY AUTHORIZED EMPLOYEE OR OFFICIAL, MAY RECLAIM ANY MONEY ERRONEOUSLY CREDITED TO A PRISONER WITHOUT JUDICIAL ACTION IN ORDER TO COMPLY WITH THIS SECTION.

(B) IF A PRISONER IS AWARDED COMPENSATORY OR PUNITIVE DAMAGES FOR A CIVIL ACTION, THE PRISONER'S CUSTODIAN SHALL NOTIFY, IN WRITING, THE VICTIM OR VICTIMS OF THE CRIME FOR WHICH THE PRISONER IS INCARCERATED AND THE RECIPIENT OR RECIPIENTS OF ANY CHILD SUPPORT OBLIGATION FOR WHICH THE PRISONER IS RESPONSIBLE.

5-507.

A COURT MAY RESCIND ANY OR ALL OF A PRISONER'S DIMINUTION CREDITS THAT HAVE BEEN AWARDED UNDER ARTICLE 27, §§ 700 AND 704A OF THE CODE IF THE COURT FINDS THAT:

(1) THE PRISONER'S CIVIL ACTION IS FRIVOLOUS, MALICIOUS, OR HAS BEEN FILED FOR THE PURPOSE OF HARASSING A PARTY; OR

(2) THE PRISONER TESTIFIED FALSELY OR KNOWINGLY PRESENTED FALSE EVIDENCE OR FALSE INFORMATION TO THE COURT.

5-508.

A PRISONER MAY NOT MAINTAIN A CIVIL ACTION IF THE SOLE INJURY TO THE PRISONER IS ALLEGED MENTAL ANGUISH OR INJURY UNLESS THE PRISONER CAN

PRESENT EVIDENCE THAT THE ALLEGED MENTAL ANGUISH OR INJURY HAS MANIFESTED ITSELF IN A PHYSICAL MANNER.

5-509.

IN A CIVIL ACTION, AN AWARD FOR PUNITIVE DAMAGES AGAINST A DEFENDANT MAY NOT EXCEED \$2,000.

5-510.

IF A PRISONER FILES A CIVIL ACTION THAT IS SUBJECT TO THE ASSESSMENT AND COLLECTION PROCEDURES UNDER § 5-502 OF THIS SUBTITLE, A TRANSACTION FEE OF \$1 MAY BE LEVIED AGAINST THE PRISONER'S ACCOUNT EACH TIME THAT A PAYMENT IS FORWARDED TO THE CLERK.

5-511.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN A CIVIL ACTION FILED BY A PRISONER THAT IS AN APPEAL ON THE RECORD, THE COURT IS NOT REQUIRED TO HOLD A HEARING IF IT DETERMINES THAT A HEARING IS NOT NECESSARY FOR THE DISPOSITION OF THE MATTER.”.

AMENDMENT NO. 3

On page 9, strike in their entirety lines 32 through 34, inclusive; and in line 35, strike “3.” and substitute “2.”.