

## CHAPTER 132

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**COURTS**

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**HOUSE BILL 95-1181**

BY REPRESENTATIVES Tucker, Anderson, Kreutz, Acquafresca, Adkins, Agler, Allen, Chlouber, Dean, Epps, Friednash, Lamm, McPherson, Moellenberg, Morrison, Musgrave, Paschall, Reeser, Schwarz, Snyder, and Swenson;  
also SENATORS Wham, Bishop, Hopper, Johnson, Norton, and R. Powers.

**AN ACT****CONCERNING STATE CIVIL ACTIONS BROUGHT AGAINST PUBLIC DEFENDANTS BY PERSONS DETAINED  
IN DETAINING FACILITIES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Title 13, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 17.5****Costs - Attorney Fees - Inmate Lawsuits**

**13-17.5-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY DECLARES THAT THE STATE HAS A STRONG INTEREST IN LIMITING SUBSTANTIALLY FRIVOLOUS, GROUNDLESS, OR VEXATIOUS INMATE LAWSUITS THAT IMPOSE AN UNDUE BURDEN ON THE STATE JUDICIAL SYSTEM. WHILE RECOGNIZING AN INMATE'S RIGHT TO ACCESS THE COURTS FOR RELIEF FROM UNLAWFUL STATE ACTIONS, THE GENERAL ASSEMBLY FINDS THAT A SIGNIFICANT NUMBER OF INMATES FILE SUBSTANTIALLY FRIVOLOUS, GROUNDLESS, OR VEXATIOUS LAWSUITS.

(2) THE GENERAL ASSEMBLY, THEREFORE, DETERMINES THAT IT IS NECESSARY TO ENACT LEGISLATION THAT PROMOTES EFFICIENCY IN THE DISPOSITION OF INMATE LAWSUITS BY PROVIDING FOR PRELIMINARY MATTERS TO BE DETERMINED BY MAGISTRATES AND TO PROVIDE FOR SANCTIONS AGAINST INMATES WHO ARE ALLOWED TO FILE CLAIMS AGAINST PUBLIC DEFENDANTS AND WHOSE CLAIMS ARE DISMISSED AS FRIVOLOUS.

**13-17.5-102. Definitions.** AS USED IN THIS ARTICLE ONLY:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(1) "DETAINING FACILITY" MEANS ANY STATE CORRECTIONAL FACILITY, AS DEFINED IN SECTION 17-1-102 (1.7), C.R.S., INCLUDING THE YOUTHFUL OFFENDER SYSTEM, OR ANY LOCAL JAIL, AS DEFINED IN SECTION 16-11-308.5 (1.5), C.R.S., OR COMMUNITY CORRECTIONS PROGRAM, ESTABLISHED IN ARTICLE 27 OF TITLE 17, C.R.S. A DETAINING FACILITY SHALL NOT INCLUDE ANY JUVENILE DETENTION FACILITY THAT DETAINS ONLY JUVENILES.

(2) "INMATE" MEANS A PERSON WHO IS SENTENCED OR IS AWAITING SENTENCING TO ANY DETAINING FACILITY.

(3) "PUBLIC DEFENDANT" MEANS ANY STATE, COUNTY, OR MUNICIPAL AGENCY, ANY STATE, COUNTY, OR MUNICIPAL OFFICIAL OR EMPLOYEE ACTING WITHIN THE SCOPE OF HIS OR HER AUTHORITY, OR ANY AGENT ACTING ON BEHALF OF ANY STATE, COUNTY, OR MUNICIPAL AGENCY.

**13-17.5-103. Release of records.** ANY INMATE WHO FILES A MOTION TO PROCEED AS A POOR PERSON, PURSUANT TO SECTION 13-16-103, IN A STATE CIVIL ACTION AGAINST ANY PUBLIC DEFENDANT SHALL ATTACH TO THE MOTION COPIES OF ALL INMATE ACCOUNT RECORDS HELD BY THE DETAINING FACILITY AND COPIES OF ALL TRANSACTIONS CONCERNING THE ACCOUNT MADE FOR THE MONTH IN WHICH THE COMPLAINT IS FILED AND ELEVEN MONTHS BEFORE THE STATE CIVIL ACTION IS FILED. IF THE INMATE ACCOUNT DEMONSTRATES THAT THE INMATE HAS, OR HAD DURING THE TIME PERIOD THAT IS REVIEWED PURSUANT TO THIS SECTION, SUFFICIENT FUNDS TO PAY THE COSTS OF FILING AND SERVICE OF PROCESS, THE MOTION TO PROCEED AS A POOR PERSON SHALL BE DENIED.

**13-17.5-104. Stay of state judicial proceedings.** IF THE COURT DETERMINES, DURING THE COURSE OF A STATE CIVIL ACTION BY AN INMATE AGAINST ANY PUBLIC DEFENDANT, THAT A FEDERAL CIVIL ACTION OR GRIEVANCE PROCEDURE IS PENDING THAT INVOLVES THE INMATE AND ANY OF THE SAME ISSUES RAISED IN THE STATE CIVIL ACTION, THE COURT SHALL STAY THE STATE CIVIL ACTION UNTIL THE FEDERAL CIVIL ACTION OR THE GRIEVANCE PROCEDURE IS COMPLETED AND ALL RIGHTS OF APPEAL HAVE BEEN EXHAUSTED.

**13-17.5-105. Proceedings before magistrate.** AS PROVIDED BY SECTIONS 13-5-201 AND 13-6-501, DISTRICT AND COUNTY COURT MAGISTRATES MAY PRESIDE OVER INMATE MOTIONS FILED PURSUANT TO SECTION 13-16-103 AND MOTIONS FILED PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE TO DISPOSE OF THE INMATE'S ACTION WITHOUT THE NECESSITY OF TRIAL.

**13-17.5-106. Assessment of costs and attorney fees - review of inmate spending from account - recovery of costs from inmate accounts - alternative sanctions - continuing garnishment authorized.** (1) JUDGMENT FOR COSTS AND ATTORNEY FEES IN A STATE CIVIL ACTION BROUGHT BY AN INMATE AGAINST ANY PUBLIC DEFENDANT SHALL BE AWARDED IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THIS TITLE.

(2) THE COURT MAY ALSO ENTER JUDGMENT AGAINST AN INMATE WHO HAS BEEN ALLOWED TO PROCEED AS A POOR PERSON PURSUANT TO SECTION 13-16-103 FOR THE AMOUNT OF COURT COSTS AND FEES THAT THE INMATE WOULD HAVE INCURRED EXCEPT FOR THE PROVISIONS OF THAT SECTION, IF THE COURT AWARDS ATTORNEY

FEES PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE JUDGMENT ENTERED BY THE COURT SHALL BE COLLECTED AND APPLIED IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

(3) IF JUDGMENT FOR COSTS AND ATTORNEY FEES IS AWARDED TO A PUBLIC DEFENDANT OR TO THE COURT, PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION, THE COURT, PURSUANT TO SECTION 13-54.5-102, SHALL ISSUE A WRIT OF CONTINUING GARNISHMENT OF THE INMATE'S ACCOUNT WITH THE DETAINING FACILITY, WHICH GARNISHMENT SHALL CONTINUE UNTIL THE JUDGMENT IS PAID IN FULL, NOTWITHSTANDING THE REQUIREMENT SET FORTH IN SECTION 13-54.5-103 THAT THE GARNISHMENT BE RENEWED.

**13-17.5-107. Construction of article - severability.** NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO IMPEDE AN INMATE'S CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS. IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID OR UNCONSTITUTIONAL, SUCH INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

**13-17.5-108. Teleconferenced hearings.** THE DEPARTMENT OF LAW, THE DEPARTMENT OF CORRECTIONS, AND THE STATE JUDICIAL DEPARTMENT SHALL COOPERATE TO DETERMINE THE COST OF AND ACTIVELY PURSUE FEDERAL FUNDING AND CONTRIBUTIONS FROM ANY PUBLIC OR PRIVATE ENTITY FOR THE PURPOSE OF DEVELOPING, IMPLEMENTING, AND MAINTAINING A TELECONFERENCING SYSTEM FOR CONDUCTING PROCEEDINGS IN CONNECTION WITH STATE OR FEDERAL CIVIL ACTIONS FILED BY AN INMATE AGAINST A PUBLIC DEFENDANT. ON OR BEFORE DECEMBER 1, 1996, THE STATE JUDICIAL DEPARTMENT SHALL INFORM THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY OF THE PROGRESS MADE IN PURSUING FUNDS FOR THE DEVELOPMENT OF THE SYSTEM. ON OR BEFORE MARCH 1, 1996, THE STATE JUDICIAL DEPARTMENT SHALL SUBMIT A DETAILED PLAN TO IMPLEMENT THE USE OF A TELECONFERENCING SYSTEM FOR ALL PROCEEDINGS IN WHICH AN INMATE IS A WITNESS OR A PARTY.

**SECTION 2.** 13-5-201, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**13-5-201. District court magistrates.** (3.5) DISTRICT COURT MAGISTRATES SHALL HAVE THE POWER TO PRESIDE OVER MATTERS SPECIFIED IN SECTION 13-17.5-105.

**SECTION 3.** 13-6-501, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**13-6-501. County court magistrates - qualifications - duties.** (4.7) COUNTY COURT MAGISTRATES SHALL HAVE THE POWER TO PRESIDE OVER MATTERS SPECIFIED IN SECTION 13-17.5-105.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 1995, and shall apply to actions filed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 16, 1995