

CHAPTER 93

CORRECTIONS

HOUSE BILL 98-1079

BY REPRESENTATIVES Miller, Adkins, K. Alexander, Arrington, G. Berry, Dean, Epps, Grossman, Hagedorn, S. Johnson, Kaufman, Morrison, Nichol, Paschall, Pfiffner, Smith, Spradley, Sullivant, Taylor, Young, and Zimmerman; also SENATORS Ament, B. Alexander, Arnold, Bishop, Chlouber, Coffman, Powers, and Schroeder.

AN ACT

CONCERNING PRISONER LAWSUITS.

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

SECTION 1. 13-17.5-102 (1), Colorado Revised Statutes, is amended, and the said 13-17.5-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

13-17.5-102. Definitions. As used in this article only:

(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.~~ "CIVIL ACTION" MEANS THE FILING OF A COMPLAINT, PETITION, WRIT, OR MOTION WITH ANY COURT WITHIN THE STATE, INCLUDING ANY APPELLATE COURT; EXCEPT THAT "CIVIL ACTION" DOES NOT INCLUDE ANY CRIMINAL ACTION OR AN ACTION FOR HABEAS CORPUS UNDER ARTICLE 45 OF THIS TITLE.

(1.5) "DETAINING FACILITY" MEANS ANY STATE CORRECTIONAL FACILITY, AS DEFINED IN SECTION 17-1-102 (1.7), C.R.S., INCLUDING THE YOUTHFUL OFFENDER SYSTEM, ANY PRIVATE CORRECTIONAL FACILITY HOUSING STATE PRISONERS PURSUANT TO PART 2 OF ARTICLE 1 OF TITLE 17, C.R.S., ANY LOCAL JAIL, AS DEFINED IN SECTION 16-11-308.5 (1.5), C.R.S., OR ANY COMMUNITY CORRECTIONS PROGRAM,

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

ESTABLISHED IN ARTICLE 27 OF TITLE 17, C.R.S. A DETAINING FACILITY SHALL NOT INCLUDE ANY JUVENILE DETENTION FACILITY THAT DETAINS ONLY JUVENILES.

SECTION 2. Article 17.5 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

13-17.5-102.3. Exhaustion of remedies. (1) NO INMATE SHALL BRING A CIVIL ACTION BASED UPON PRISON CONDITIONS UNDER ANY STATUTE OR CONSTITUTIONAL PROVISION UNTIL ALL AVAILABLE ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED IN A TIMELY FASHION BY THE ENTITY OPERATING THE DETAINING FACILITY AND INMATE. FOR PURPOSES OF THIS SUBSECTION (1), AN INMATE SHALL BE CONSIDERED TO HAVE EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES WHEN THE INMATE HAS COMPLETED THE LAST STEP IN THE INMATE GRIEVANCE PROCESS AS SET FORTH IN THE REGULATIONS PROMULGATED FOR THE DETAINING FACILITY.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, IF A COURT FINDS THAT A CLAIM FILED BY AN INMATE IS FRIVOLOUS, MALICIOUS, FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, OR SEEKS MONETARY RELIEF FROM A DEFENDANT WHO IS IMMUNE FROM MONETARY RELIEF, A COURT MAY DISMISS THE CLAIM WITHOUT FIRST REQUIRING EXHAUSTION OF ADMINISTRATIVE REMEDIES.

13-17.5-102.7. Successive claims. (1) NO INMATE WHO ON THREE OR MORE OCCASIONS HAS BROUGHT AN ACTION BASED UPON PRISON CONDITIONS THAT HAS BEEN DISMISSED ON THE GROUNDS THAT IT WAS FRIVOLOUS, MALICIOUS, FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, OR SOUGHT MONETARY RELIEF FROM A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF, SHALL BRING A CIVIL ACTION BASED UPON PRISON CONDITIONS UNDER ANY STATUTE OR CONSTITUTIONAL PROVISION.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, AN INMATE MAY FILE A SUIT WITH THE WRITTEN PERMISSION OF A JUDGE OF THE COURT IN WHICH THE ACTION IS TO BE FILED OR IF THE INMATE IS IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

13-17.5-106.5. Court-ordered payment. ANY COMPENSATORY DAMAGES AWARDED TO AN INMATE IN CONNECTION WITH A CIVIL ACTION BROUGHT AGAINST ANY FEDERAL, STATE, OR LOCAL JAIL, PRISON, OR FACILITY OR AGAINST ANY OFFICIAL OR AGENT OF A JAIL, PRISON, OR FACILITY, AFTER DEDUCTION FOR ANY AWARD OF ATTORNEY FEES PURSUANT TO SECTION 13-17.5-106 (1)(c), SHALL BE PAID DIRECTLY TO SATISFY ANY OUTSTANDING COURT-ORDERED PAYMENTS PENDING AGAINST THE INMATE, INCLUDING BUT NOT LIMITED TO RESTITUTION OR CHILD SUPPORT. THE REMAINDER OF THE AWARD AFTER FULL PAYMENT OF ALL PENDING COURT ORDERS SHALL BE FORWARDED TO THE INMATE.

SECTION 3. 13-17.5-106 (1), Colorado Revised Statutes, is amended to read:

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.~~ (a) IN ANY

ACTION BASED UPON PRISON CONDITIONS BROUGHT UNDER ANY STATUTE OR CONSTITUTIONAL PROVISION, IF ATTORNEY FEES ARE RECOVERABLE PURSUANT TO ANY STATE OR FEDERAL STATUTE, NO ATTORNEY FEES SHALL BE AWARDED TO AN INMATE, EXCEPT TO THE EXTENT THAT:

(I) THE FEES WERE DIRECTLY AND REASONABLY INCURRED IN PROVING AN ACTUAL VIOLATION OF THE INMATE'S RIGHTS PROTECTED BY THE CONSTITUTION OR STATUTE; AND

(II) (A) THE AMOUNT OF THE FEES IS PROPORTIONATELY RELATED TO THE COURT-ORDERED RELIEF FOR THE VIOLATION; OR

(B) THE FEES WERE DIRECTLY AND REASONABLY INCURRED IN ENFORCING THE RELIEF ORDERED FOR THE VIOLATION.

(b) NO AWARD OF ATTORNEY FEES UNDER PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE BASED ON AN HOURLY RATE IN EXCESS OF ONE HUNDRED FIFTY PERCENT OF THE HOURLY RATE PAID TO COURT-APPOINTED COUNSEL IN THE DISTRICT IN WHICH THE ACTION WAS FILED.

(c) WHENEVER A SEPARATE MONETARY JUDGMENT IS AWARDED IN AN ACTION IN WHICH ATTORNEY FEES ARE AWARDED UNDER PARAGRAPH (a) OF THIS SUBSECTION (1), A PORTION OF THE JUDGMENT NOT TO EXCEED TWENTY-FIVE PERCENT SHALL BE APPLIED TO REDUCE THE AMOUNT OF ATTORNEY FEES AWARDED AGAINST THE DEFENDANT.

(d) NOTHING IN THIS SUBSECTION (1) SHALL PROHIBIT AN INMATE FROM ENTERING INTO AN AGREEMENT TO PAY AN ATTORNEY FEE IN EXCESS OF THE AMOUNT AUTHORIZED IN THIS SUBSECTION (1), IF THE FEE IS PAID BY THE INDIVIDUAL RATHER THAN BY A DEFENDANT.

SECTION 4. 13-17.5-103, Colorado Revised Statutes, is amended to read:

13-17.5-103. Filing fees. ~~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.~~ (1) AN INMATE SEEKING TO BRING A CIVIL ACTION OR APPEAL A JUDGMENT IN A CIVIL ACTION WITHOUT PREPAYMENT OF FEES, IN ADDITION TO FILING ANY REQUIRED AFFIDAVIT, SHALL SUBMIT A COPY OF THE INMATE'S TRUST FUND ACCOUNT STATEMENT FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT OR NOTICE OF APPEAL, CERTIFIED BY AN APPROPRIATE OFFICIAL AT THE DETAINING FACILITY. IF THE INMATE ACCOUNT DEMONSTRATES THAT THE INMATE HAS SUFFICIENT FUNDS TO PAY THE FILING FEE, THE MOTION TO PROCEED AS A POOR PERSON SHALL BE DENIED.

(2) ANY INMATE WHO IS ALLOWED TO PROCEED IN THE CIVIL ACTION AS A POOR

PERSON SHALL BE REQUIRED TO PAY THE FULL AMOUNT OF THE FILING FEE IN THE FOLLOWING INSTALMENTS:

(a) IF THE INMATE HAS TEN DOLLARS OR MORE IN HIS OR HER INMATE TRUST FUND ACCOUNT, MAKE AN INITIAL PARTIAL PAYMENT IN ACCORDANCE WITH THE ORDER OF THE COURT; AND

(b) MAKE CONTINUING MONTHLY PAYMENTS TO THE COURT EQUAL TO TWENTY PERCENT OF THE PRECEDING MONTH'S DEPOSITS IN THE INMATE'S TRUST ACCOUNT UNTIL THE FEE IS PAID IN FULL.

(3) IN NO EVENT SHALL AN INMATE BE PROHIBITED FROM FILING A CIVIL ACTION OR APPEALING A CIVIL OR CRIMINAL JUDGMENT BECAUSE THE INMATE HAS NO ASSETS AND NO MEANS BY WHICH TO PAY THE INITIAL PARTIAL PAYMENT.

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: April 13, 1998