

CHAPTER 106

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COURTS

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HOUSE BILL 01-1226

BY REPRESENTATIVE(S) Miller, Lee, Coleman, Dean, Garcia, Grossman, Hefley, Jameson, Kester, Larson, Mace, Nuñez, Rhodes, Spradley, Stafford, Stengel, Tapia, Tochtrop, Veiga, White, and Williams S.; also SENATOR(S) Teck, Anderson, Arnold, Cairns, Chlouber, Dennis, Dyer (Arapahoe), Dyer (Durango), Epps, Evans, Hillman, Lamborn, May, McElhany, Musgrave, Nichol, Owen, and Taylor.

AN ACT

CONCERNING PRISONER LAWSUITS.

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

**SECTION 1.** 13-17.5-102.3 (1), Colorado Revised Statutes, is amended 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~~ BY THE ENTITY OPERATING the detaining facility. FAILURE TO ALLEGE IN THE CIVIL ACTION THAT ALL AVAILABLE ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED IN ACCORDANCE WITH THIS SUBSECTION (1) SHALL RESULT IN DISMISSAL OF THE CIVIL ACTION.

**SECTION 2.** 13-17.5-102.7, Colorado Revised Statutes, is amended to read:

**13-17.5-102.7. Successive claims.** (1) No inmate who on three or more occasions has brought ~~an~~ A CIVIL action based upon prison conditions that has been dismissed on the grounds that it was frivolous, GROUNDLESS, OR malicious OR 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~~ BE PERMITTED TO PROCEED AS A POOR PERSON IN a civil action based upon prison conditions under any statute or constitutional provision.

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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.*

(2) Notwithstanding THE PROVISIONS OF subsection (1) of this section, an inmate may ~~file a suit~~ PROCEED AS A POOR PERSON IN A CIVIL ACTION ~~with the written permission of a judge of the court in which the action is to be filed or if the inmate~~ IF THE JUDGE FINDS THAT THE ACTION ALLEGES SUFFICIENT FACTS WHICH, IF ASSUMED TO BE TRUE, WOULD DEMONSTRATE THAT THE INMATE is in imminent danger of serious physical injury.

(3) (a) A COPY OF ANY COURT ORDER THAT DISMISSES AN INMATE'S CIVIL ACTION ON THE GROUNDS THAT IT IS FRIVOLOUS, GROUNDLESS, OR MALICIOUS OR FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED OR SEEKS MONETARY RELIEF FROM A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF SHALL BE MAILED BY THE COURT CLERK TO THE COLORADO ATTORNEY GENERAL, WHETHER OR NOT THE ATTORNEY GENERAL ENTERED AN APPEARANCE IN THE CIVIL ACTION, AND WHETHER OR NOT THE CIVIL ACTION INVOLVED A STATE CORRECTIONAL FACILITY OR STATE DEFENDANT. THE ATTORNEY GENERAL SHALL MONITOR THE DISMISSALS DESCRIBED IN THIS PARAGRAPH (a).

(b) THE ATTORNEY GENERAL SHALL INFORM THE STATE JUDICIAL DEPARTMENT OR THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT WHENEVER THE ATTORNEY GENERAL BECOMES AWARE THAT AN INMATE HAS BEEN ASSESSED THREE OR MORE DISMISSALS AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3). EACH JUDICIAL DISTRICT SHALL MAINTAIN A REGISTRY OF SUCH INFORMATION. AN INMATE LISTED IN THE REGISTRY WHO BRINGS A CIVIL ACTION SHALL BE SUBJECT TO THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION.

**SECTION 3.** 13-17.5-103, Colorado Revised Statutes, is amended to read:

**13-17.5-103. Filing fees.** (1) An inmate ~~seeking to bring a~~ WHO SEEKS TO PROCEED IN ANY 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~~ CIVIL ACTION, 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, OR IF THE ACTION ON ITS FACE IS FRIVOLOUS, GROUNDLESS, OR MALICIOUS, OR FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED OR SEEKS MONETARY RELIEF FROM A DEFENDANT WHO IS IMMUNE FROM SUCH RELIEF, 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 AND SERVICE OF PROCESS FEES PREVIOUSLY PAID BY THE COURT in the following ~~instalments~~ INSTALLMENTS:

(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) REGARDLESS IF THE INMATE HAS TEN DOLLARS IN HIS OR HER INMATE ACCOUNT AT THE TIME OF THE FILING OF THE CIVIL ACTION, 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 FILING fee is AND SERVICE OF PROCESS FEES PREVIOUSLY PAID BY THE COURT ARE paid in full.

(2.5) THE COURT SHALL INCLUDE IN ITS ORDER GRANTING PERMISSION TO PROCEED AS A POOR PERSON THE REQUIREMENT THAT THE INMATE COMPLY WITH THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION.

(2.7) A COPY OF ANY ORDER GRANTING AN INMATE'S MOTION TO PROCEED IN A CIVIL ACTION AS A POOR PERSON SHALL BE FORWARDED BY THE COURT TO THE DETAINING FACILITY THAT HAS CUSTODY OF THE INMATE. UPON RECEIPT OF THE ORDER, THE DETAINING FACILITY SHALL FORWARD PAYMENTS FROM THE INMATE'S ACCOUNT TO THE COURT IN ACCORDANCE WITH THE ORDER GRANTING LEAVE TO PROCEED AS A POOR PERSON.

(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 4. Effective date - applicability.** This act shall take effect July 1, 2001, and shall apply to all 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: March 30, 2001