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**SFA**



**BILL ANALYSIS**

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Senate Bill 406 (as introduced 3-4-99)  
Senate Bill 419 (as introduced 3-9-99)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

Date Completed: 3-17-99

## CONTENT

**Senate Bill 419 would add Chapter 55 (“Prisoner Litigation Reform”) to the Revised Judicature Act (RJA) to do the following:**

- Repeal and replace Section 2963 of the RJA, which provides for the payment of a prisoner’s civil filing fees and costs from his or her institutional account. (Under the bill, these provisions would apply to all prisoners, rather than just those in Department of Corrections facilities.)
- Specify that a prisoner could bring a civil action concerning prison conditions only under Chapter 55, and prohibit a prisoner from bringing such an action if two or more prior actions or appeals had been dismissed as nonmeritorious.
- Provide that a court, in a civil action brought by a prisoner, could revoke good time credit under certain circumstances.
- Provide for pretrial proceedings and hearings to be conducted in the prison.
- Restrict a court’s ability to grant prospective relief in an action under Chapter 55, and provide for the termination of prospective relief.
- Allow a court to appoint a special master to conduct hearings under Chapter 55.
- Require the State Court Administrative Office to compile a list of civil actions brought by prisoners that were dismissed as nonmeritorious.

**Senate Bill 406 would amend the Department of Corrections (DOC) law to refer to a section of the RJA proposed by Senate Bill 419, instead of Section 2963, in provisions requiring the Department to remove amounts from a prisoner’s institutional account if the prisoner is ordered by a court to make monthly payments on the balance of filing fees or costs.**

The bills are tie-barred. A more detailed description of [Senate Bill 419](#) follows.

### Actions Under Chapter 55

The bill would define “prisoner” as a person subject to incarceration, detention, or admission to a prison who was accused of, convicted of, sentenced for, or adjudicated delinquent for violations of State or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program. “Prison” would refer to a State or local facility that incarcerated or detained juveniles or adults.

On its own motion or on the motion of a party, the court would have to dismiss an action brought by a prisoner under Chapter 55 as to one or more defendants, if the court were satisfied that the action was nonmeritorious or sought monetary relief from a defendant who was immune from the requested relief. (“Nonmeritorious” would mean frivolous, false, malicious, not reasonably related to legitimate penological interests, or otherwise failing to state a claim upon which relief could be granted.) The court could not appoint counsel paid for in whole or in part at taxpayer expense to a prisoner for the purpose of filing a civil action under Chapter 55.

A prisoner could not file an action under Chapter 55 until he or she had exhausted all available administrative remedies.

### Payment of Filing Fees

Section 2963 of the RJA provides that, if a prisoner under the jurisdiction of the DOC submits for filing a civil action as plaintiff in a court of this State or an appeal in a civil action in a court of this State, and states that he or she is indigent and therefore unable to pay the filing fee and costs required by law, the prisoner must submit to the court a certified copy of his or her institutional account, showing the current balance and a 12-month history of deposits and withdrawals. The court then must order the prisoner to pay fees and costs as provided in this section, and must suspend the filing of the action or appeal until the court receives the filing fee or initial partial filing fee. (Under the bill, these provisions would apply to any prisoner, rather than a prisoner under the jurisdiction of the DOC.)

Currently, if the court orders a prisoner to pay a filing

fee or partial filing fee, the court must return to the prisoner all documents submitted by him or her that relate to that action or appeal along with two certified copies of the court order. An additional certified copy of the order must be sent to the DOC facility where the prisoner is housed. The prisoner then has 21 days to resubmit to the court all documents relating to the action or appeal, accompanied by the required filing fee or partial filing fee and one certified copy of the court order. If the fee is not received within 21 days after it was ordered, the court may not file that action or appeal and must return all related documents to the plaintiff. (Under the bill, an additional certified copy of the court order would have to be sent to the prison where the prisoner was housed, rather than to the DOC facility.)

Under Section 2963, if, upon the commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account equals or exceeds the full amount of the filing fee required by law, the court must order the prisoner to pay that amount. If the balance is less than the full amount of the filing fee, the court must require the prisoner to pay an initial partial filing fee equal to 50% of the greater of the following: 1) the average monthly deposits to the prisoner's institutional account for the 12 months preceding the date of filing; or 2) the average monthly balance in the account for that 12-month period. In determining the balance in a prisoner's institutional account for these purposes, the court must disregard amounts in the account that are required by law or by another court order to be paid for any other purposes. (The bill would not change these provisions.)

In addition to ordering an initial partial filing fee, the court must order the prisoner to make monthly payments equal to 50% of the deposits made to the account, until the full amount of the filing fee is paid. The collection of payments and their remittal must be conducted as provided in Section 68 of the DOC law. If costs are assessed against a prisoner, and if the balance of his or her institutional account is not sufficient to pay the full amount of costs assessed, the court must order the prisoner to make payments in the same manner as required for the payment of filing fees, and the full amount of the costs must be collected and paid in the manner provided in this section and in Section 68 of the DOC law. (The bill would delete these references to Section 68 of the DOC law.)

The total amount collected from a prisoner under these provisions may not exceed the full amount of the filing fee and costs required by law. For purposes of this section, the fact of a prisoner's incarceration may not be the sole basis for a determination of indigency. The section does not, however, prohibit a prisoner from commencing a civil action or filing an appeal in a civil action if the

prisoner has no assets and no means by which to pay the initial partial filing fee. If the court, pursuant to court rule, waives or suspends the payment of fees and costs because the prisoner has no assets and no means to pay the initial partial filing fee, the court must order the fees and costs to be paid by the prisoner in the manner provided in this section when the reason for the waiver or suspension no longer exists. (The bill would not change these provisions.)

The bill also provides that, if a prisoner were ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs, the agency having custody of the prisoner would have to remove those amounts from the prisoner's institutional account and, when an amount equal to the balance of the filing fees or costs was removed, remit that amount as directed in the order.

In addition, a prisoner who failed to pay outstanding fees and costs as required could not commence a new civil action or appeal until the outstanding fees and costs had been paid.

The bill would require the court to dismiss a case at any time, regardless of any filing fee that could have been paid, if the court found any of the following:

- A prisoner's allegation of indigency was untrue.
- The action or appeal was nonmeritorious.
- The action or appeal sought monetary relief against a defendant who was immune from the requested relief.
- The prisoner failed to pay outstanding fees and costs.

#### Civil Action Concerning Prison Conditions

The bill provides that a prisoner could bring a civil action concerning prison conditions only under Chapter 55. The action would have to be brought in the circuit court or the court of claims, as appropriate. ("Civil action concerning prison conditions" would mean any civil proceeding arising under State or local law with respect to prison conditions or the effects of actions by government officials on the lives of prisoners; the term would not include proceedings challenging the fact or duration of confinement in prison.)

A prisoner could not bring a civil action or appeal a judgment in a civil action concerning prison conditions if he or she had, on two or more prior occasions, while incarcerated or detained in any prison, brought an action or appeal in a court of this State that was dismissed on the ground that it was nonmeritorious, unless the prisoner were in imminent danger of serious physical injury or of first-, second-, or third-degree criminal sexual conduct. Upon commencing the action or initiating the appeal, the

prisoner would have to disclose the number of civil actions and appeals under Chapter 55 that he or she had previously initiated.

The court would have to dismiss a civil action or appeal at any time, regardless of any filing fee that could have been paid, if the court found that the prisoner's claim of imminent danger was false, or the prisoner failed to disclose the number of previous actions and appeals.

#### Prospective Relief/Injunctive Relief

The court could not grant or approve any prospective relief in an action under Chapter 55 unless the court found that the relief was narrowly drawn, extended no further than necessary to correct the violation of the right, and was the least intrusive means necessary to correct the violation. A defendant or intervener would be entitled to the immediate termination of prospective relief, if the relief were ordered in the absence of these findings. The court also would have to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief. ("Prospective relief" would mean all relief other than monetary damages. "Relief" would mean all relief in any form that could be granted or approved by the court, including consent decrees but not private settlement agreements. "Consent decree" would mean any relief entered by the court that was based in whole or in part upon the parties' consent or acquiescence, but would not include private settlements.)

The court could not order prospective relief that required or permitted a government official to exceed his or her authority under State or local law, or that otherwise violated local law, unless all of the following conditions existed:

- State law permitted the relief to be ordered in violation of local law.
- The relief was necessary to correct the violation of a right under State or local law.
- No other relief would correct the violation of the right.

The bill specifies that these provisions would not authorize a court, in exercising its remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations of the court's remedial powers.

The court could enter a temporary restraining order or an order for preliminary injunctive relief to the extent otherwise authorized by law. Preliminary injunctive relief would have to be narrowly drawn, extend no further than necessary to correct the harm the court found to require preliminary relief, and be the least intrusive means necessary to correct that

harm. In tailoring the preliminary relief, the court would have to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief. Preliminary injunctive relief would automatically expire 90 days after the preliminary injunction was entered, unless the court made the findings required for the entry of prospective relief and made the order final before the 90-day period expired.

Except as otherwise provided, prospective relief would be terminable upon the motion of a party or intervener, as follows:

- Two years after the date the court granted or approved the prospective relief.
- One year after the date the court entered an order denying termination of prospective relief.
- In the case of an order issued on or before the date of the bill's enactment, two years after that date.

The parties could, however, agree to terminate or modify relief before it was terminated under this provision.

Prospective relief would not terminate if the court made written findings based on the record that prospective relief remained necessary to correct a current or ongoing violation of the right, extended no further than necessary to correct the violation, and was narrowly drawn and the least intrusive means of correcting the violation.

A party could not seek modification or termination before the relief was terminable, to the extent that modification or termination would otherwise be legally permissible. The court would have to rule promptly on a motion to modify or terminate prospective relief. Any prospective relief subject to a pending motion would be automatically stayed during one of the following periods:

- Beginning on the 30th day after the motion was filed, in the case of a motion made under the provisions described above, and ending on the date the court entered a final order ruling on the motion.
- Beginning on the 180th day after the motion was filed, in the case of a motion made under any other law, and ending on the date the court entered a final order ruling on the motion.

The court could postpone the effective date of an automatic stay for good cause, for up to 60 days. "Good cause" would not include the congestion of the court's calendar.

An order staying, suspending, delaying, or barring the operation of an automatic stay, other than an order to

postpone the effective date of the stay for good cause, would have to be treated as an order denying the dissolution or modification of an injunction, and could be appealed as of right regardless of how the order was styled or whether it was termed a preliminary or final ruling.

The court could not enter or approve a consent decree unless it complied with the limitations on granting or approving prospective relief, and on entering a temporary restraining order or a preliminary injunction.

#### Special Master

The court could appoint a special master who was disinterested and objective and would give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact in an action under Chapter 55. The court could appoint a special master during the remedial phase of the action only if the court found that that phase would be sufficiently complex to warrant the appointment.

If the court determined that the appointment of a special master was necessary, it would have to request the defendant institution and the plaintiff each to submit a list of up to five persons to serve as a special master. Each party would have the opportunity to remove up to three from the opposing party's list. The court then would have to select the master from those remaining on the list. A party could file an interlocutory appeal of the court's selection of a special master (i.e., the appeal could be filed before the lawsuit was decided).

A special master would have to be compensated for his or her actual and necessary costs based on an hourly rate that did not exceed the hourly rate established for court-appointed counsel. The compensation would have to be paid with funds appropriated for paying court-appointed counsel.

The court would have to review the appointment of the special master every six months to determine whether his or her services continued to be required, although the appointment could not extend beyond the termination of the relief.

A special master could conduct hearings and prepare proposed findings of fact, which would have to be made on the record, if authorized by the court to do so. Also, if authorized by the court, the special master could assist in the development of remedial plans. The special master could not make any ex parte findings or communications (i.e., without notice to or the presence of the opposing party). The special master would be relieved of the appointment upon the termination of relief, but could be removed by the court at any time.

#### Damages

Any damages awarded to a prisoner in connection with a civil action brought against a prison or against a prison official or agent would have to be paid directly to satisfy any outstanding restitution orders pending against the prisoner, including restitution orders issued under the State Correctional Facility Reimbursement Act, the Prisoner Reimbursement to the County Act, and the Crime Victim's Rights Act, and any outstanding costs and fees as required under Chapter 55. The remainder of the award after full payment of all pending restitution orders, costs, and fees, would have to be forwarded to the prisoner.

Before the payment of any damages to a prisoner, reasonable efforts would have to be made to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of damages.

#### Good Time Revocation

In a civil action brought by a prisoner, the court could order the revocation of good time credit if, on its own motion or the motion of any party, the court found that the prisoner filed an action prohibited by the bill (e.g., because the prisoner had not exhausted administrative remedies, the action was nonmeritorious, or the prisoner failed to comply with filing fee requirements) and one of the following applied:

- The claim was filed for a malicious purpose.
- The claim was filed solely to harass the party against whom it was filed.
- The prisoner testified falsely or otherwise knowingly presented false evidence or information to the court.

#### In-Prison Proceedings

To the extent practicable, in an action brought by a prisoner, pretrial proceedings in which the prisoner's participation was required or permitted would have to be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the prison in which he or she was confined.

Subject to the agreement of the official of the State or local unit of government with custody over the prisoner, hearings could be conducted at the prison in which the prisoner was confined. To the extent practicable, the court would have to allow counsel to participate by telephone, video conference, or other communications technology in a hearing held at the prison.

#### List of Previous Actions

The State Court Administrative Office would have to compile and maintain a list of the civil actions brought by a prisoner under Chapter 55 that were dismissed as nonmeritorious. The cases would have to include an account of the amount of unpaid fees and costs associated with each dismissed case. The list would have to be made available to the courts for the purpose of ascertaining the existence and number of civil actions filed under Chapter 55 by each prisoner, and any associated unpaid fees and costs.

Calendar Year	Cases Filed
1994	1,954
1995	1,796
1996	1,057
1997	952
1998 (estimated)	1,775

The court in which a civil action under Chapter 55 was brought would have to refer to the list to determine the number and existence of civil actions previously filed under Chapter 55 by a prisoner and any associated unpaid fees and costs.

Other Provisions

As soon as practicable, the court would have to review a complaint in a civil action in which a prisoner sought redress from a governmental entity or officer or employee of a governmental entity. On review, the court would have to dismiss the complaint or a portion of it if the court found either that the complaint or portion was nonmeritorious, or that the complaint sought monetary relief from a defendant who was immune from the requested relief.

A defendant could waive the right to reply to an action brought by a prisoner. Notwithstanding any other law or rule of procedure, a waiver would not constitute an admission of the allegations contained in the complaint. Relief could not be granted to the plaintiff unless a reply had been filed. The court could require a defendant to reply if it found that the plaintiff had a reasonable opportunity to prevail on the merits.

If the court did not dismiss the complaint after reviewing it, the court would have to indicate in the record the reasons for that decision.

A prisoner could not bring an action for mental or emotional harm suffered while in custody without a showing of physical injury arising out of the incident giving rise to the mental or emotional injury.

MCL 791.268 (S.B. 406)  
 Proposed MCL 600.5501-600.5533 (S.B. 419)

Legislative Analyst: S. Lowe

**FISCAL IMPACT**

Senate Bills 406 and 419 would have an indeterminate fiscal impact on State and local government.

Table 1 summarizes information from the Department of Corrections' Statistical Report on the number of cases filed by prisoners against the Department and individuals. (Habeas corpus cases to bring the prisoner to court for appeal are not included in the statistics.) As seen in Table 1, the number of suits filed by prisoners increased from 1994 to 1996. In 1997 and 1998, the number of cases decreased. At each prison, 5% to 15% of the assistant-to-the-warden position is allocated to litigation coordination or obtaining documents for these cases. Additionally, the executive office assists the Attorney General in gathering documents for certain cases and establishes procedures for the litigation coordinators; this is estimated as one FTE in the office of hearings and policies.

The Department maintains institutional accounts for prisoners in State prisons called fiduciary accounts. Currently, a report on the fiduciary account is forwarded to courts to determine whether a prisoner is indigent. The Department is responsible for assets held in the prison. Other assets held by a prisoner outside of the prison are the responsibility of the Department of Treasury or the Attorney General. To the extent that this process would continue under the proposed legislation, there would be no change in prison operations or operating costs.

To the extent that the definition of a prison as used in the bill includes both State and local facilities and that the definition of a prisoner as used in the bill includes those accused of, convicted of, sentenced for, or adjudicated delinquent for violations of State or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program, prisoner institutional accounts for facilities other than State prisons would have to be reviewed. Many offenders in local facilities or diversionary programs have minimal institutional accounts for canteen purchases or, in the case of residential programs, do not have institutional accounts.

Good time, which reduces the minimum sentence of the offender, could be revoked for the filing of certain false or aggravating cases. Unless otherwise prohibited, offenders who committed a crime prior to April 1, 1987, when good time was replaced with disciplinary credits, are subject to good time. There

are no data to indicate how many prisoners still in the prison system are subject to good time. Additionally, some offenders serving in local facilities may reduce their minimum sentence with credits earned in programs that may be referred to as good time programs. With the bills' inclusion of local facilities, certain jail inmates could lose good time credits, increasing the time served by offenders and increasing local jail population.

The bills would result in additional administrative responsibilities for the State Court Administrative Office regarding tracking actions that were dismissed as nonmeritorious.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.