

Act No. 147
Public Acts of 1999
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Senators Van Regenmorter, Byrum, Jaye, Shugars, Sikkema, Steil, Goschka, Hammerstrom, Bennett, Stille, Gougeon, Schuette, Rogers, Dunaskiss, North, McCotter, McManus, Johnson and Gast

ENROLLED SENATE BILL No. 419

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," by amending section 2963 (MCL 600.2963), as added by 1996 PA 555, and by adding chapter 55.

The People of the State of Michigan enact:

Sec. 2963. (1) If a prisoner under the jurisdiction of the department of corrections submits for filing a civil action as plaintiff in a court of this state or submits for filing an appeal in a civil action in a court of this state and states that he or she is indigent and therefore is unable to pay the filing fee and costs required by law, the prisoner making the claim of indigency shall submit to the court a certified copy of his or her institutional account, showing the current balance in the account and a 12-month history of deposits and withdrawals for the account. The court then shall order the prisoner to pay fees and costs as provided in this section. The court shall suspend the filing of the civil action or appeal until the filing fee or initial partial filing fee ordered under subsection (2) or (3) is received by the court. If the court orders that a prisoner pay a filing fee or partial filing fee, all documents submitted by the prisoner that relate to that action or appeal shall be returned to the prisoner by the court along with 2 certified copies of the court order. An additional certified copy of the court order shall be sent to the department of corrections facility where the prisoner is housed. The prisoner then shall, within 21 days after the date of the court order, resubmit to the court all documents relating to the action or appeal, accompanied by the required filing fee or partial filing fee and 1 certified copy of the court order. If the filing fee or initial partial filing fee is not received within 21 days after the day on which it was ordered, the court shall not file that action or appeal, and shall return to the plaintiff all documents submitted by the plaintiff that relate to that action or appeal.

(2) If, upon 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 shall order the prisoner to pay that amount.

(3) If, upon commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account is less than the full amount of the filing fee required by law, the court shall require the prisoner to pay an initial partial filing fee in an amount equal to 50% of the greater of the following:

(a) The average monthly deposits to the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(b) The average monthly balance in the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(4) In determining the balance in a prisoner's institutional account for purposes of subsection (2) or (3), the court shall disregard amounts in the institutional account that are required by law or by another court order to be paid for any other purposes.

(5) In addition to an initial partial filing fee under subsection (3), the court shall order the prisoner to make monthly payments in an amount equal to 50% of the deposits made to the account. Payments under this subsection shall continue until the full amount of the filing fee is paid. The collection of payments from the account, and their remittal by the department of corrections, shall be conducted as provided in section 68 of 1953 PA 232, MCL 791.268. If costs are assessed against a prisoner, and if the balance of the prisoner's institutional account is not sufficient to pay the full amount of the costs assessed, the court shall order the prisoner to make payments in the same manner required in this section for the payment of filing fees, and the full amount of the costs shall be collected and paid in the manner provided in this subsection and in section 68 of 1953 PA 232, MCL 791.268.

(6) The total amount collected from a prisoner under subsections (3) to (5) shall not exceed the full amount of the filing fee and costs required by law.

(7) For purposes of this section, the fact of a prisoner's incarceration cannot be the sole basis for a determination of indigency. However, this section shall not 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 in an action described in subsection (1) because the prisoner has no assets and no means by which to pay the initial partial filing fee, the court shall 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.

(8) A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.

(9) If a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs under this section, the agency having custody of the prisoner shall remove those amounts from the institutional account of the prisoner subject to the order and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order.

CHAPTER 55.

PRISONER LITIGATION REFORM

Sec. 5501. A civil action concerning prison conditions shall be brought in the circuit court or the court of claims, as appropriate.

Sec. 5503. (1) A prisoner shall not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies.

(2) The court shall on its own motion or on the motion of a party dismiss an action concerning prison conditions brought by a prisoner as to 1 or more defendants if the court is satisfied that the action is frivolous or seeks monetary relief from a defendant who is immune from the requested relief.

(3) The court shall not appoint counsel paid for in whole or in part at taxpayer expense to a prisoner for the purpose of filing a civil action concerning prison conditions.

Sec. 5505. (1) Section 2963 applies to civil actions concerning prison conditions.

(2) The court shall dismiss a case at any time, regardless of any filing fee that may have been paid, if the court finds any of the following:

- (a) A prisoner's allegation of indigency is untrue.
- (b) The action or appeal is frivolous.
- (c) The action or appeal seeks monetary relief against a defendant who is immune from the requested relief.
- (d) A prisoner fails to comply with subsection (1).

Sec. 5507. (1) A prisoner shall not claim indigency under section 2963 in a civil action concerning prison conditions or an appeal of a judgment in a civil action concerning prison conditions or be allowed legal representation by an attorney who is directly or indirectly compensated for his or her services in whole or in part by state funds if the prisoner has, on 3 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 grounds that it was frivolous, unless the prisoner has suffered serious physical injury or is under imminent danger of suffering serious physical injury or has suffered or is under imminent danger of suffering conduct prohibited under section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(2) A prisoner who brings a civil action or appeals a judgment concerning prison conditions shall, upon commencement of the action or initiation of the appeal, disclose the number of civil actions and appeals that the prisoner has previously initiated.

(3) The court shall dismiss a civil action or appeal at any time, regardless of any filing fee that may have been paid, if the court finds any of the following:

- (a) The prisoner's claim of injury or of imminent danger under subsection (1) is false.
- (b) The prisoner fails to comply with the disclosure requirements of subsection (2).

Sec. 5509. (1) The court shall review as soon as practicable a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(2) On review, the court shall dismiss the complaint or a portion of the complaint if the court finds either of the following:

- (a) The complaint or a portion of the complaint is frivolous.
- (b) The complaint seeks monetary relief from a defendant who is immune from the requested relief.

(3) A defendant may waive the right to reply to an action brought by a prisoner. Notwithstanding any other law or rule of procedure, a waiver under this subsection does not constitute an admission of the allegations contained in the complaint. Relief shall not be granted to the plaintiff unless a reply has been filed.

(4) The court may require a defendant to reply to a complaint in a civil action concerning prison conditions if it finds that the plaintiff is likely to prevail on the merits.

(5) If, after reviewing the complaint, the court does not dismiss the complaint under this section, the court shall indicate in the record the reasons for that decision.

Sec. 5511. (1) A person shall not bring an action against this state or a subdivision of this state, or an official, employee, or agent of this state or a subdivision of this state, for mental or emotional injury suffered while in custody without a showing of physical injury arising out of the incident giving rise to the mental or emotional injury.

(2) Subject to section 220h of 1953 PA 232, MCL 791.220h, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, any damages awarded to a prisoner in connection with a civil action brought against a prison or against an official, employee, or agent of a prison shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner, including, but not limited to, restitution orders issued under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406, the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93, 1982 PA 14, MCL 801.301, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, any outstanding costs and fees, and any other debt or assessment owed to the jurisdiction housing the prisoner. The remainder of the award after full payment of all pending restitution orders, costs, and fees shall be forwarded to the prisoner.

(3) Before payment of any damages awarded to a prisoner in connection with a civil action described in subsection (2), the court awarding the damages shall make reasonable efforts to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of damages.

Sec. 5513. In a civil action brought by a prisoner, the court may order the revocation of a prisoner's good time credit, disciplinary credit, or both, if, on its own motion or the motion of a party, the court finds that the prisoner filed an action prohibited under section 5503 or 5505 and 1 of the following applies:

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

Sec. 5515. (1) To the extent practicable, in an action brought by a prisoner, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the prison in which the prisoner is confined.

(2) Subject to the agreement of the official of the state or local unit of government with custody over the prisoner, hearings may be conducted at the prison in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in a hearing held at the prison.

Sec. 5517. (1) The court shall not grant or approve any prospective relief in a civil action concerning prison conditions unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation of the right, and is the least intrusive means necessary to correct the violation of the right. The court shall give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief.

(2) A court shall not order prospective relief that requires or permits a government official to exceed his or her authority under state or local law or otherwise violates local law, unless all of the following conditions exist:

- (a) State law permits the relief to be ordered in violation of local law.
- (b) The relief is necessary to correct the violation of a right under state or local law.
- (c) No other relief will correct the violation of the right.

(3) This section does 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 on the remedial powers of the court.

Sec. 5519. The court may enter a temporary restraining order or an order for preliminary injunctive relief in a civil action concerning prison conditions to the extent otherwise authorized by law. Preliminary injunctive relief shall be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief in tailoring the preliminary relief. Preliminary injunctive relief shall automatically expire 90 days after the preliminary injunctive order is entered, unless the court makes the findings required under section 5517(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

Sec. 5521. (1) Except as provided in sections 5519 and 5523, prospective relief ordered in a civil action concerning prison conditions shall be terminable upon the motion of a party or intervenor as follows:

- (a) Two years after the date the court granted or approved the prospective relief.
- (b) One year after the date the court entered an order denying termination of prospective relief.
- (c) In the case of an order issued on or before the date the amendatory act that added this chapter is enacted into law, 2 years after that date of enactment.

(2) This section does not prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subsection (1).

Sec. 5523. (1) A defendant or intervenor is entitled to the immediate termination of a prospective relief ordered in a civil action concerning prison conditions if the relief was ordered in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the state right, and is the least intrusive means necessary to correct the violation of a right under state or local law.

(2) Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the right, extends no further than necessary to correct the violation of the right, and is narrowly drawn and the least intrusive means to correct the violation.

(3) A party shall not seek modification or termination before the relief is terminable under section 5521 to the extent that modification or termination would otherwise be legally permissible.

Sec. 5525. In a civil action concerning prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in sections 5517 and 5519.

Sec. 5527. (1) The court shall promptly rule on a motion to modify or terminate prospective relief in a civil action concerning prison conditions.

(2) Any prospective relief subject to a pending motion shall be automatically stayed during 1 of the following periods:

(a) Beginning on the thirtieth day after the motion is filed, in the case of a motion made under section 5521 or 5523, and ending on the date the court enters a final order ruling on the motion.

(b) Beginning on the one hundred eightieth day after the motion is filed, in the case of a motion made under any other law, and ending on the date the court enters a final order ruling on the motion.

(3) The court may postpone the effective date of an automatic stay specified in subsection (2) for good cause for not more than 60 days. As used in this subsection, "good cause" does not include the congestion of the court's calendar.

(4) An order staying, suspending, delaying, or barring the operation of an automatic stay described in subsection (2), other than an order to postpone the effective date of the automatic stay under subsection (3), shall be treated as an order denying the dissolution of or modification of an injunction and may be appealed as of right regardless of how the order is styled or whether the order is termed a preliminary or final ruling.

Sec. 5529. (1) The state court administrative office shall compile and maintain a list of the civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. The list shall include an account of the amount of unpaid fees and costs associated with each dismissed case. The list shall be made available to the courts of this state for the purpose of ascertaining the existence and number of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs, for the purposes described in this chapter.

(2) A court in which a civil action concerning prison conditions is brought shall refer to the list described in subsection (1) to determine the number and existence of civil actions concerning prison conditions previously filed by a prisoner and any associated unpaid fees and costs.

Sec. 5531. As used in this chapter:

(a) "Civil action concerning prison conditions" means any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison, or parole appeals or major misconduct appeals under section 34 or section 55 of 1953 PA 232, MCL 791.234 and 791.255.

(b) "Consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements.

(c) "Frivolous" means that term as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591.

(d) "Prison" means a facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of state or local law.

(e) "Prisoner" means a person subject to incarceration, detention, or admission to a prison who is 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.

(f) "Private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(g) "Prospective relief" means all relief other than monetary damages.

(h) "Relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 500 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.