

SENATE, No. 668

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator GORMLEY

1 AN ACT concerning civil actions by inmates of correctional facilities
2 and supplementing Title 30 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. a. In any civil action filed by an inmate in which the defendant
8 is represented by the Attorney General or county counsel and the
9 Attorney General or county counsel believes the lawsuit is frivolous,
10 the Attorney General or county counsel shall move to recover costs
11 and fees.

12 b. The commissioner shall promulgate regulations providing for the
13 forfeiture of progressive time credits authorized pursuant to
14 R.S.30:4-140 when an inmate's lawsuit:

15 (1) was filed to harass or retaliate against another individual, to
16 disrupt or interfere with the operation of the correctional institution,
17 or for some other malicious purpose, and

18 (2) has been determined by a court to be frivolous.

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20 2. a. If an inmate files an action or proceeding in any court of this
21 State and requests a waiver of filing fees on the grounds of indigency
22 the inmate shall attach to the filing a certified copy of the prisoner's
23 fund account statement from the appropriate correctional institution
24 for the six months immediately preceding the filing of the complaint or
25 petition. If any filing fee is waived, the inmate shall pay a partial filing
26 fee that is 20% of the greater of:

27 (1) the average monthly balance in the inmate's account;

28 (2) the average deposits to the inmate's account;

29 for the six months immediately preceding the filing of the complaint or
30 petition. However, the partial fee may not exceed the full filing fee
31 for the commencement of the action or proceeding.

32 b. If an inmate claims exceptional circumstances that render the
33 offender unable to pay the partial filing fee required by this section, in
34 addition to the statement of account required by subsection a. the
35 inmate shall submit an affidavit of special circumstances setting forth
36 the reasons and circumstances that justify relief from the partial filing
37 fee requirement.

1 c. If the court approves the application to waive all fees, the court
2 shall give written notice to the inmate that all fees and costs relating
3 to the filing and service will be waived. If the court denies the
4 application to waive all fees, the court shall give written notice to the
5 inmate that the offender's case will be dismissed if the partial filing fee
6 is not paid within 45 days after the date of the order, or within an
7 additional period that the court may, upon request, allow. Process in
8 an action filed by an inmate shall not be served until the fee is paid.

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10 3. If an inmate is awarded a money judgement as the result of a
11 civil action, the monies derived from that judgment shall be deposited
12 in the inmate's account at the correctional institution in which the
13 inmate is confined. These monies shall be used to satisfy any
14 court-imposed fines, restitution or penalties which the inmate has not
15 met. These monies may also be used to meet any claims for
16 reimbursement for medical treatment sought by the State or a county
17 pursuant to the provisions of P.L.1995 c.254 (C.30:7E-1et seq.)

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19 4. As used in this act:

20 "Commissioner" the commissioner of the Corrections.

21 "Inmate" means a person sentenced to imprisonment, or ordered to
22 pretrial or investigative detention, in a State prison or county jail.

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24 5. This act shall take effect immediately.

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27 STATEMENT

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29 This bill is intended to discourage the filing of frivolous civil actions
30 by inmates confined in State and county correctional institutions by
31 permitting the Attorney General or county counsel to move for the
32 recovery of fees and costs in cases in which the Attorney General or
33 county counsel believes the lawsuit to be frivolous.

34 The bill would also authorize the Commissioner of Corrections to
35 promulgate regulations for the forfeiture of progressive time ("good
36 time") credits when a frivolous lawsuit by a state-sentenced inmate
37 was filed to harass or retaliate against another individual; to disrupt or
38 interfere with the operation of a correctional institution or for some
39 other malicious purpose.

40 In addition, the bill would establish a procedure requiring an inmate
41 to pay at least a partial fee for filing a civil action. Presently, pursuant
42 to court rules, the fee normally charged for filing a civil action is
43 waived if it is determined that the plaintiff is indigent. Filing fees are
44 often waived in civil cases filed by inmates on the grounds of
45 indigency. In order to determine the amount of the partial filing fee to
46 be paid by the inmate instituting the action, this bill would require that

1 if an inmate requests a waiver of a filing fee, the inmate must attach to
2 the filing a certified statement indicating the balance for a period of six
3 months maintained in the inmate's account at the correctional
4 institution where the inmate is confined. The partial filing fees would
5 be set at 20% of the greater of the average monthly balance in the
6 inmate's account or the average monthly deposits to the inmate's
7 account for the six months immediately proceeding the filing of the
8 action.

9 This bill would further provide that if an inmate is awarded a money
10 judgment as the result of a civil action, that the monies derived from
11 that judgment would be deposited in the inmate's institutional account.
12 These monies could then be used to meet any court-imposed fines,
13 restitution or penalties which the inmate has not paid. These funds
14 would also be available to satisfy any medical costs for which the State
15 or a county is entitled to reimbursement.

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20 Establishes several procedures with regard to civil actions filed by
21 inmates of State and county correctional institutions.