
ASSEMBLY BILL NO. 188—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

FEBRUARY 24, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes pertaining to litigation involving prisoners. (BDR 2-431)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prisoners; requiring a prisoner who commences a civil action to pay the full amount of any filing fees under certain circumstances; prohibiting a prisoner from bringing a civil action for mental and emotional injury without a prior showing of physical harm; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 12 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 ***1. A prisoner who desires to prosecute or defend a civil action***
4 ***may file an affidavit with the court setting forth with particularity***
5 ***facts concerning his income, property and other resources which***
6 ***establish that the prisoner is unable to prosecute or defend the***
7 ***action because the prisoner is unable to pay the costs of so doing.***
8 ***The affidavit must be accompanied by a certified copy of the***
9 ***statement of the trust account of the prisoner, for the 6-month***
10 ***period immediately preceding the date of the filing of the action,***
11 ***obtained from the appropriate official of each prison at which the***
12 ***prisoner is or was confined. Subject to the provisions of subsection***
13 ***2, if the judge is satisfied that the prisoner is unable to pay the***
14 ***costs, the judge shall order:***



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- 1 (a) *The clerk of the court:*
2 (1) *To allow the prisoner to commence or defend the*
3 *action; and*
4 (2) *To file or issue any necessary writ, process, pleading or*
5 *paper.*
6 (b) *The sheriff or other appropriate public officer within this*
7 *state to make personal service of any necessary writ, process,*
8 *pleading or paper.*
9 2. *Notwithstanding the provisions of subsection 1 and except*
10 *as otherwise provided in subsection 11, a prisoner who files a civil*
11 *action pursuant to subsection 1 shall pay the full amount of all*
12 *filing fees. The court shall assess and, when funds exist, collect, as*
13 *a partial payment of the required filing fees, an initial partial*
14 *filing fee of 20 percent of the greater of:*
15 (a) *The average monthly deposits to the prisoner's account; or*
16 (b) *The average monthly balance in the prisoner's account for*
17 *the 6-month period immediately preceding the filing of the action.*
18 3. *The provisions of subsection 2 must not be construed to*
19 *prohibit a prisoner from filing a civil action for the reason that the*
20 *prisoner has no assets and no means by which to pay the initial*
21 *partial filing fee.*
22 4. *After payment of the initial partial filing fee, the prisoner*
23 *shall make monthly payments of 20 percent of the preceding*
24 *month's income credited to the prisoner's account. The*
25 *appropriate official at the prison having custody of the prisoner*
26 *shall forward payments from the prisoner's account to the clerk of*
27 *the court each time the amount in the account exceeds \$10 until*
28 *the required filing fees are paid.*
29 5. *If the prisoner is required to have proceedings reported or*
30 *recorded, or if the court determines that the reporting, recording*
31 *or transcription of proceedings would be helpful to the*
32 *adjudication or appellate review of the case, the court shall order*
33 *that the reporting, recording or transcription be performed at the*
34 *expense of the county in which the action is pending but at a*
35 *reduced rate as set by the county.*
36 6. *If the prisoner prevails in the action, the court shall enter*
37 *its order requiring the losing party, within 5 days:*
38 (a) *To pay the prisoner for any costs incurred by the prisoner*
39 *pursuant to this section; and*
40 (b) *To pay into court any costs that would have otherwise been*
41 *incurred by the prisoner if the court had not waived those costs*
42 *pursuant to this section, and those costs must then be paid as*
43 *provided by law.*
44 7. *If the affidavit establishes that the prisoner is unable to*
45 *defend an action, the running of the time within which to appear*



1 *and answer or otherwise defend is tolled during the period*
2 *between the filing of the affidavit and the ruling of the court*
3 *thereon.*

4 *8. An affidavit filed pursuant to this section, and any*
5 *application or request for an order filed with the affidavit, does not*
6 *constitute a general appearance before the court by the affiant or*
7 *give the court personal jurisdiction over him.*

8 *9. Notwithstanding the fact that a prisoner has paid any filing*
9 *fee, or any portion thereof, pursuant to this section, the court shall*
10 *dismiss the action at any time if the court determines that the*
11 *allegation of poverty is untrue or that the action:*

- 12 *(a) Fails to state a claim on which relief can be granted;*
- 13 *(b) Seeks monetary relief against a defendant who is immune*
14 *from such relief; or*
- 15 *(c) Is subject to dismissal for any other reason.*

16 *10. The order of the court to which application is made*
17 *pursuant to this section is not appealable.*

18 *11. The provisions of subsection 2 do not apply to an action*
19 *pertaining to divorce, annulment, child support or the termination*
20 *of parental rights.*

21 *12. As used in this section, "prisoner" means a person who is*
22 *incarcerated, confined or detained in any institution or facility of*
23 *the Department of Corrections, any local jail or detention facility,*
24 *or any other state or local correctional or detention facility located*
25 *within this state.*

26 **Sec. 2.** NRS 12.015 is hereby amended to read as follows:

27 12.015 1. ~~[Any]~~ *Except as otherwise provided in section 1 of*
28 *this act, any* person who desires to prosecute or defend a civil action
29 may file an affidavit with the court setting forth with particularity
30 facts concerning his income, property and other resources which
31 establish that he is unable to prosecute or defend the action because
32 he is unable to pay the costs of so doing. If the judge is satisfied that
33 the person is unable to pay the costs, he shall order:

- 34 (a) The clerk of the court:
 - 35 (1) To allow the person to commence or defend the action
 - 36 without costs; and
 - 37 (2) To file or issue any necessary writ, process, pleading or
 - 38 paper without charge.
- 39 (b) The sheriff or other appropriate public officer within this
- 40 state to make personal service of any necessary writ, process,
- 41 pleading or paper without charge.

42 2. If the person is required to have proceedings reported or
43 recorded, or if the court determines that the reporting, recording
44 or transcription of proceedings would be helpful to the adjudication
45 or appellate review of the case, the court shall order that the



1 reporting, recording or transcription be performed at the expense of
2 the county in which the action is pending but at a reduced rate as set
3 by the county.

4 3. If the person prevails in the action, the court shall enter its
5 order requiring the losing party to pay into court within 5 days the
6 costs which would have been incurred by the prevailing party, and
7 those costs must then be paid as provided by law.

8 4. Where the affidavit establishes that the person is unable to
9 defend an action, the running of the time within which to appear and
10 answer or otherwise defend is tolled during the period between the
11 filing of the affidavit and the ruling of the court thereon.

12 5. An affidavit filed pursuant to this section, and any
13 application or request for an order filed with the affidavit, does not
14 constitute a general appearance before the court by the affiant or
15 give the court personal jurisdiction over him.

16 6. The order of the court to which application is made pursuant
17 to this section is not appealable.

18 **Sec. 3.** Chapter 41 of NRS is hereby amended by adding
19 thereto a new section to read as follows:

20 *1. A prisoner may not bring a civil action for mental or*
21 *emotional injury suffered while in custody without a prior*
22 *showing of physical harm.*

23 *2. As used in this section, "prisoner" means a person who is*
24 *incarcerated, confined or detained in any institution or facility of*
25 *the Department of Corrections, any local jail or detention facility,*
26 *or any other state or local correctional or detention facility located*
27 *within this state.*

