

HOUSE BILL No. 4622

May 4, 1999, Introduced by Reps. Gilbert, Shackleton, Kowall, Julian, Howell, Hager, Patterson, Tabor, Voorhees, Vear, Garcia, DeRossett, Mortimer, Caul, Rocca, Gosselin, Pappageorge, Byl, Tabor, Ehardt, Green, Toy, Sanborn and Scranton and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding sections 2969, 2970, 2971,
and 2972.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2969. (1) AS USED IN THIS SECTION AND SECTIONS 2970 TO
2 2972:

3 (A) "CLAIM OF INDIGENCY" MEANS AN ALLEGATION BY A PLAINTIFF,
4 BY AFFIDAVIT OR OTHERWISE, THAT HE OR SHE IS UNABLE BECAUSE OF
5 INDIGENCY TO PAY FILING FEES AND COSTS.

6 (B) "STATE CORRECTIONAL FACILITY" MEANS A FACILITY HOUSING A
7 PRISONER POPULATION UNDER THE JURISDICTION OF THE DEPARTMENT OF
8 CORRECTIONS AND INCLUDES A YOUTH CORRECTIONAL FACILITY
9 ESTABLISHED UNDER SECTION 20G OF 1953 PA 232, MCL 791.220G,

1 REGARDLESS OF WHETHER THE DEPARTMENT OF CORRECTIONS OR A PRIVATE
2 VENDOR OPERATES THE FACILITY.

3 (2) SUBJECT TO SUBSECTION (3), AN ACTION BROUGHT UNDER A
4 CLAIM OF INDIGENCY BY A PRISONER CONFINED IN A STATE CORRECTIONAL
5 FACILITY, SEEKING REDRESS AGAINST AN AGENCY, OFFICER, OR EMPLOYEE
6 OF THIS STATE, SHALL BE DISMISSED BY THE COURT IF ANY OF THE FOL-
7 LOWING APPLY:

8 (A) THE ADMINISTRATIVE REMEDIES AVAILABLE TO THE PRISONER
9 HAVE NOT BEEN FULLY EXHAUSTED.

10 (B) THE PRISONER ON 3 OR MORE PREVIOUS OCCASIONS FILED CIVIL
11 ACTIONS UNDER CLAIMS OF INDIGENCY WHILE HE OR SHE WAS A PRISONER,
12 ALL OF WHICH WERE DISMISSED ON THE GROUNDS THAT THEY WERE FRIVO-
13 LOUS OR FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE
14 GRANTED.

15 (C) THE PRISONER IS LIABLE FOR UNPAID COSTS OR FEES ARISING
16 OUT OF ANY PREVIOUS CIVIL ACTION BROUGHT BY HIM OR HER.

17 (3) HOWEVER, THE COURT MAY ALLOW THE FILING OF A CIVIL
18 ACTION THAT WOULD BE BARRED BY SUBSECTION (2) IF THE COURT
19 BELIEVES THAT THE PRISONER IS IN IMMINENT DANGER OF SERIOUS PHYS-
20 ICAL INJURY, AND THE CIVIL ACTION ADDRESSES THAT IMMINENT
21 DANGER.

22 (4) THE COURT SHALL NOT APPOINT COUNSEL PAID FOR IN WHOLE OR
23 IN PART AT TAXPAYER EXPENSE TO A PRISONER FOR THE PURPOSE OF
24 FILING A CIVIL ACTION DESCRIBED IN THIS SECTION.

25 SEC. 2970. (1) A PRISONER CONFINED IN A STATE CORRECTIONAL
26 FACILITY WHO BRINGS AN ACTION UNDER A CLAIM OF INDIGENCY SEEKING
27 REDRESS AGAINST AN AGENCY, OFFICER, OR EMPLOYEE OF THIS STATE

1 SHALL, UPON COMMENCEMENT OF THE ACTION OR INITIATION OF THE
2 APPEAL, DISCLOSE THE NUMBER OF SUCH CIVIL ACTIONS THAT THE PRIS-
3 ONER HAS PREVIOUSLY COMMENCED OR INITIATED.

4 (2) THE STATE COURT ADMINISTRATIVE OFFICE SHALL COMPILE AND
5 MAINTAIN A LIST OF THE CIVIL ACTIONS DESCRIBED IN SUBSECTION (1)
6 BROUGHT BY A PRISONER THAT ARE DISMISSED FOR REASONS DESCRIBED IN
7 SECTION 2969(2). THE LIST SHALL INCLUDE AN ACCOUNT OF THE AMOUNT
8 OF UNPAID FEES AND COSTS ASSOCIATED WITH EACH DISMISSED CASE.
9 THE LIST SHALL BE MADE AVAILABLE TO THE COURTS OF THIS STATE FOR
10 THE PURPOSE OF ASCERTAINING THE EXISTENCE AND NUMBER OF SUCH
11 CIVIL ACTIONS BY EACH PRISONER, AND ANY ASSOCIATED UNPAID FEES
12 AND COSTS.

13 (3) A COURT IN WHICH A CIVIL ACTION DESCRIBED IN SUBSECTION
14 (1) IS BROUGHT SHALL REFER TO THE LIST DESCRIBED IN SUBSECTION
15 (2) TO DETERMINE THE NUMBER AND EXISTENCE OF SUCH CIVIL ACTIONS
16 PREVIOUSLY FILED BY A PRISONER AND ANY ASSOCIATED UNPAID FEES AND
17 COSTS.

18 SEC. 2971. (1) IF AN ACTION IS BROUGHT UNDER A CLAIM OF
19 INDIGENCY BY A PRISONER CONFINED IN A STATE CORRECTIONAL FACILI-
20 TY, SEEKING REDRESS AGAINST AN AGENCY, OFFICER, OR EMPLOYEE OF
21 THIS STATE, THE COURT MAY REVIEW THE ACTION ON ITS OWN MOTION AT
22 ANY TIME AFTER THE ACTION IS FILED OR, UPON MOTION OF THE
23 DEFENDANT, SHALL REVIEW THE ACTION TO DETERMINE IF ANY OF THE
24 FOLLOWING APPLY:

25 (A) THE ACTION IS FRIVOLOUS OR MALICIOUS OR FAILS TO STATE A
26 CLAIM UPON WHICH RELIEF MAY BE GRANTED.

1 (B) THE ACTION SEEKS MONETARY RELIEF AGAINST A DEFENDANT
2 THAT HAS CIVIL IMMUNITY FROM LIABILITY FOR THAT CLAIM.

3 (C) THE ALLEGATION OF INDIGENCY BY WHICH THE ACTION WAS
4 BROUGHT IS NOT TRUE.

5 (2) IF THE COURT DETERMINES UNDER SUBSECTION (1) THAT
6 SUBSECTION (1)(A), (B), OR (C) APPLIES TO THE ACTION, THE COURT
7 SHALL DISMISS THE CIVIL ACTION AND ASSESS COSTS AND FEES AGAINST
8 THE PLAINTIFF.

9 SEC. 2972. (1) TO THE EXTENT PRACTICABLE, IN AN ACTION
10 DESCRIBED IN SECTION 2971 BROUGHT BY A PRISONER, PRETRIAL PRO-
11 CEEDINGS IN WHICH THE PRISONER'S PARTICIPATION IS REQUIRED OR
12 PERMITTED SHALL BE CONDUCTED BY TELEPHONE, VIDEO CONFERENCE, OR
13 OTHER TELECOMMUNICATIONS TECHNOLOGY WITHOUT REMOVING THE PRISONER
14 FROM THE CORRECTIONAL FACILITY IN WHICH THE PRISONER IS
15 CONFINED.

16 (2) SUBJECT TO THE AGREEMENT OF THE OFFICIAL OF THE STATE OR
17 LOCAL UNIT OF GOVERNMENT WITH CUSTODY OVER THE PRISONER, HEARINGS
18 IN AN ACTION DESCRIBED IN SECTION 2971 MAY BE CONDUCTED AT THE
19 CORRECTIONAL FACILITY IN WHICH THE PRISONER IS CONFINED. TO THE
20 EXTENT PRACTICABLE, THE COURT SHALL ALLOW COUNSEL TO PARTICIPATE
21 BY TELEPHONE, VIDEO CONFERENCE, OR OTHER COMMUNICATIONS TECHNOL-
22 OGY IN A HEARING HELD AT THE CORRECTIONAL FACILITY.