

104TH CONGRESS  
1ST SESSION

# S. 866

To reform prison litigation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, MAY 15), 1995

Mr. DOLE (for himself, Mr. KYL, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To reform prison litigation, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Prison Litigation  
5       Reform Act of 1995”.

6       **SEC. 2. PROCEEDINGS IN FORMA PAUPERIS.**

7       (a) FILING FEES.—Section 1915 of title 28, United  
8       States Code, is amended—

9               (1) in subsection (a)—

10                       (A) by striking “(a) Any” and inserting

11                       “(a)(1) Subject to subsection (b), any”;

12                       (B) by striking “fees and”;

1 (C) by striking “makes affidavit” and in-  
2 serting “submits an affidavit”;

3 (D) by striking “such costs” and inserting  
4 “such fees”;

5 (E) by striking “he” each place it appears  
6 and inserting “the person”;

7 (F) by adding immediately after paragraph  
8 (1), the following new paragraph:

9 “(2) A prisoner of a Federal, State, or local institu-  
10 tion seeking to bring a civil action or appeal a judgment  
11 in a civil action or proceeding, without prepayment of fees  
12 or security therefor, in addition to filing the affidavit filed  
13 under paragraph (1), shall submit a certified copy of the  
14 trust fund account statement (or institutional equivalent)  
15 for the prisoner for the 6-month period immediately pre-  
16 ceding the filing of the complaint or notice of appeal, ob-  
17 tained from the appropriate official of each institution at  
18 which the prisoner is or was confined.”; and

19 (E) by striking “An appeal” and inserting  
20 “(3) An appeal”;

21 (2) by redesignating subsections (b), (c), (d),  
22 and (e) as subsections (c), (d), (e), and (f), respec-  
23 tively;

24 (3) by inserting after subsection (a) the follow-  
25 ing new subsection:

1       “(b)(1) Notwithstanding subsection (a), if a prisoner  
2 brings a civil action or files an appeal in forma pauperis,  
3 the prisoner shall be required to pay the full amount of  
4 a filing fee. The court shall assess, and when funds exist,  
5 collect, as a partial payment of any court fees required  
6 by law, an initial partial filing fee of 20 percent of the  
7 greater of—

8               “(A) the average monthly deposits to the pris-  
9 oner’s account; or

10              “(B) the average monthly balance in the pris-  
11 oner’s account for the 6-month period immediately  
12 preceding the filing of the complaint or notice of ap-  
13 peal.

14       “(2) After payment of the initial partial filing fee,  
15 the prisoner shall be required to make monthly payments  
16 of 20 percent of the preceding month’s income credited  
17 to the prisoner’s account. The agency having custody of  
18 the prisoner shall forward payments from the prisoner’s  
19 account to the clerk of the court each time the amount  
20 in the account exceeds \$10 until the filing fees are paid.

21       “(3) In no event shall the filing fee collected exceed  
22 the amount of fees permitted by statute for the commence-  
23 ment of a civil action or an appeal of a civil action or  
24 criminal judgment.

1       “(4) In no event shall a prisoner be prohibited from  
2 bringing a civil action or appealing a civil or criminal judg-  
3 ment for the reason that the prisoner is unable to pay  
4 the initial partial filing fee.”;

5       (4) in subsection (c), as redesignated by para-  
6 graph (2), by striking “subsection (a) of this sec-  
7 tion” and inserting “subsections (a) and (b) and the  
8 prepayment of any partial filing fee as may be re-  
9 quired under subsection (b)”;

10       (5) by amending subsection (e), as redesignated  
11 by paragraph (2), to read as follows:

12       “(e) The court may request an attorney to represent  
13 any person unable to employ counsel, and shall dismiss  
14 the case at any time if the allegation of poverty is untrue,  
15 or if the court determines that the action or appeal is friv-  
16 olous or malicious, or fails to state a claim on which relief  
17 may be granted.”.

18       (b) COSTS.—Section 1915(e) of title 28, United  
19 States Code (as redesignated by subsection (a)(2)), is  
20 amended)—

21       (1) by striking “(f) Judgment” and inserting  
22 “(f)(1) Judgment”;

23       (2) by striking “such cases” and inserting “pro-  
24 ceedings under this section”;

1           (3) by striking “cases” and inserting “proceed-  
2       ings”; and

3           (4) by adding at the end the following new  
4       paragraph:

5       “(2)(A) If the judgment against a prisoner includes  
6       the payment of costs under this subsection, the prisoner  
7       shall be required to pay the full amount of the costs or-  
8       dered.

9       “(B) The prisoner shall be required to make pay-  
10      ments for costs under this subsection in the same manner  
11      as is provided for filing fees under subsection (a)(2).

12      “(C) In no event shall the costs collected exceed the  
13      amount of the costs ordered by the court.”.

14   **SEC. 3. JUDICIAL SCREENING.**

15      (a) IN GENERAL.—Chapter 123 of title 28, United  
16      States Code, is amended by inserting after section 1915  
17      the following new section:

18   **“§ 1915A. Screening**

19      “(a) SCREENING.—The court shall review, before  
20      docketing if feasible or, in any event, as soon as prac-  
21      ticable after docketing, a complaint in a civil action in  
22      which a prisoner seeks redress from a governmental entity  
23      or officer or employee of a governmental entity.

1 “(b) GROUNDS FOR DISMISSAL.—On review, the  
 2 court shall dismiss the complaint, or any portion of the  
 3 complaint, if the complaint—

4 “(1) fails to state a claim upon which relief  
 5 may be granted; or

6 “(2) seeks monetary relief from a defendant  
 7 that is immune from such relief.

8 “(c) DEFINITION.—As used in this section, the term  
 9 ‘prisoner’ means a person that is serving a sentence follow-  
 10 ing conviction of a crime or is being held in custody pend-  
 11 ing trial or sentencing.”.

12 (b) TECHNICAL AMENDMENT.—The analysis for  
 13 chapter 123 of title 28, United States Code, is amended  
 14 by inserting after the item relating to section 1915 the  
 15 following new item:

“1915A. Screening.”.

16 **SEC. 4. FEDERAL TORT CLAIMS.**

17 Section 1346(b) of title 28, United States Code, is  
 18 amended—

19 (1) by striking “(b)” and inserting “(b)(1)”;  
 20 and

21 (2) by adding at the end the following:

22 “(2) No person convicted of a felony who is incarcer-  
 23 ated while awaiting sentencing or while serving a sentence  
 24 may bring a civil action against the United States or an  
 25 agency, officer, or employee of the Government, for mental

1 or emotional injury suffered while in custody without a  
 2 prior showing of physical injury.”.

3 **SEC. 5. CIVIL RIGHTS CLAIMS.**

4 The Civil Rights of Institutionalized Persons Act (42  
 5 U.S.C. 1997 et seq.) is amended by inserting after section  
 6 7 the following new section:

7 **“SEC. 7A. LIMITATION ON RECOVERY.**

8 “No civil action may be brought against the United  
 9 States by an adult convicted of a crime confined in a jail,  
 10 prison, or other correctional facility, for mental or emo-  
 11 tional injury suffered while in custody without a prior  
 12 showing of physical injury.”.

13 **SEC. 6. EARNED RELEASE CREDIT OR GOOD TIME CREDIT**  
 14 **REVOCATION.**

15 (a) IN GENERAL.—Chapter 123 of title 28, United  
 16 States Code, is amended by adding at the end the follow-  
 17 ing new section:

18 **“§ 1932. Revocation of earned release credit**

19 “In a civil action brought by an adult convicted of  
 20 a crime and confined in a Federal correctional facility, the  
 21 court may order the revocation of earned good time credit  
 22 (or the institutional equivalent) if—

23 “(1) the court finds that—

24 “(A) the claim was filed for a malicious  
 25 purpose;

1 “(B) the claim was filed solely to harass  
2 the party against which it was filed; or

3 “(C) the claimant testifies falsely or other-  
4 wise knowingly presents false evidence or infor-  
5 mation to the court; or

6 “(2) if the Attorney General determines that  
7 subparagraph (A), (B), or (C) of paragraph (1) has  
8 been met and recommends revocation of earned good  
9 time credit to the court.”.

10 (b) CLERICAL AMENDMENT.—The analysis for chap-  
11 ter 123 of title 28, United States Code, is amended by  
12 inserting after the item relating to section 1931 the follow-  
13 ing:

“1931. Revocation of earned release credit.”.

14 **SEC. 7. EXHAUSTION REQUIREMENT.**

15 Section 7(a)(1) of the Civil Rights of Institutionalized  
16 Persons Act (42 U.S.C. 1997e(a)(1)) is amended—

17 (1) by striking “in any action brought” and in-  
18 serting “no action shall be brought”;

19 (2) by striking “the court shall” and all that  
20 follows through “require exhaustion of” and insert  
21 “until”; and

22 (3) by inserting “and exhausted” after “avail-  
23 able”.