Georgia State University Law Review

Volume 16
Issue 1 *Fall 1999*

Article 22

9-1-1999

PENAL INSTITUTIONS Prison Litigation Reform: Provide that a Prisoner Filing a Writ of Habeas Corpus Pay Fees from the Prisoner's Account; Prohibit In Forma Pauperis Filing by Prisoners Who Have Repeatedly Filed Frivolous or Malicious Claims

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Recommended Citation
Williams, Roger S. (1999) "PENAL INSTITUTIONS Prison Litigation Reform: Provide that a Prisoner Filing a Writ of Habeas Corpus Pay Fees from the Prisoner's Account; Prohibit In Forma Pauperis Filing by Prisoners Who Have Repeatedly Filed Frivolous or Malicious Claims," *Georgia State University Law Review*: Vol. 16: Iss. 1, Article 22.
Available at: http://scholarworks.gsu.edu/gsulr/vol16/iss1/22

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PENAL INSTITUTIONS

Prison Litigation Reform: Provide that a Prisoner Filing a Writ of Habeas Corpus Pay Fees from the Prisoner's Account; Prohibit In Forma Pauperis *Filing by Prisoners Who Have Repeatedly Filed Frivolous or Malicious Claims*

CODE SECTIONS:	O.C.G.A. §§ 42-12-3 (amended); -7.1 to -7.2 (new)
BILL NUMBER:	SB 115
ACT NUMBER:	409
GEORGIA LAWS:	1999 Ga. Laws 847
SUMMARY:	The Act requires prisoners to pay costs and fees associated with the filing of a petition for writ of habeas corpus from their inmate accounts. The clerk of the court shall notify the superintendent of the institution in which the prisoner is incarcerated that a petition of habeas corpus has been filed. The inmate's account will then be frozen until all court costs and fees have been satisfied. The Act further prohibits prisoners, who have on three or more occasions filed malicious or frivolous actions, from filing an action *in forma pauperis* in any court of the state unless the prisoner is under imminent danger of serious physical injury.
EFFECTIVE DATE:	July 1, 1999

History

Some lawmakers contend that frivolous and malicious litigation by prisoners unduly burdens the courts and results in unnecessary expenditures by the state.[1] Historically, the state has paid the filing fees and associated court costs for indigent prisoners who file suit *in forma pauperis*.[2] In 1996, the Georgia General Assembly passed the

1. *See* Telephone Interview with Sen. Harold J. Ragan, Senate District No. 11 (Apr. 21, 1999) [hereinafter Ragan Interview].
2. *See Review of Selected 1996 Georgia Legislation*, 13 GA. ST. U. L. REV. 280, 281

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Prison Litigation Reform Act (PLRA) in an attempt to reduce the costs incurred by the state to process and defend frivolous lawsuits.[3] The PLRA requires prison superintendents to freeze the inmate accounts of prisoners who file indigent claims and authorizes the court to financially penalize prisoners who file malicious, frivolous or fraudulent suits.[4] However, to avoid infringing upon prisoners' constitutional rights, the PLRA specifically excluded appeals from criminal convictions and habeas corpus filings.[5] Accordingly, some prisoners have continued to file malicious and frivolous suits under the guise of habeas corpus petitions.[6] The Act attempts to balance the need to control frivolous filings with the constitutional rights of prisoners.[7]

Senators Harold J. Ragan of the 11th District, Michael Meyer von Bremen of the 12th District, and Tommie Williams of the 6th District sponsored SB 115 to discourage malicious or frivolous filings by prisoners and to require that prisoners pay associated filing fees and court costs.[8]

SB 115

Introduction to Passage by the Senate

As introduced, the bill amended Code section 42-12-3 to remove the habeas corpus filings exception from the actions covered by the PLRA.[9] The bill also added Code section 42-12-7.1 to require indigent prisoners to pay the current balance in their inmate accounts.[10] Code section 42-12-7.1 defines the procedures that apply when an indigent prisoner files a petition of habeas corpus. Specifically, it requires that the prisoner's inmate account be frozen until all court costs and fees

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(1996) [hereinafter *Selected 1996 Legislation*]. *In forma pauperis* "describes permission given to a poor person (*i.e.* indigent) to proceed without liability for court fees or costs." BLACK'S LAW DICTIONARY 779 (6th ed. 1990).

3. *See* 1996 Ga. Laws 400, § 1, at 401 (codified at O.C.G.A. §§ 42-12-1 to -9 (1997 & Supp. 1999)); *see generally Selected 1996 Legislation, supra* note 2.

4. *See Selected 1996 Legislation, supra* note 2.

5. *See id.*

6. *See* Ragan Interview, *supra* note 1.

7. *See id.*

8. *See* SB 115, as introduced, 1999 Ga. Gen. Assem.; *see also* Ragan Interview, *supra* note 1.

9. *Compare* SB 115, as introduced, 1999 Ga. Gen. Assem., *with* 1996 Ga. Laws 400, § 1, at 401 (formerly found at O.C.G.A. § 42-12-3 (1996)).

10. *Compare* SB 115, as introduced, 1999 Ga. Gen. Assem., *with* 1996 Ga. Laws 400, § 1, at 404 (formerly found at O.C.G.A. § 42-12-3 (1996)).

are satisfied.[11] The Senate Judiciary Committee favorably reported the bill as introduced, and the Senate passed the bill as introduced.[12]

From House Floor Amendment to Passage by the House

The House State Institutions and Property Committee considered and favorably reported the bill.[13] Representative Snelling of the 99th District submitted a House floor amendment adding Code section 42-12-7.2 to prohibit prisoners from filing any action *in forma pauperis* in any court of the state if the prisoner has filed three or more frivolous or malicious claims, unless the prisoner is under imminent danger of serious physical injury.[14] The House approved the amendment and passed the bill as amended.[15] Senate members reached a consensus and passed the bill as revised by the House floor amendment.[16]

The Act

The Act amends Title 42, Chapter 12 of the PLRA by removing the exception for habeas corpus filings from the actions covered by the PLRA.[17] The Act also adds Code sections 42-12-7.1 and -7.2.[18] Code section 42-12-7.1 requires that prisoners filing indigent claims pay the current balance of funds in their inmate accounts.[19] This Code section further defines the procedures to be followed by the clerk of court and prison superintendent when an indigent prisoner files a petition for writ of habeas corpus, including freezing the prisoner's inmate account until all court costs and fees are satisfied.[20]

Code section 42-12-7.2 prohibits prisoners from filing any action *in forma pauperis* in any court of the state if the prisoner has filed three or more frivolous or malicious claims.[21] To avoid infringing on the prisoner's constitutional rights against cruel and unusual punishment, Code section 42-12-7.2 provides an exception for situations when the

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11. *See* SB 115, as introduced, 1999 Ga. Gen. Assem.
12. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
13. *See id.*
14. *See* SB 115 (HFA), 1999 Ga. Gen. Assem.
15. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
16. *See id.*
17. *Compare* 1996 Ga. Laws 400, § 1, at 401 (formerly found at O.C.G.A. § 42-12-3 (1997)), *with* O.C.G.A § 42-12-3 (Supp. 1999).
18. *See* O.C.G.A. §§ 42-12-7.1 to -7.2 (Supp. 1999).
19. *See id.* § 42-12-7.1.
20. *See id.*
21. *See id.* § 42-12-7.2.

prisoner is in imminent danger of serious physical injury.[22] Code section 42-12-7.2 is modeled upon a corresponding subsection of the Federal PLRA,[23] which has recently been upheld as constitutional.[24]

Opposition to SB 115

A member of the Criminal Defense Association briefly opposed the bill.[25] However, no members of the House or Senate opposed the bill.[26]

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22. *See* O.C.G.A. § 42-12-7.2 (Supp. 1999).
23. *See* Telephone Interview with Rep. Bob Snelling, House District No. 99 (Apr. 23, 1999). *Compare* 28 U.S.C. § 1915(g) (1998), *with* O.C.G.A § 42-12-7.2 (Supp. 1999).
24. *See* White v. Company, 157 F.3d 1226 (10th Cir. 1998).
25. *See* Telephone Interview with Sen. Michael Meyer von Bremen, Senate District No. 11 (May 20, 1999).
26. *See id.*

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