STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1623 By: Wilt

COMMITTEE SUBSTITUTE

An Act relating to inmates and prisoners; amending 12 O.S. 2001, Section 95, as last amended by Section 1, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 95), which relates to limitations on bringing actions; modifying scope of certain limitation; amending 12 O.S. 2001, Section 397, as last amended by Section 2, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 397), which relates to procedure in actions in which a prisoner is a witness or complaining or defending party; limiting scope of appearance; limiting use of writ of habeas corpus ad testificandum; providing procedure for pretrial hearings for certain civil actions that involve a prisoner; amending 57 O.S. 2001, Section 549, as amended by Section 9, Chapter 168, O.S.L. 2004 (57 O.S. Supp. 2004, Section 549), which relates to powers and duties of the State Board of Corrections; modifying investment power; amending 57 O.S. 2001, Section 564, which relates to actions initiated by inmates; clarifying requirement that inmates exhaust administrative remedies prior to initiating actions; amending Section 13, Chapter 168, O.S.L. 2004 (57 O.S. Supp. 2004, Section 566.5), which relates to the legal proceedings filed by inmates; expanding scope of requirement that inmate exhaust administrative remedies prior to the filing of any pleadings; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 95, as last amended by Section 1, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 95), is amended to read as follows:

Section 95. A. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;

2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 7102 of Title 10 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

a. within two (2) years of the act alleged to have caused the injury or condition, or

b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years or until five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility or jail, whichever is later. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator, unless the perpetrator was convicted of a crime of sexual abuse involving the claimant. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph ~~6~~ 7 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18);

7. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Oklahoma Statutes, may be brought against any person incarcerated or under the supervision of a state, federal or local correctional facility on or after November 1, 2003:

a. at any time during the incarceration of the offender for the offense on which the action is based, or

b. within five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility, if the defendant was serving time for the offense on which the action is based;

8. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

9. An action to establish paternity can be brought by a child if commenced within one (1) year after the child reaches the age of eighteen (18);

10. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations;

11. ~~An action~~ All actions filed by an inmate or by a person based upon facts that occurred while the person was an inmate in the custody of one of the following:

a. the State of Oklahoma,

b. a contractor of the State of Oklahoma, or

c. a political subdivision of the State of Oklahoma,

to include, but not be limited to, the revocation of earned credits and claims for injury to the rights of another, shall be commenced within one (1) year after the cause of action shall have accrued; and

12. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

B. Collection of debts owed by inmates who have received damage awards pursuant to Section 566.1 of Title 57 of the Oklahoma Statutes shall be governed by the time limitations imposed by that section.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 397, as last amended by Section 2, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 397), is amended to read as follows:

Section 397. A. A person confined in any prison in this state may by order of any court of record, be required to be produced for oral examination as a witness by the court in the county where he is imprisoned, but in all other cases his examination must be by deposition.

B. Any person or a prisoner confined in any prison or jail in this state who is the complaining party or defending party in any form of a civil action may apply for a Writ of Habeas Corpus for the purpose of having the prisoner appear before the court for an evidentiary hearing in which the court shall take testimony from the prisoner. The custodian of the prisoner shall be given prior notice of the application and fifteen (15) days to respond prior to the decision of the court. If the court issues such writ, it shall be issued and delivered to the custodian of the prisoner at least fifteen (15) days prior to the date the prisoner is to appear, shall order the custodian to be paid for all costs of transportation and shall order the prisoner to be delivered to the court named in the writ. The court shall not consider a writ of habeas corpus ad testificandum except for a hearing on the merits of the civil action. The court shall not award attorney fees and costs to the prevailing party in this matter. All pretrial hearings for the civil action that involve a prisoner shall be conducted by telephone, deposition or video conference.

C. If upon application, the court issues a Writ of Habeas Corpus as provided in subsection B of this section, it shall order the person applying for such writ or other appropriate party to pay to the custodian executing the writ all costs of transporting the prisoner to and from the court. No court shall waive the requirement to pay the costs of transportation to the custodian. The writ shall also serve as a judgment against the prisoner, if the prisoner is the party ordered to pay transportation costs or was the party seeking the writ, and may be enforced by the detaining

governmental unit without further order of any court for a period of five (5) years after the date of the writ. The custodian executing the release shall notify the prisoner and the court, at the time of delivery, of the costs of transportation.

D. Any writ that fails to comply with all of the requirements of this section shall be void and unenforceable and no officer or employee of the custodian shall be liable for failing to execute said writ.

SECTION 3. AMENDATORY 57 O.S. 2001, Section 549, as amended by Section 9, Chapter 168, O.S.L. 2004 (57 O.S. Supp. 2004, Section 549), is amended to read as follows:

Section 549. A. The State Board of Corrections shall have the following powers and duties with respect to the operation of prison industries, the Construction Division, and administration of inmate trust funds:

1. The power to make leases or other contracts consistent with the operation of prison industries, and to set aside land or facilities for the use of such industry;

2. The power to establish conditions for expenditures by the Department of Corrections from the Industries Revolving Fund;

3. The power to negotiate wages and working conditions on behalf of prisoners working in prison industries or prisoners working in the Construction Division. Pay grades for the Construction Division "on-the-job training" inmate crews shall be as follows:

a. Pay Grade "A" - Inmate Worker,

b. Pay Grade "B" - Inmate Worker,

c. Pay Grade "C" - Apprentice,

d. Pay Grade "D" - Skilled Craft;

4. The power to collect wages on behalf of the inmate, to apportion inmate wages in accordance with the law; and the duty to preserve those wages reserved for the inmate in an account for his

or her benefit, and to establish procedures by which the inmate can draw funds from this account under the conditions and limitations and for the purposes allowed by law;

5. The duty to establish the percentages of such wages which shall be available for apportionment to inmate savings; to the inmate for his or her personal use; to the lawful dependents of the inmate, if any; to the victim of the inmate's crime; for payment of creditors; for payment of costs and expenses for criminal actions against such inmate; and to the Department of Corrections for costs of incarceration. Provided, that not less than twenty percent (20%) of such wages shall be placed in an account, payable to the prisoner upon his or her discharge or upon assignment to a prerelease program. Funds from this account may be used by the inmate for fees or costs in filing a civil or criminal action as defined in Section 151 et seq. of Title 28 of the Oklahoma Statutes or for federal action as defined in Section 1911 et seq. of Title 28 of the United States Code, 28 U.S.C., Section 1911 et seq.; and

6. The power to invest ~~the twenty percent (20%) mandatory savings~~ funds held by the Department of Corrections on behalf of each inmate in an interest-bearing account with the interest accruing and payable to the Crime Victims Compensation Fund, as provided in Section 142.17 of Title 21 of the Oklahoma Statutes. The interest from each inmate's savings account shall be payable to the Crime Victims Compensation Fund, at such intervals as may be determined by the Board, in addition to any other payments to such fund required by the inmate's sentence or otherwise by law. An inmate shall not have the right, use or control of any interest derived from any funds placed in a mandatory savings account.

B. The State Board of Corrections shall cause to be placed in an account income from the inmate's employment and any other income or benefits accruing to or payable to and for the benefit of said

inmate, including any workers' compensation or Social Security benefits.

1. From this account the State Board of Corrections may charge for costs of incarceration any inmate working in private prison industries or any other inmate for costs of incarceration not to exceed fifty percent (50%) of any deposits made to said account, unless said deposits were from a workers' compensation benefit.

2. From this account, the State Board of Corrections may charge any inmate for costs of incarceration, an amount equivalent to one hundred percent (100%) of any deposits from a workers' compensation benefit to said account.

3. The Department of Corrections shall pay into the Crime Victims Compensation Revolving Fund, Section 142.17 of Title 21 of the Oklahoma Statutes, an amount equal to five percent (5%) of the gross wages earned by inmates working in a private prison industries program, said amount to be paid from the amount deducted for cost of incarceration.

4. Withdrawals and deposits shall be made according to rules and regulations established by the State Board of Corrections.

C. The Department of Corrections may assess costs of incarceration against all inmates beginning on September 1, 1992. Such costs shall be a debt of the inmate owed to the Department of Corrections and may be collected as provided by law for collection of any other civil debt. In addition to the provisions of this section authorizing expenditure of inmate trust funds for costs of incarceration, any monies received for costs of incarceration shall be deposited in the Department of Corrections Revolving Fund.

SECTION 4. AMENDATORY 57 O.S. 2001, Section 564, is amended to read as follows:

Section 564. An inmate in the custody of the Department of Corrections shall <u>completely</u> exhaust all available administrative remedies <u>on all potential claims against the state, the Department</u>

of Corrections, or an employee of the state or the Department of Corrections prior to initiating an action in district court against the Department.

SECTION 5. AMENDATORY Section 13, Chapter 168, O.S.L. 2004 (57 O.S. Supp. 2004, Section 566.5), is amended to read as follows:

Section 566.5 In ~~a~~ any legal proceeding filed by an inmate ~~against any person or the state~~, full and complete exhaustion of all administrative and statutory remedies on all potential claims against the state, the Department of Corrections, or an employee of the state or the Department of Corrections is a jurisdictional requirement and must be completed prior to the filing of any pleadings.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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