STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2966 By: Sullivan

AS INTRODUCED

An Act relating to prisons and reformatories; amending 57 O.S. 2001, Sections 564, as amended by Section 4, Chapter 159, O.S.L. 2005, 566, as last amended by Section 1, Chapter 382, O.S.L. 2004 Section 10, Chapter 402, O.S.L. 2002, as amended by Section 12, Chapter 168, O.S.L. 2004, Section 11, Chapter 402, O.S.L. 2002, as amended by Section 2, Chapter 382, O.S.L. 2004 and Section 13, Chapter 168, O.S.L. 2004, as amended by Section 6, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, Sections 564, 566, 566.3, 566.4 and 566.5), which relate to inmate lawsuits; modifying standing and procedures; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 564, as amended by Section 4, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, Section 564), is amended to read as follows:

Section 564. An inmate in the custody of the Department of Corrections shall completely exhaust all available administrative remedies on all potential claims against <u>any person, party or entity,</u> the state, the Department of Corrections, or an employee of the state or the Department of Corrections prior to initiating an action in district court ~~against the Department~~. <u>Upon release from custody an inmate shall be barred from bringing any action for a claim arising during custody or incarceration and for which no administrative remedy was sought prior to release.</u>

SECTION 2. AMENDATORY 57 O.S. 2001, Section 566, as last amended by Section 1, Chapter 382, O.S.L. 2004 (57 O.S. Supp. 2005, Section 566), is amended to read as follows:

Section 566. A. Any action by an inmate initiated against any person, party or entity, the state, the Department of Corrections, an entity contracting with the Department of Corrections to provide correctional services, another state agency, or political subdivision, or an original action in an appellate court, or an appeal of an action whether or not the plaintiff was represented in the district court, may be:

1. Dismissed with or without prejudice, by the court on its own motion or on a motion of the defendant, if all administrative and statutory remedies available to the inmate have not been exhausted in a timely manner; or

2. Dismissed with prejudice, by the court on a motion of the defendant, if the court is satisfied that the action is frivolous or malicious.

B. As used in this section:

1. "Frivolous" means having no reasonable basis in law or fact, or lacking any good faith legal argument for the extension, modification, or reversal of existing law, or being maintained solely or primarily for delay or to harass the party filed against;

2. "Inmate" or "inmate in a penal institution" includes, but is not limited to, a person presently or formerly in the custody or under the supervision of the Department of Corrections or the Federal Bureau of Prisons, a person who has been convicted of a crime and is incarcerated for that crime in a county jail, a person who is being held in custody for trial or sentencing, or a person on probation or parole; and

3. "Malicious" means filing numerous actions, or actions brought in bad faith on de minimus issues.

C. If the court determines from the pleadings or the evidence that one or more of the causes of action are frivolous or malicious, any one or more of the following sanctions may be imposed, after

notice to the inmate and an opportunity for the inmate to respond, without the need for an additional hearing:

1. Award attorney fees and actual costs incurred by the state, the Department of Corrections, another state agency, a political subdivision, the Attorney General's Office, or the defendant, not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per frivolous cause of action;

2. Court costs not to exceed Five Hundred Dollars ($500.00) per cause of action;

3. Order the Department of Corrections to revoke up to seven hundred twenty (720) earned credits accrued by the inmate. In any case in which the prisoner submits a frivolous or malicious claim, or one that is intended solely or primarily for delay or to harass the party filed against, or testifies falsely or otherwise presents false evidence or information to the court in depositions or in a notarized statement to the court or commits a fraud upon the court, the prisoner shall suffer a loss of earned credits. The earned credits shall be deducted upon a finding of fact and an order of the court. In the absence of such a finding by the court and upon review and recommendation by the Office of the Attorney General, a prison disciplinary hearing may be held to determine whether the prisoner has filed such a claim or evidence. Upon such a finding, the earned credits of the prisoner shall be revoked by the Department or political subdivision;

4. Order the Department or political subdivision to revoke permission to have nonessential personal property of the inmate, including, but not limited to, televisions, radios, stereos, or tape recorders. If permission is revoked, the Department shall take appropriate precautions to protect the property during the period of the revocation;

5. Impose a civil sanction in an amount not to exceed One Thousand Dollars ($1,000.00); or

6. Impose a monetary judgment against the inmate, not to exceed Five Hundred Dollars ($500.00), to be paid to each named defendant.

D. Any award of attorney fees, or costs, or the imposition of a sanction shall serve as a judgment against the inmate and the Department or political subdivision is authorized to take up to eighty percent (80%) of the inmate's nonmandatory savings trust funds per month until paid. The judgment shall be subject to execution without further order of any court for a period of seven (7) years from the date of an award or imposition of a sanction.

SECTION 3. AMENDATORY Section 10, Chapter 402, O.S.L. 2002, as amended by Section 12, Chapter 168, O.S.L. 2004 (57 O.S. Supp. 2005, Section 566.3), is amended to read as follows:

Section 566.3 A. 1. If an applicant for in forma pauperis is a prisoner and the prisoner brings an action of any kind, upon filing, the court shall order the prisoner to pay, as a partial payment of any court costs required by law, before the commencement of the action, a first-time payment of twenty percent (20%) of the deposits of the preceding six (6) months to the trust account of the prisoner administered by the confining agency and thereafter monthly payments of twenty percent (20%) of the deposits of the preceding month to the account, but only if the prisoner does not have enough funds to pay the total costs required by law at the time of filing. In those cases where the prisoner has sufficient funds available, the prisoner shall be ordered to pay the required costs before the action may commence. The confining agency shall withdraw monies maintained in the trust account for payment of court fees and shall forward the monies collected at any time the monies exceed Ten Dollars ($10.00) to the appropriate court clerk, or clerks if multiple courts are involved, until the actual court costs are paid in full. If the prisoner is discharged before payment in full, the court clerk shall be notified of the reported forwarding address and date of discharge of the prisoner. The prisoner must file a

certified copy of the trust account records of the prisoner with the court that reflects the balance and activity of the previous six (6) months at the time the petition is filed. If the prisoner is on probation or parole, the prisoner will file certified copies of bank or savings statements of the account and income receipts for the prior six (6) months.

2. Nothing in this section prevents a prisoner from authorizing payment beyond that required by law or the Department of Corrections or political subdivision from forwarding payment beyond that required by law if the prisoner has the funds available.

3. The court may dismiss any civil action in which the prisoner has failed to pay fees and costs assessed by the court and it is determined the prisoner has funds available and did not pay the required fees and costs.

4. If a prisoner is found to be indigent and totally without any funds pursuant to this section at the time of filing, the case may proceed without prepayment of fees or partial fees. Even in those cases where the court finds the prisoner is without funds, the court shall assess costs against the prisoner, establish a payment schedule and order the costs paid when the prisoner has funds.

B. 1. An affidavit of inability to pay containing complete information as to the identity of the prisoner, prisoner identification number, nature and amount of income, income of the spouse of the prisoner, property owned, cash or checking accounts, dependents, debts and monthly expenses shall be filed with the court. In addition to the information required above, the affidavit shall contain the following statements: "I am unable to pay the court costs at this time. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn as required by law.

2. The Attorney General or other counsel for the defendant shall be authorized to receive information from any source verifying the financial information given by the prisoner.

3. When considering the ability of a prisoner to pay fees and costs and establishing a payment schedule, the court shall consider, but is not limited to consideration of, the following:

a. all living support received by the person from any source, including the state, whether in money or any form of services,

b. any income of a spouse,

c. gifts,

d. savings accounts,

e. retirement plans,

f. trust accounts,

g. personal property,

h. inmate trust accounts, and

i. any dispositions of property, real or personal, in the past twelve (12) months.

C. A court, in which an affidavit of inability to pay has been filed, shall dismiss the action in whole or in part upon a finding that the allegation of poverty is false. If a portion of the action is dismissed, the court shall also designate the issues and defendants on which the action is to proceed without prepaying costs. This order is not subject to an interlocutory appeal.

D. In determining whether the allegation of poverty is false, the court is authorized to hold a hearing, before or after service of process, on its own motion or upon the motion of a party.

E. If the court concludes, based on information contained in the affidavit of inability to pay or other information available to the court, that the prisoner is able to prepay part of the fees or costs required, then the court shall order a partial payment to be

made as a condition precedent to the commencement and further prosecution of the action.

F. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

1. The allegation of poverty is untrue; or

2. The action or appeal:

a. is frivolous or malicious,

b. fails to state a claim on which relief may be granted, or

c. seeks monetary relief against a defendant who is immune from such relief.

G. 1. The Department of Corrections and each sheriff is hereby authorized to adopt a grievance procedure at its institutions for receiving and disposing of any and all grievances by prisoners against the Department of Corrections or any entity contracting with the Department of Corrections to provide correctional services, or any officials or employees ~~thereof~~ of either the Department or correctional services contractor or a sheriff, deputies of the sheriff or employees of the county, which arise while a prisoner is within the custody or under the supervision of the Department or sheriff. The grievances may include, but are not limited to, any and all claims seeking monetary damages or any other form of relief otherwise authorized by law. All such grievance procedures, including the prisoner disciplinary process, shall be deemed to be the exclusive internal administrative remedy for complaints and grievances.

2. No court of the State of Oklahoma shall entertain a grievance, petition, or complaint of a prisoner unless and until the prisoner has exhausted all the remedies as provided in the grievance procedure of the Director of the Department of Corrections or

sheriff. Nothing in this section shall modify requirements of The Governmental Tort Claims Act.

3. Failure to timely institute administrative review of a claim shall be considered an abandonment, and upon motion of the defendants, supported by an affidavit of the defendant that the prisoner has failed to timely institute and exhaust the administrative remedy, the court shall enter a judgment of dismissal with prejudice in that cause of action. Strict adherence to the notice requirement established in the grievance procedures shall be complied with by the prisoner or the attorney of the prisoner.

4. In addition to any other provisions of law providing for the confidentiality of records of the Department of Corrections or a sheriff, all reports, investigations, and like supporting documents prepared by the Department or sheriff for purposes of responding to the request of a prisoner for an administrative remedy shall be deemed to be prepared in anticipation of litigation and are confidential and not subject to discovery by the prisoner in any civil action or subject to release under the Oklahoma Open Records Act. All formal written responses to the grievance of the prisoner shall be furnished to the prisoner as provided for in the grievance procedure.

5. Any prisoner who is allegedly aggrieved by an adverse decision by the Department of Corrections or a sheriff rendered pursuant to any grievance procedure must file the appropriate civil cause of action or application for extraordinary writ, within one hundred eighty (180) days after the final decision is issued and within the limitations period set forth in The Governmental Tort Claims Act, to the appropriate court alleging specifically what legal right was violated and what remedy exists.

H. Nothing in this section shall be construed as waiving the sovereign immunity or the tort immunity of the state, its agencies, officers or employees for injuries allegedly suffered while in the

custody of the state and its agency or any county, sheriff, or officers or employees of the county for injuries allegedly suffered while in the custody of the county.

I. "Prisoner" as used herein shall include but not be limited to a person in custody or whose claims arose during custody.

SECTION 4. AMENDATORY Section 11, Chapter 402, O.S.L. 2002, as amended by Section 2, Chapter 382, O.S.L. 2004 (57 O.S. Supp. 2005, Section 566.4), is amended to read as follows:

Section 566.4 A. No action may be brought in a court of this state by a prisoner or former prisoner for mental or emotional injury allegedly suffered while under arrest, being detained, or in custody or incarcerated without a prior showing of actual physical injury.

B. 1. Neither the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail, private correctional company, nor their members, agents, servants or employees shall be liable for any form of civil claim or action alleged to have arisen from any theory of contract law. No arrest or conviction resulting in detention or incarceration shall create any contractual obligation, either actual, implied or at common law, between the prisoner and the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail nor their members, agents, servants or employees. No policy or internal management procedure issued for the management of the prison or jail shall constitute any contractual relationship or obligation between the state, agency, board, commission, prison, jail, or any of its officers, members, servants or employees, and the prisoner or any visitor to the prison or jail.

2. No tort action or civil claim may be filed against any employee, agent, or servant of the state, the Department of Corrections, private correctional company, or any county jail or any city jail alleging acts related to the duties of the employee, agent

or servant, until all of the notice provisions of the Governmental Tort Claims Act have been fully complied with by the claimant. This requirement shall apply to any claim against an employee of the state, the Department of Corrections, or any county jail or city jail in either their official or individual capacity, and to any claim against a private correctional contractor and its employees for actions taken pursuant to or in connection with a governmental contract.

C. No civil action of any type may be brought seeking an injunction or temporary restraining order against any city, county or state agency, or any officer or employee thereof, brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state if the claim alleges matters arising from the incarceration of the plaintiff and related to management of the prison, including but not limited to, prison transfers, cell assignments, prison job or work assignments and disciplinary action.

D. In any complaint or allegation made by a prisoner against any person holding a license to any state court, agency, board, commission or association which issues any form of license, in which the state court, agency, board, commission or association has made a determination that the complaint of the prisoner is frivolous, malicious or without merit, the state court, agency, board, commission or association may sanction the prisoner as provided for by law.

E. No prisoner of any city or county jail or of any state, federal or private prison in Oklahoma or any person on parole or probation may obtain any public records maintained by any government entity and pertaining in any manner to any public employee, officer or to any citizen, or any criminal history record of any convicted felon. No prisoner, probationer or parolee may obtain without prepayment of the required fees and costs any other public record subject to release. The Director of the Department of Corrections

shall promulgate a rule for the release of criminal history records available to the public which shall include the requirement that requests for criminal history records include the name of the person whose record is being requested and shall charge Fifteen Dollars ($15.00) for each completed request responded to in any form of written communication by the Department.

F. No default judgment shall be rendered against any person, city, county or state agency, or any officer or employee thereof, in any form of civil action brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state.

G. Venue for tort actions filed by a prisoner or a former prisoner of any state prison in the state shall be as follows:

1. Venue for actions filed by any prisoner of any state prison or private prison in which the state, the Department of Corrections, the Board of Corrections as a whole or individual members, or any officer or employee that has multicounty responsibilities is named as a party shall be in the county of the official residence of the Department of Corrections; and

2. Venue for tort actions filed by prisoners of a county jail or city jail, and not involving the Department of Corrections, but against the sheriff, jailer, county officials or employees, or city officials or employees shall be in the county where the jail is located.

The limitations on venue set out in this section shall also apply to tort actions filed by former prisoners, if said tort action is based on facts that occurred while the plaintiff was a prisoner.

H. The Attorney General, district attorneys and the general counsel of the Department of Corrections shall notify the Pardon and Parole Board of all lawsuits filed by any prisoner in which a determination was made by a court that the lawsuit was either frivolous or malicious.

I. The Department of Corrections may assess an administrative fee not to exceed Five Dollars ($5.00) for the processing of any grievance or disciplinary report that has been appealed to the Director and shall charge prisoners for the costs of any supplies, materials or services provided to the inmate at the request of the inmate. Any fees collected pursuant to this subsection shall be deposited into the Department of Corrections Revolving Fund. If the appeal of the grievance or the disciplinary report results in a finding in favor of the prisoner, all fees and costs collected pursuant to this section shall be returned to the prisoner.

J. Judgments rendered against prisoners and received by the Department of Corrections for, but not limited to, monetary damages, child support, transportation costs, filing fees, court costs, sanctions or attorney fees may be withdrawn by the Department from any funds deposited into a prison trust account of the prisoner and forwarded to the prevailing party.

K. Upon motion of the defendant or the court for a special report in any civil action filed by a prisoner <u>or former prisoner</u> or attorney of the prisoner against any party, the court shall stay all proceedings in the case and order the custodian or appropriate party to prepare a special report to the court prior to defendants being required to answer. The special report will order corrections officials or the appropriate party to undertake a review of the subject matter of the petition in order to provide the court with additional information for the processing of the claim of the prisoner, to ascertain the facts and circumstances, to consider whether any action can and should be taken by the institution or other appropriate officials to resolve the subject matter of the petition and to determine whether other like matters, whether pending in this court or elsewhere, are related to this matter and should be taken up and considered together. All reports made in the course of the review shall be attached to and filed with the special

report, and a date the special report is due to the court shall be set. All pending motions are stricken without prejudice to their being reasserted after the special report is filed. All discovery under the Oklahoma Rules of Civil Procedure is stayed until the special report has been filed and any dispositive motions based on the special report are ruled upon. A copy of the special report shall be sent to the respective parties by the agency or person preparing the special report. Upon receipt of the special report, dispositive motions may be filed by the parties and the district court may properly dismiss the petition as being frivolous or malicious or for failure to state a claim, may grant summary judgment or order that the case may proceed under the Oklahoma Rules of Civil Procedure.

SECTION 5. AMENDATORY Section 13, Chapter 168, O.S.L. 2004, as amended by Section 6, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, Section 566.5), is amended to read as follows:

Section 566.5 In any legal proceeding filed by an inmate, full and complete exhaustion of all administrative and statutory remedies on all potential claims against the state, the Department of Corrections, private entities contracting to provide correctional services, 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. This act shall become effective November 1, 2006.

50-2-8945 CJB 01/13/06