

SENATE BILL NO. 547—COMMITTEE ON JUDICIARY

(ON BEHALF OF OFFICE OF THE ATTORNEY GENERAL)

MARCH 26, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes pertaining to litigation involving prisoners.
(BDR 2-478)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prisoners; requiring a prisoner who commences a civil action to pay the full amount of any filing fees under certain circumstances; prohibiting a prisoner from bringing a civil action for mental or emotional injury without a prior showing of physical harm; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 12 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 ***1. A prisoner who desires to prosecute or defend a civil action may***
4 ***file an affidavit with the court setting forth with particularity facts***
5 ***concerning his income, property and other resources which establish that***
6 ***the prisoner is unable to prosecute or defend the action because the***
7 ***prisoner is unable to pay the costs of so doing. The affidavit must be***
8 ***accompanied by a certified copy of the statement of the trust account of***
9 ***the prisoner, for the 6-month period immediately preceding the date of***
10 ***the filing of the action, obtained from the appropriate official of each***
11 ***prison at which the prisoner is or was confined. Subject to the provisions***
12 ***of subsection 2, if the judge is satisfied that the prisoner is unable to pay***
13 ***the costs, the judge shall order:***

14 ***(a) The clerk of the court:***

15 ***(1) To allow the prisoner to commence or defend the action; and***

16 ***(2) To file or issue any necessary writ, process, pleading or paper.***

17 ***(b) The sheriff or other appropriate public officer within this state to***
18 ***make personal service of any necessary writ, process, pleading or paper.***



* S B 5 4 7 *

1 2. Notwithstanding the provisions of subsection 1, a prisoner who
2 files a civil action pursuant to subsection 1 shall pay the full amount of
3 all filing fees. The court shall assess and, when funds exist, collect, as a
4 partial payment of the required filing fees, an initial partial filing fee of
5 20 percent of the greater of:

6 (a) The average monthly deposits to the prisoner's account; or

7 (b) The average monthly balance in the prisoner's account for the
8 6-month period immediately preceding the filing of the action.

9 3. The provisions of subsection 2 must not be construed to prohibit a
10 prisoner from filing a civil action for the reason that the prisoner has no
11 assets and no means by which to pay the initial partial filing fee.

12 4. After payment of the initial partial filing fee, the prisoner shall
13 make monthly payments of 20 percent of the preceding month's income
14 credited to the prisoner's account. The appropriate official at the prison
15 having custody of the prisoner shall forward payments from the
16 prisoner's account to the clerk of the court each time the amount in the
17 account exceeds \$10 until the required filing fees are paid.

18 5. If the prisoner is required to have proceedings reported or
19 recorded, or if the court determines that the reporting, recording or
20 transcription of proceedings would be helpful to the adjudication or
21 appellate review of the case, the court shall order that the reporting,
22 recording or transcription be performed at the expense of the county in
23 which the action is pending but at a reduced rate as set by the county.

24 6. If the prisoner prevails in the action, the court shall enter its order
25 requiring the losing party, within 5 days:

26 (a) To pay the prisoner for any costs incurred by the prisoner
27 pursuant to this section; and

28 (b) To pay into court any costs that would have otherwise been
29 incurred by the prisoner if the court had not waived those costs pursuant
30 to this section, and those costs must then be paid as provided by law.

31 7. If the affidavit establishes that the prisoner is unable to defend an
32 action, the running of the time within which to appear and answer or
33 otherwise defend is tolled during the period between the filing of the
34 affidavit and the ruling of the court thereon.

35 8. An affidavit filed pursuant to this section, and any application or
36 request for an order filed with the affidavit, does not constitute a general
37 appearance before the court by the affiant or give the court personal
38 jurisdiction over him.

39 9. Notwithstanding the fact that a prisoner has paid any filing fee, or
40 any portion thereof, pursuant to this section, the court shall dismiss the
41 action at any time if the court determines that the allegation of poverty is
42 untrue or that the action:

43 (a) Fails to state a claim on which relief can be granted;

44 (b) Seeks monetary relief against a defendant who is immune from
45 such relief; or

46 (c) Is subject to dismissal for any other reason.

47 10. The order of the court to which application is made pursuant to
48 this section is not appealable.



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1 *11. As used in this section, "prisoner" means a person who is*
2 *incarcerated, confined or detained in any institution or facility of the*
3 *department of prisons, any local jail or detention facility, or any other*
4 *state or local correctional or detention facility located within this state.*

5 **Sec. 2.** NRS 12.015 is hereby amended to read as follows:

6 12.015 1. ~~Any~~ *Except as otherwise provided in section 1 of this*
7 *act, any* person who desires to prosecute or defend a civil action may file
8 an affidavit with the court setting forth with particularity facts concerning
9 his income, property and other resources which establish that he is unable
10 to prosecute or defend the action because he is unable to pay the costs of so
11 doing. If the judge is satisfied that the person is unable to pay the costs, he
12 shall order:

13 (a) The clerk of the court:

14 (1) To allow the person to commence or defend the action without
15 costs; and

16 (2) To file or issue any necessary writ, process, pleading or paper
17 without charge.

18 (b) The sheriff or other appropriate public officer within this state to
19 make personal service of any necessary writ, process, pleading or paper
20 without charge.

21 2. If the person is required to have proceedings reported or recorded,
22 or if the court determines that the reporting, recording or transcription of
23 proceedings would be helpful to the adjudication or appellate review of the
24 case, the court shall order that the reporting, recording or transcription be
25 performed at the expense of the county in which the action is pending but
26 at a reduced rate as set by the county.

27 3. If the person prevails in the action, the court shall enter its order
28 requiring the losing party to pay into court within 5 days the costs which
29 would have been incurred by the prevailing party, and those costs must
30 then be paid as provided by law.

31 4. Where the affidavit establishes that the person is unable to defend
32 an action, the running of the time within which to appear and answer or
33 otherwise defend is tolled during the period between the filing of the
34 affidavit and the ruling of the court thereon.

35 5. An affidavit filed pursuant to this section, and any application or
36 request for an order filed with the affidavit, does not constitute a general
37 appearance before the court by the affiant or give the court personal
38 jurisdiction over him.

39 6. The order of the court to which application is made pursuant to this
40 section is not appealable.

41 **Sec. 3.** Chapter 41 of NRS is hereby amended by adding thereto a new
42 section to read as follows:

43 *1. A prisoner may not bring a civil action for mental or emotional*
44 *injury suffered while in custody without a prior showing of physical*
45 *harm.*



1 2. *As used in this section, “prisoner” means a person who is*
2 *incarcerated, confined or detained in any institution or facility of the*
3 *department of prisons, any local jail or detention facility, or any other*
4 *state or local correctional or detention facility located within this state.*

