

Approved: 4/29/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran 5:00 p.m. on March 22, 1994 at the rail of the Capitol.

All members were present except: Senator Brady (excused)
Senator Martin (excused)
Senator Oleen (excused)
Senator Parkinson (excused)

Committee staff present: Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Senator Harris reported the Civil Law Subcommittee recommended HB 2430 be reported favorably. A motion was made by Senator Harris, seconded by Senator Petty to adopt the subcommittee report on HB 2430 and report HB 2430 favorably. The motion carried.

A motion was made by Senator Petty, seconded by Senator Rock to adopt the subcommittee report on HB 2779 and report HB 2779 favorably. The motion carried.

Senator Ranson presented possible amendments to HB 2832 as well as a memo from the office of the Attorney General and Department of Corrections (Attachment No. 1). A motion was made by Senator Ranson, seconded by Senator Harris to adopt the subcommittee report to amend HB 2832 as listed in Attachment No. 1 and to include technical amendments. The motion carried.

A motion was made by Senator Ranson, seconded by Senator Harris to report HB 2832 favorably as amended.
The motion carried.

The meeting adjourned at 5:15 p.m.

HOUSE BILL No. 2832

By Representatives Wilk and Phill Kline, Bradley, Cox, Crabb, Farmer, Flower, Freeborn, Glasscock, Graeber, Hayzlett, Jen- nison, Mayans, Mays, Mead, Myers, O'Connor, Packer, Robinett, Roe, Samuelson, Scott, Shore, M. Smith, Snowbarger, Vickrey and Wagle

2-3

15 AN ACT concerning inmates in the custody of the secretary of cor-
16 rections; relating to denial of parole; concerning the filing of civil
17 actions by inmates; [relating to inmate employment;] amending
18 K.S.A. 60-1501, 60-1503, 60-1504 and 60-2007 and K.S.A. 1993
19 Supp. 22-3717, 60-1505, 60-2001[, 60-2403, 75-5211] and 75-5268
20 and repealing the existing sections.

21

22 *Be it enacted by the Legislature of the State of Kansas:*

23 New Section 1. Any inmate in the custody of the secretary of
24 corrections or in a county jail, prior to filing any civil action naming
25 the state of Kansas, any political subdivision of the state of Kansas,
26 any public official, the secretary of corrections, the warden, the
27 sheriff, or an employee of the department of corrections or the
28 county, while such employee is engaged in the performance of such
29 employee's duty, as the defendant pursuant to the rules of civil
30 procedure, shall have exhausted such inmate's administrative rem-
31 edies, established by rules and regulations promulgated by the sec-
32 retary of corrections or by county resolutions, concerning such civil
33 action. Upon filing a petition in a civil action, such inmate shall file
34 with such petition proof that the administrative remedies have been
35 exhausted.

36 Sec. 2. K.S.A. 1993 Supp. 22-3717 is hereby amended to read
37 as follows: 22-3717. (a) Except as otherwise provided by this section
38 and K.S.A. 1993 Supp. 21-4628 and amendments thereto, an inmate,
39 including an inmate sentenced pursuant to K.S.A. 21-4618 and
40 amendments thereto, shall be eligible for parole after serving the
41 entire minimum sentence imposed by the court, less good time
42 credits.

(b) An inmate sentenced for a class A felony, including an inmate

Wilk
3-22-94
attached 1-1

1 #

1 incapacitated or incompetent persons, physically present in this state
2 may prosecute a writ of habeas corpus in the supreme court, court
3 of appeals or the district court of the county in which such restraint
4 is taking place. No docket fee shall be required.

5 (b) Except as provided in K.S.A. 60-1507, and amendments
6 thereto, an inmate in the custody of the secretary of corrections
7 shall file a petition for writ pursuant to subsection (a) within two
8 years of the date of the decision of the hearing or action such
9 inmate is challenging 30 days from the date the action was final.

10 Sec. 4. K.S.A. 60-1503 is hereby amended to read as follows:
11 60-1503. (a) Issuance. Upon filing of the petition, the writ shall
12 be issued forthwith by the clerk of the court and shall bear
13 the seal of the court. The petition shall be presented promptly to
14 a judge in the district court in accordance with the procedure of
15 the court for the assignment of court business. The petition shall be
16 examined promptly by the judge to whom it is assigned. If it plainly
17 appears from the face of the petition and any exhibits attached
18 thereto that the plaintiff is not entitled to relief in the district court,
19 the petition shall be dissolved at the cost of the plaintiff. If the judge
20 finds that the plaintiff may be entitled to relief, the judge shall issue
21 the writ and order the person to whom the writ is directed to file
22 an answer within the period of time fixed by the court or to take
23 such other action as the judge deems appropriate.

24 (b) Form. The writ shall be directed to the party having the
25 person under restraint and shall command him or her such person
26 to have such person before the judge at the time and place specified
27 in the writ.

28 (c) Service. The writ shall be served without delay. If directed
29 to the sheriff it shall be served by the clerk. If directed to any
30 other person it shall be served by the sheriff or some other person
31 designated by the judge. If the person to whom it is directed cannot
32 be found or shall refuse admittance, the writ may be served by
33 leaving it at his or her such person's residence or affixing it at
34 some conspicuous place where the party is confined or restrained.

35 (d) Sundays and holidays. The writ may be issued and served
36 at any time, including Sundays and holidays.

37 Sec. 4 5. K.S.A. 60-1504 is hereby amended to read as follows:
38 60-1504. (a) Time. The Except as provided in subsection (b), the
39 person to whom the writ is directed shall file an answer thereto
40 within twenty-four (24) 72 hours after the writ is served or at such
41 other time as shall be specified in the writ.

42 (b) Time; exceptions. If the petition for writ challenges a denial
3 of parole or a prison disciplinary action, the person to whom the

the restrained

B-1

1 such provisions for custody during pendency of the appeal, as the
 2 judge shall prescribe. If the state, in open court, announces its
 3 intention to appeal from an order discharging a prisoner, the judge
 4 shall stay the enforcement of the judgment for a period not more
 5 than 24 hours to permit the filing of an appeal.

6 (c) (1) *The Record*. In habeas corpus proceedings involving ex-
 7 tradition to another state, when written notice of appeal from a
 8 judgment or an order is filed, the transcript shall be prepared within
 9 20 days after the notice of appeal is filed and sent to the appellate
 10 court for review. The appellate court may shorten or extend the
 11 time for filing the record if there is a reasonable explanation for the
 12 need for such action. When the record is received by the appellate
 13 court, the court shall set the time for filing of briefs, if briefs are
 14 desired, and shall set the appeal for submission.

15 (2) *Hearing*. Such cases, taken to the court of appeals by appeal,
 16 shall be heard at the earliest practicable time. The appellant need
 17 not be personally present, and such appeal shall be heard and de-
 18 termined upon the law and the facts arising upon record. No inci-
 19 dental question which may have arisen on the hearing of the ap-
 20 plication before the court shall be reviewed.

21 (3) *Orders on Appeal*. In such cases, the appellate court shall
 22 render such judgment and make such orders as the law and the
 23 nature of the case may require, and may make such orders relative
 24 to the costs in the case as may seem right, allowing costs and fixing
 25 the amount, or allowing no cost at all.

26 Sec. 6 7. K.S.A. 1993 Supp. 60-2001 is hereby amended to read
 27 as follows: 60-2001. (a) *Docket fee*. Except as otherwise provided by
 28 law, no case shall be filed or docketed in the district court, whether
 29 original or appealed, without payment of a docket fee in the amount
 30 of \$61.50 to the clerk of the district court.

31 (b) *Poverty affidavit in lieu of docket fee*. (1) *Effect*. In any case
 32 where a plaintiff by reason of poverty is unable to pay a docket fee,
 33 and an affidavit so stating is filed, no fee will be required. ~~If the~~
 34 ~~plaintiff is an inmate in the custody of the secretary of corrections,~~
 35 ~~such inmate may be required to pay a reduced docket fee. The~~
 36 ~~supreme court shall establish by court rule a sliding scale for~~
 37 ~~the docket fee based on the inmate's ability to pay. If such~~
 38 ~~inmate has money in the inmate's account, the secretary of~~
 39 ~~corrections is hereby authorized to disburse such money to~~
 40 ~~pay the docket fee [court costs shall be determined at the con-~~
 41 ~~clusion of the case by the court hearing the case.]~~ The secretary of
 42 corrections is hereby authorized to disburse money from the in-
 43 mate's account ~~[in relation to the inmate's ability to pay, if the court~~

An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement of the balance in the inmate's trust fund. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the costs for filing the action.

~~assesses costs to the inmate.~~

to pay the costs as determined by the court.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraisers' fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorneys' fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 7 8. K.S.A. 60-2007 is hereby amended to read as follows: 60-2007. (a) Except as otherwise provided in this subsection, the provisions of this section shall apply to any civil action brought in a court of this state, including any action pending on the effective date of this act. This section shall not be applied retroactively to specific conduct occurring prior to the effective date of this act. The provisions of this section shall not apply to proceedings brought under K.S.A. 60-1507, and amendments thereto.

(b) At the time of assessment of the costs of any action to which this section applies, if the court finds that a party, in a pleading, motion or response thereto, has asserted a claim or defense, including setoffs and counterclaims, or has denied the truth of a factual statement in a pleading or during discovery, without a reasonable basis in fact and not in good faith, the court shall assess against the party as additional costs of the action, and allow to the other parties, reasonable attorney fees and expenses incurred by the other parties as a result of such claim, defense or denial. An attorney may be held individually or jointly and severally liable with a party for such additional costs where the court finds that the attorney knowingly and not in good faith asserted such a claim, defense or denial or, having gained knowledge of its falsity, failed to inform the court

1 state allowed in K.S.A. 75-3203 and amendments thereto;
 2 (c) if any of the dependents of the inmate are receiving public
 3 assistance, a reasonable percentage of the inmate's net pay after
 4 deduction of the above expenses shall be forwarded to the court
 5 which ordered support for the dependent or, if there is no order,
 6 to the secretary of social and rehabilitation services;
 7 (d) if subsection (c) is not applicable, then a reasonable per-
 8 centage of the inmate's net pay after deduction of the above expenses
 9 shall be disbursed for the payment, either in full or ratable, of the
 10 inmate's obligations [if such obligations relate to the care and sup-
 11 port of the defendant's immediate family] acknowledged by the
 12 inmate in writing, or which have been reduced to judgment;
 13 (e) payment of a reasonable amount to the clerk of the district
 14 court in which the crime occurred pursuant to an order of resti-
 15 tution and payment to the state crime victims compensation fund
 16 pursuant to the program established in subsection (2);
 17 (f) if subsection (c) or (d) is not applicable, then a reasonable
 18 percentage of the inmate's net pay after deduction of the above
 19 expenses shall be disbursed for the payment, either in full or rat-
 20 able, of the inmate's other obligations acknowledged by the inmate
 21 in writing, or which have been reduced to judgment;
 22 (g) payment of a reasonable amount into a savings account
 23 for disbursement to the inmate upon release from custody;
 24 (h) payment of a reasonable amount to the clerk of the dis-
 25 trict court in which the crime occurred pursuant to an order
 26 of restitution. Such payment shall be required only if the in-
 27 mate is incarcerated for a crime or crimes for which restitution
 28 is, or could be, ordered pursuant to the property crime resti-
 29 tution and compensation act. Such payment shall be in addition
 30 to any amount withheld and ordered paid as restitution to the
 31 state crime victims compensation board; and
 32 (i) payment of costs assessed to the inmate pursuant to the code
 33 of civil procedure; and
 34 (j) the balance, if any, shall be credited to the inmate's
 35 account and shall be made available to the inmate in such manner
 36 and for such purposes as are authorized by the secretary.
 37 (2) The secretary of corrections is hereby authorized to imple-
 38 ment a program where inmates in the custody of the secretary
 39 contribute monetarily to the crime victims compensation fund. The
 40 secretary is hereby authorized to adopt rules and regulations to
 41 implement this program.
 42 [New Sec. 10. When the court orders that restitution be paid,
 43 whether to the crime victim or crime victims compensation fund,

Strike lines 37-41

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1 requested to do so.

2 [(2) The provisions of this subsection shall apply only to those
3 judgments which have not become void as of July 1, 1988.

4 [(c) The time within which action must be taken to prevent a
5 judgment from becoming dormant does not run during any period
6 in which the enforcement of the judgment by legal process is stayed
7 or prohibited.

8 [(d) the provision of this section shall not apply to section 10.

9 [Sec. 12. K.S.A. 1993 Supp. 75-5211 is hereby amended to read
10 as follows: 75-5211. (a) The secretary of corrections shall provide
11 programs of employment, work, educational or vocational training
12 for those inmates whom the secretary determines are available,
13 willing and able to participate and are capable of benefiting there-
14 from. Equipment, management practices and general procedures
15 shall, to the extent possible, approximate normal conditions of em-
16 ployment. Such work week may include schooling, vocational train-
17 ing, employment at private industry, treatment or other activities
18 authorized by the secretary. For all purposes under state law, no
19 inmate shall be deemed to be an employee of the state or any state
20 agency. The secretary of corrections shall credit to each inmate as
21 a reward for such employment, an amount which shall be set by
22 the governor but shall not be less than \$.25 per day. *Of the amount*
23 *credited to the inmate, an amount shall be deducted and paid to*
24 *the crime victims compensation fund pursuant to the program es-*
25 *tablished in K.S.A. 75-5268, and amendments thereto. Any inmate*
26 *who is gainfully employed under the work release provisions of*
27 *K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is*
28 *gainfully employed by a private business enterprise operating on*
29 *the grounds of a correctional institution under K.S.A. 75-5288 and*
30 *amendments thereto, or any other private business at which inmates*
31 *are permitted to be gainfully employed, and any inmate who is*
32 *incarcerated at the Topeka correctional facility for the purpose of*
33 *receiving diagnosis and any inmate on disciplinary segregation status*
34 *shall not be eligible to receive compensation as provided in this*
35 *subsection.*

36 [(b) The secretary of corrections shall establish programs and
37 prescribe procedures for withdrawing amounts from the compen-
38 sation paid to inmates from all sources for the same purposes as
39 are prescribed by K.S.A. 75-5268 and amendments thereto for mon-
40 eys of work release participants, except that any inmate employed
41 in a private industry program, other than work release, shall, in
42 addition to the deductions specified in K.S.A. 75-5268 and amend-
43 ments thereto, have deduction of 5% of monthly gross wages paid

The secretary of corrections
is hereby authorized to
adopt rules and regulations
under which offenders in
the secretary's custody may
be assessed fees for various
services provided to offenders
and for deductions for
payment to the crime victims
compensation fund.

to the crime victims compensation fund or a local property crime fund for the purpose of victim compensation. The department of corrections is authorized to make this deduction and payment to the crime victims compensation fund or a local property crime fund. In the event a local fund has made a payment to a victim of a property crime under this act and there is an order of restitution for which moneys are being withheld from an inmate under K.S.A. 75-5268 and amendments thereto, the secretary shall cause such moneys deducted for use by the state crime victims compensation board to be paid quarterly to the local fund, if any, then the balance to the state crime victims compensation fund. If there is no order of restitution, then K.S.A. 75-5268 and amendments thereto shall apply to the disposition of funds.

[(c) (1) Upon the initial release of any inmate on parole, conditional release, postrelease supervision or expiration of the inmate's maximum sentence, the inmate shall be provided with suitable clothing and, if the inmate has a balance of \$500 or less in the inmate's trust account, a cash payment of \$100. If the inmate subsequently violates a condition of release resulting in reincarceration and is thereafter again released on parole, conditional release, postrelease supervision or expiration of the inmate's maximum sentence, the inmate may be provided, pursuant to rules and regulations of the secretary of corrections, with a cash payment of not more than \$100. Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed, or any inmate paroled or released to a detainer shall not be eligible to receive this cash payment. *Upon any release, when an inmate is receiving funds from the inmate's trust account, an amount shall be deducted and paid to the crime victims compensation fund, pursuant to the program established in K.S.A. 75-5268, and amendments thereto.*

[(2) An inmate released on expiration of the inmate's maximum sentence shall be provided public transportation, if required, to the inmate's home, if within the state, or, if not, to the place of conviction or to some other place not more distant, as selected by the inmate. An inmate released on parole or conditional release shall be provided public transportation, if required, to the place to which the inmate was paroled or conditionally released.]

Sec. 9 10 [13]. K.S.A. 60-1501, 60-1503, 60-1504 and 60-2007



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 21, 1994

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Senator Pat Ranson
Capitol Building, 300 S.W. 10th
Topeka, Kansas 66612-1504

VIA HAND DELIVERY

Re: House Bill 2832

Dear Senator Ranson:

Thank you for the opportunity to address the equal protection implications of the captioned bill.

The Senate Judiciary Committee seemed to be concerned with the prospect of limiting, through the use of docket fees, an inmate's right to petition courts for writs of habeas corpus. House Bill 2832, as originally introduced by Representative Wilk, required the Kansas Supreme Court to establish a sliding scale docket fee for prisoners in the custody of the secretary of corrections. The current version of the bill would require the department of corrections to establish an inmate's ability to pay. It appears that any final version will include some type of reduced fee provision with a bypass provision for those who are truly indigent.

Generally, inmates, like everyone else, have a protected right of access to the courts. Courts are very protective of that right. For example, in Smith v. Bennett, 365 U.S. 708 (1961), the United States Supreme Court struck down a state law requiring an indigent inmate to pay a statutory \$4 filing fee before being allowed to pursue a petition for writ of habeas corpus in state court. However, based on several recent federal decisions, it appears that reasonable limitations can be imposed by the state without violating equal protection. For example, courts have carefully scrutinized a prisoner's assets and required that at least some court costs be paid. In Re

Senator Ransom, March 21, 1994
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Stump, 449 F.2d 1297 (1st Cir. 1971)(inmate with \$218 in prison account must pay \$15 filing fee to pursue civil rights action); Braden v. Estelle, 428 F.Supp. 595 (S.D. Tex. 1977)(court adopts partial payment plan to curb "indiscriminate filing of prisoner civil rights actions.") States need not permit in forma pauperis proceedings where there is some evidence the prisoner intentionally depleted existing resources. Veneble v. Meyers, 500 F.2d 1215 (9th Cir.), cert. denied, 419 U.S. 1090 (1974); In re Stump, 449 F.2d at 1298.

An assessed filing fee of \$7.20 was upheld in Lumbert v. Illinois Department of Corrections, 827 F.2d 257 (7th Cir. 1987), pursuant to a United States District Court rule which required inmates to make partial payments in amounts not to exceed 50% of the inmate's average monthly income for the six months immediately preceding the filing of the petition, unless the inmate can show why he cannot make the payment. The court held this restriction was reasonably related to reducing frivolous inmate litigation. 827 F.2d at 259-260. Reduced fee schedules have even been upheld where applied to federal petitions for a writ of habeas corpus. See In re Epps, 888 F.2d 694 (2d Cir. 1989), and cases cited therein.

Based on the authority cited above, requiring some type of a filing fee from prisoners does not per se violate the equal protection clause. I believe such a restriction would withstand judicial scrutiny as long as truly indigent inmates retain the ability to petition the courts without fees through the use of poverty affidavits.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN


John J. Knoll
Assistant Attorney General

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

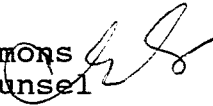
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Joan Finney
Governor

Gary Stotts
Secretary

M E M O R A N D U M

To: Senator Pat Ranson

From: Charles E. Simmons
Chief Legal Counsel 

Date: March 18, 1994

Subject: HB 2832

Questions concerning several aspects of this bill were raised at the hearing on March 18th. The following information is submitted in response to those questions:

Section 1: This provision requires that an inmate exhaust administrative remedies before filing a civil action. The provision is modeled after a federal statute, 42 U.S.C. 1997e, which provides for a requirement to exhaust administrative remedies if the correctional facility has a certified grievance procedure. A copy of this statute is attached as is a copy of a notice issued December 13, 1993 by the Hon. Dale E. Saffels, United States District Judge, regarding the exhaustion requirement. As noted in our testimony, the KDOC has a certified grievance procedure.

Exhaustion of administrative remedies is already a requirement for habeas corpus actions. In Levier v. State, 209 Kan. 442 (1972) the court stated:

When appropriate administrative procedures have been established then those remedies will be required to have been exhausted prior to resort to the courts. (p. 452).

Exhaustion of administrative remedies was also affirmed in Highman v. Marquez, 5 Kan. App. 158 (1980) for habeas corpus actions as well as cases seeking declaratory and injunctive relief.

Section 3: A concern was raised regarding whether a 30 day statute of limitation period would apply to actions brought by an inmate to challenge their conviction. On page 9 of the bill, lines 5-9, it

Senator Pat Ranson
Re: HB 2832
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is provided that the 30 day period does not apply to actions brought pursuant to KSA 60-1507. That is the statute under which an inmate would allege that he or she was illegally convicted.

The statute of limitation period of 30 days as proposed in the bill is intended to address those areas where a final order has been entered, such as a parole revocation action, a parole denial, or a disciplinary conviction. Challenges of mistreatment of a continuing or probably continuing nature would not be limited by such a statute of limitation. The 30 day limit is the same as private citizens would face in challenging a final order of an agency. KSA 77-613.

Section 7: This section deals with assessing a docket fee to inmates. The Department does have a concern with the existing version since the DOC would basically determine how much the inmate would pay. We believe this should be a responsibility of the court. The amendment proposed by Rep. Wilk would address this. That amendment provides that in order to file with a poverty affidavit, the inmate must submit a certificate showing how much money he or she has. It would then be up to the court, not the DOC, to determine what, if any, fees were required. It would be a judicial determination of the inmate's ability to pay. The court should be able to examine whether an inmate's claim of poverty is justified. In other words, can the inmate pay the \$61.50 filing fee? The Wilk amendment merely provides a procedure for the court to make this determination.

Attachments

CES/nd

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general or chief legal officer of the appropriate State or political subdivision, and the director of the institution of—

(i) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(ii) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and

(iii) to the extent feasible and consistent with the interests of other plaintiffs, the minimum measures which he believes may remedy the alleged conditions and the alleged pattern or practice of resistance; and

(B) that he believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(2) Any certification made by the Attorney General pursuant to this subsection shall be personally signed by him.

(c) Any motion to intervene made by the Attorney General pursuant to this section shall be personally signed by him.

Attorney's fee.
allowance.

(d) In any action in which the United States joins as an intervenor under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs. Nothing in this subsection precludes the award of attorney's fees available under any other provisions of the United States Code.

42 USC 1997d.

SEC. 6. PROHIBITION OF RETALIATION.

No person reporting conditions which may constitute a violation under this Act shall be subjected to retaliation in any manner for so reporting.

42 USC 1997e.

SEC. 7. EXHAUSTION OF REMEDIES.

(a)(1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed ninety days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

(2) The exhaustion of administrative remedies under paragraph (1) may not be required unless the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b).

Grievance
resolution
standards.

(b)(1) No later than one hundred eighty days after the date of enactment of this Act, the Attorney General shall, after consultation with persons, State and local agencies, and organizations with background and expertise in the area of corrections, promulgate minimum standards for the development and implementation of a plain, speedy, and effective system for the resolution of grievances of adults confined in any jail, prison, or other correctional facility. The Attorney General shall submit such proposed standards for publica-

Publication in
Federal
Register.

RECEIVED

DEC 15 1993

Department of Corrections
Legal Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

U.S.
DISTRICT

DEC 13 2 17 PM '93

NOTICE

BY *[Signature]* DEPUTY
ATTORNEY GENERAL

On October 15, 1993, the United States Department of Justice granted full certification, as defined in 28 C.F.R. § 40.15, to the Kansas Department of Corrections Inmate Grievance Procedure.

In order to assure that the remedy provided by this procedure is used before claims are presented for judicial review in an action brought pursuant to 42 U.S.C. § 1983 and assigned to the undersigned, it is hereby ORDERED and ADJUDGED:

1. That all pleadings presented for filing pursuant to 42 U.S.C. § 1983 by an adult confined in the custody of the Secretary of the Kansas Department of Corrections and arising from the party's incarceration shall include documentation of the party's efforts to present these claims for review under the Inmate Grievance Procedure. This requirement may be satisfied by presenting copies of the grievance form submitted by the inmate and any responses issued by the principal administrator of the facility and by the Secretary of the Department of Corrections or designee.


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This requirement shall not apply to those matters specifically excluded from the Inmate Grievance Procedure by Kansas Administrative Regulation 44-15-101a(d)(2), namely, the inmate disciplinary process, classification decisions, property loss, or personal injury claims. However, where the inmate challenges the procedure rather than the decision in these matters, exhaustion of the grievance procedure may be required.

2. That any action filed which does not demonstrate exhaustion of the Inmate Grievance Procedure will be continued for a period not to exceed ninety (90) days, as provided by 42 U.S.C. § 1997e, to allow the inmate to exhaust this administrative remedy, if the court believes this requirement is appropriate and in the interests of justice.

This requirement shall become effective on January 1, 1994, in all matters assigned to the undersigned and shall remain in effect until the further order of the court.

DATED this 13th day of December, 1993, at Topeka, Kansas.


DALE E. SAFFELS
United States District Judge