DEPARTMENT OF JUSTICE

Vol. 141  WASHINGTON, THURSDAY, MAY 25, 1995  No. 88

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(USPS 087-390)

UNITED STATES GOVERNMENT PUBLISHING OFFICE
Washingon, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300
CONGRESSIONAL RECORD—SENATE

S7497

May 25, 1995

S. 362. A bill to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, and for other purposes (Rept. No. 104-97).

By Mr. ROTHI, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:
S. 291. A bill to reform the regulatory process, to make government more efficient and effective, and for other purposes (Rept. No. 104-88).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. D’AMATO, from the Committee on Banking, Housing, and Urban Affairs:
Bruce A. Morrison, of Connecticut, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2000.

J. Timothy O’Neill, of Virginia, to be a Director of the Federal Housing Finance Board for the remainder of the term expiring February 27, 1997.

(The above nominations were reported with the recommendation that the Senate accept the nominees’ commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROTHI, from the Committee on Governmental Affairs:
Ronna Lee Beck, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

John W. Carlin, of Kansas, to be Archivist of the United States.


Linda Kay Davis, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Eric T. Washington, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Ines Smith Reid, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 1995.

S. David Fineman, of Pennsylvania, to be a Governor of the United States Postal Service for the term expiring December 8, 2003.

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND, from the Committee on Armed Services:
Mr. THURMOND. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

These nominations are to lie on the Secretary’s desk for the information of any Senator since these names have already appeared in the Records of May 23, and 24, 1995 and to save the expense of printing again.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JOHNSTON (for himself, Mr. FAIRCLOTH, Mr. HURD, Mr. PRESSLER, Mr. DORGAN, Mr. LOTT, Mr. DOLE, Mr. MURkowski, and Mr. HEPFNER):
S. 851. A bill to amend the Federal Water Pollution Control Act to refund the wetlands restoration reserve and other restoration reserves; to Committee on Environment and Public Works.

By Mr. DOMENICI (for himself, Mr. GHRIZZELL, Mr. BROWN, Mr. CAMPBELL, Mr. HATCH, Mr. BENNETT, Mr. BURNS, Mr. SIMPSON, Mr. THOMAS, Mr. Kyl, Mr. BURSTEIN, Mr. KENNEDY, Mr. CONRAD, Mr. DORGAN, Mr. DOLE, and Mr. GRAMM):
S. 852. A bill to provide for uniform management of livestock grazing on Federal land, and for other purposes; to Committee on Energy and Natural Resources.

By Mr. DOLE (for himself, Mr. BAXLEY, Mr. BURMS, Mr. MURKOWSKI, Mr. STEVENS, Mr. KEMPThorne, Mr. CRAIG, Mr. BAUCUS, Mr. PACKWOOD, and Mr. HATFIELD):
S. 853. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to Committee on the Judiciary.

By Mr. LUGAR (for himself and Mr. LEEY):
S. 854. A bill to amend the Food Security Act of 1985 to improve the agricultural resource conservation program, and for other purposes; to Committee on Agriculture, Nutrition, and Forestry.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):
S. 855. A bill to amend title 10, United States Code, to revise the authorization for long-term leasing of military family housing to be constructed; to Committee on Armed Services.

By Mr. JEFFORDS (for himself, Mr. KASSEBAUM, Mr. KENNEDY, Mr. PELL, Mr. KEMPThorne, and Mr. DODD):
S. 856. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, the Museum Services Act, and the Arts and Artifacts Indemnity Act to improve and extend the Acts, and for other purposes; to Committee on Labor and Human Resources.

By Ms. SNOWE:
S. 857. A bill to amend the Immigration and Nationality Act to provide waiver authority to the Attorney General to provide a written justification for the exact grounds for the denial of a visa, except in cases of intense immigration; to Committee on the Judiciary.

By Ms. SNOWE:
S. 858. A bill to restrict intelligence sharing with the United Nations; to Committee on Foreign Relations.

By Mr. SNOWE:
S. 859. A bill to establish terrorist lookout committees in each United States embassy; to Committee on Foreign Relations.

By Mr. SNOWE:
S. 860. A bill to require a General Accounting Office study of activities of the North/South Center in support of the North American Free Trade Agreement; to Committee on Governmental Affairs.

By Mr. SNOWE:
S. 861. A bill to require a General Accounting Office study of duplication among certain international affairs grantees; to Committee on Foreign Relations.

By Mr. HATFIELD:
S. 862. A bill to authorize the Administrator of the Small Business Administration to make urban university business initiative grants, and for other purposes; to Committee on Small Business.

By Mr. GRASSLEY (for himself and Mr. CONRAD):
S. 863. A bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to Committee on Finance.

By Mr. BENNETT:
S. 865. A bill entitled the “Securities Act Amendments of 1995” to increase by 25 percent the budget of the Securities and Exchange Commission; to Committee on Banking, Housing, and Urban Affairs.

By Mr. DOLE (for himself, Mr. KYL, and Mr. HATCH):
S. 866. A bill to perform prison litigation, and for other purposes; to Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred for action, as indicated:

By Mr. AKAKA (for himself, Mr. INOUYE, Mr. DASCHLE, Mr. KENNEDY, Mr. SIMON, and Mr. MURKOWSKI):
S. Res. 125. A bill honoring the contributions of Father Joseph Domien de Veuster for his service to humanity, and for other purposes; considered and agreed to.

By Mr. MCCONNELL:
S. Res. 126. A resolution to amend the Senate gift rule; to Committee on Rules and Administration.

By Ms. SNOWE:
S. Res. 127. A resolution to express the sense of the Senate concerning the crossing fees; to Committee on the Judiciary.

By Ms. SNOWE:
S. Con. Res. 15. A concurrent resolution expressing the sense of Congress regarding the escalating costs of international peacekeeping activities; to Committee on Foreign Relations.

By Ms. SNOWE:
S. Con. Res. 16. A concurrent resolution expressing the sense of Congress that the Russian Federation be strongly condemned for its plan to provide nuclear technology to Iran, and that such nuclear transfer would make Russia ineligible under terms of the Freedom Support Act; to Committee on Foreign Relations.
services. Enders across the Nation have master’s degrees. The other hand, nurse practitioners, physicians working with physicians, and members work consultation with physicians, and physician assistants often have no ready access to the health care providers, the reimbursement levels provided by Medicare can create difficulty for that individual—the same care that would be reimbursed if the physician were in the next room. The State of North Dakota allows that same physician’s assistant to provide the care without a physician present, but Medicare provides no reimbursement.

The Office of Technology Assessment, the Physician Payment Review Commission and these providers themselves have all expressed the need for consistency, and for a reimbursement scheme that acknowledges reality of today’s medical marketplace.

Greater use of nurse practitioners, physician assistants, and clinical nurse specialists can allow us to improve our ability to provide health care services in areas where access to providers can be difficult. These providers have historically been willing to move to both rural and urban areas alike. They were items about which Democrats and Republicans had a great deal of agreement during health care reform last year. I urge my colleagues to support our effort to improve health care access for rural Americans.

By Mr. DOLE (for himself, Mr. KYL, and Mr. HAAS). S. 866. A bill to reform prison litigation, and for other purposes; to the Committee on the Judiciary.

PRISON LITIGATION REFORM ACT

Mr. DOLE, Mr. President. I am pleased to join today with my distinguished colleague from Arizona, Senator KYL, in introducing the Prison Litigation Reform Act of 1995.

Over the past two decades, we have witnessed an alarming explosion in the number of lawsuits filed by State and Federal prisoners. According to enterprise institute scholar Walter Berns, the number of “dubious lawsuits filed in addition to the number of complaints” filed by prisoners has grown astronomically—from 6,500 in 1975 to more than 30,000 in 1994. As Justice Rehnquist has pointed out, prisoners will now “litigate at the drop of a hat,” simply because they have little to lose and everything to gain. Prisoners file grievances as insufficient storage locker space, being prohibited from attending a wedding anniversary party, and yes, being served creamy peanut butter instead of the chunky variety they had ordered.

Unfortunately, prisoner litigation does not operate in a vacuum. Frivolous lawsuits filed by prisoners tie up valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population.

According to Arizona Attorney General, 95 percent of the civil cases filed in Arizona’s Federal courts last year were filed by State prisoners. That means that 20,000 prisoners in Arizona filed almost as many cases as Arizona’s 3.5 million law-abiding citizens. The time and money spent defending most of these cases are clearly time and money that could be better spent prosecuting criminals, fighting
illegal drugs, or cracking down on consumer fraud.

GARNISHMENT

The bottom line is that prisons

CONCLUSION

Finally, Mr. President, I want to ex-
press my thanks to Arizona Attorney
General Grant Woods. In many re-
spects, the Prison Litigation Reform
Act is modeled after the attorney gen-
eral's own activity in Arizona. Without
the invaluable input of Attor-
ney General Woods and his staff, Sen-
ator Kyl and I would not be here today

Mr. President, I ask unanimous con-
sent that the full text of the Prison
Litigation Reform Act be reprinted in

There being no objection, the bill was
ordered to be printed in the RECORD.

Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled, ...-

SEC. 1. SHORT TITLE

This Act may be cited as the “Prison Litigation
Reform Act of 1995.”

SEC. 2. PROCEEDINGS IN FORMA PAUPERIS

(a) FILING FEES.--Section 1915 of title 28, United
States Code, is amended--

(A) by inserting in subsection (a)(2), the following
new phrase:

"(A) By striking "the plaintiff" and inserting "the
prisoner":"

(B) in striking "any" and inserting "the prisoner";

(E) by striking "no" each place it appears
and inserting "the person":

(F) by adding immediately after paragraph
(1), the following new paragraph:

"(2) A prisoner of a Federal, State, or local
institution seeking to bring a civil action or
appeal a judgment in a civil action or pro-
cceeding, without prepayment of fees or secu-
rity deposit or to file an affi-
vant filed under paragraph (1), shall submit a
certified copy of the trust fund account
statement (or institutional equivalent) for the
6-month period immediately
preceding the filing of the complaint or
notice of appeal, obtained from the appro-
priate state or institutional agency
at which the prisoner is or was confined; and

(E) by striking "An appeal" and inserting

(2) an appeal is

(2) by redesignating subsections (b), (c),
(d), and (e) as subsections (c), (d), (e), and (f),
respectively;

(3) by inserting after subsection (a) the fol-
lowing new subsection:

"(b)(1) Notwithstanding subsection (a), if a
prisoner brings a civil action or files an ap-
ppeal in forma pauperis, the prisoner shall be
required to pay the full amount of a filing
fee. The court shall assess, and when funds
exist, collect, as a partial payment of any
court fees required by law, an initial partial
filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the
prisoner's account; or

(B) the average monthly balance in the
prisoner's account for the 6-month period
immediately preceding the filing of the com-
plaint or notice of appeal.

(2) After payment of the initial partial
filing fee, the prisoner shall be required to
make monthly payments of 20 percent of
the preceding month's income credited
to the prisoner's account. The money hav-
ing custody of the prisoner shall forward payments
from the prisoner's account to the clerk of
the court each time the amount in the
account exceeds $30 until the filing fees are
paid.

(3) In no event shall the filing fee col-
lected exceed the amount of fees permitted
by statute for the commencement or proceed-
ing of a civil action or criminal
judgment.

(4) by adding at the end of the following
paragraph, the following new para-
graph:

"(2) in striking "cases" and inserting
proceedings under this section;"

"(2) in striking "cases" and inserting
proceedings under this section;"

"(2) in striking "cases" and inserting
proceedings under this section;"

"(A) if the judgment against a prisoner
includes the payment of costs under this
subsection, the prisoner shall be required to
pay the full amount of the costs ordered.

(2) the prisoner shall be required to
make payments for costs under this sub-
section in the same manner as is provided for
filing fees under subsection (a)(2).

(3) in no event shall the costs collected
exceed the amount of the costs ordered by
the court."

SEC. 3. JUDICIAL SCREENING.

(a) Procedure.--Chapter 129 of title 28,
United States Code, is amended by inserting
after section 1915 the following new section:

"1915A. Screening.

The court shall..."
(1) by striking "(b)" and inserting "(b)(1)"; and
(2) by adding at the end the following:
"(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence is subject to civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

SEC. 5. CIVIL RIGHTS CLAIMS.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. 1983) is amended by inserting after section 7 the following new section:

"SEC. 8. EARNED RELEASE CREDIT OR GOOD TIME CREDIT REVOCATION.

(a) In general.—Chapter 123 of title 28, United States Code, is amended by adding at the end the following new section:

"Sec. 123. Revocation of earned release credit.

"In a civil action brought by an adult convicted of a crime confined in a jail, prison, or other correctional facility, the court may order the revocation of earned good time credit to the extent that subparagraph (A), (B), or (C) of paragraph (1) has been met and recommends revocation of earned good time credit to the court.

(b) Clerical amendment.—The amendment made by subsection (a) is made without general or special reference to any provision other than this Act.

(c) Extension of time retirement.—Section 7(a)(1) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1996(a)(1)) is amended—

(1) by striking "in any action brought and inserting "no action shall be brought";

(2) by striking "the court shall" and all that follows through "require exhaustion of" and inserting "until"; and

(3) by inserting "and exhausted" after "available".

Mr. KYL. Mr. President, I join Senator DOLE in introducing the Prison Litigation Reform Act of 1995. This bill will deter frivolous inmate lawsuits. Statistics compiled by the Administrative Office of the United States Courts show that inmate suits are clogging the courts and draining precious judicial resources. Nationally, in 1994, a total of 230,590 civil cases were brought in U.S. district courts more than one-fourth of these cases—60,086—were brought by prisoners.

Most inmate lawsuits are meritless. Courts have complained about the abundance of such cases. Filing frivolous civil rights lawsuits has become a recreational activity for long-term residents of our prisons. James v. Quinlan, 866 F.2d 37, 40 n. 5 (3rd Cir. 1989) quoting Gabel v. Lynam, 835 F.2d 124, 125 n. 1 (5th Cir. 1988) (per curiam). Indeed, in Gabel, the fifth circuit expressed frustration with the glut of "meritorious lawsuits" brought by disgruntled state prisoners. Gabel v. Lynam, 835 F.2d 124, 125 (per curiam).

The court wrote:

"About one appeal in every six which came to our docket (17.3%) the last four months viewed the merits of particular cases. A criminal.

A high percentage of these are meritless, and many are transparently frivolous. So far in the current fiscal year (October 1994), for example, the percentage of such appeals in which reversal occurred was 5.08. Partial reversal occurred in 2.94%, for a total of 7.92% in which any relief was granted. Over 92% were either dismissed or affirmed in full.

For the same period section 1983 prisoner appeals prosecuted without counsel were our largest single category of cases which survived long enough to be briefed and enter our screening process, so as to reach full panel consideration. The number of these stands at almost 22%, with the next largest category—direct appeals from federal question appeals at 14.5%, and both general civil rights cases and criminal appeals coming in at 30% 11 each.

Such figures suggest that law-abiding Americans must make: Is the lawsuit worth the price? Criminals should not be given a special privilege that other Americans do not have. The unnecessary filing of frivolous suits and frivolous appeals burden the courts. The burden that disposing of meritless complaints imposes on efficient judicial administration, and the need to discourage prisoners from filing frivolous complaints as a means of gaining a "short sabbatical in the nearest Federal courthouse." Cruz v. Beto, 405 U.S. 319, 327 (1972) (Rehnquist, J., dissenting).

The Dole-Kyl "Prisoner Litigation Reform Act" will:

- Remove the ability of prisoners to file free lawsuits, instead making them pay full filing fees and court costs.

- Require judges to dismiss frivolous cases before they bog down the court system.

- Prohibit inmate lawsuits for mental and emotional distress.

- Rerack good-time credit earned by inmates if they file lawsuits deemed frivolous.

- Require the exhaustion of administrative remedies.

- Prohibit prisoners who qualify for poor person status, there is no cost to bring a suit and, therefore, no incentive to limit suits to cases that have some chance of success.

The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings. As the Wall Street Journal recently wrote, the Dole-Kyl bill will make prisoners think twice about the case and not just file reflexively. Lumbert v. Illinois Department of Correction, 837 F.2d 257, 259 (7th Cir. 1987) (Posner, J.). Prisoners who do bring a frivolous claim will not merely lose the litigation, but they will be shut out from court for lack of sufficient money to pay even the partial fee.

Finally, section 2 of the Dole-Kyl bill also imposes the same payment system for court costs as it does for filing fees. This provision, like the filing fee provision, will ensure that inmates evaluate the merits of their claims.

Section 3 of this bill creates a new statute that requires judicial screening of a complaint, or any portion of the complaint, in a civil action in which a prisoner seeks redress from a governmental entity or officer of the court.

The bill also establishes two standards a prisoner must meet. Under the first standard, the court must dismiss the complaint if satisfied that the complaint fails to state a claim on which relief may be
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granted. Under the second standard, the court must dismiss claims for monetary relief from a defendant who is immune from such relief.

Sections 4 and 5 of the bill will bar inmates' constitutional claims for monetary damages unless they can show physical injury. Of the 60,986 prisoner petitions filed in 1994, about two-thirds were prisoner civil rights petitions, according to the Justice Department. Prisoner civil rights petitions are brought under 42 U.S.C. 1983. Section 1983 petitions are claims brought in Federal court by State inmates seeking redress of grievances under a Federal right. "The volume of section 1983 litigation is substantial by any standard," according to the Justice Department's report on section 1983 litigation, "Challenges and Solutions of Prisons Systems Jails." Indeed, the Administrative Office (AO) of the U.S. courts counted only 218 cases in 1968, the first year that State prisoners' rights cases were recorded as a specific category of litigation. The number climbed to 26,824 by 1994. When compared to the total number of all civil cases filed in the Nation's U.S. district courts, more than 1.6 million civil filings, civil cases brought by an adult state prisoner until they exhaust all available administrative procedures, may order the revocation of earned good-time credit if the court finds that:

First, the claim was filed for a malicious activity; (2) the claim was filed solely to harass the party against which it was filed, or third, the claimant testifies falsely or otherwise knowingly presents false evidence or information.

Additionally, if the claim is a frivolous one, the Attorney General determines that any of these criteria have been met, the Attorney General may recommend to the court the revocation of earned good-time credit. Section 7 will make the exhaustion of administrative remedies mandatory. Many prisoner cases seek relief for matters that are relatively minor and for which the prison grievance system would provide an adequate remedy. Section 7 of this bill would require an inmate, prior to filing a complaint under 42 U.S.C. section 1983, to exhaust all available administrative remedies certified as adequate by the U.S. attorney general. An exhaustion requirement is appropriate for prisoners given the burden that arises in a Federal court system, the availability of administrative remedies, and the lack of merit of many of the claims filed under 42 U.S.C. section 1983.

Mr. President, in a dissenting opinion in Doe v. Ky ., 94-137 (April 26, 1995), then-Justice Rehnquist wrote, "With less to profitably occupy their time than potential litigants on the outside, and with a justified feeling that they have much to gain and virtually nothing to lose, prisoners appear to be far more prolific litigants than other groups in the population.

Mr. President, I ask unanimous consent that this additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 24, 1995]

SUE THE WARDEN, SUE THE CHIEF, SUE THE GARDENER...

With about 1.6 million criminal offenders in prison at any given moment, the Federal court system, the availability of Federal court judges, the burden that their lack of merit of many of the frivolous lawsuits are is substantial by any standard. Thus, for a litigant who seeks to bring a tort lawsuit in Federal court, he bears the burden of proving a claim, and, if he is found liable, will indemnify him unless the damages "resulted from [his] Intentional wrongdoing.

The Republican crime bill passed by the Senate in the last 100 days aims to reduce the number of frivolous lawsuits by prohibiting the filing of an action in Federal court by adult state prisoners until they have exhausted all the remedies available to them in State court. The Senate bill would also authorize Federal judges to dismiss an inmate's complaint if the allegation of poverty is untrue, or if substituted the action fails to state a claim upon which relief may be granted in a Federal court.

The provisions seem reasonable, but it remains to be seen whether the Senate and the President will find them so. And only time will tell whether they are adequate.

[From the Tucson Citizen, Feb. 2, 1995]