

CIVIL LITIGATION BY INMATES AND PRISONERS

610A.1 Actions or appeals brought by inmates or prisoners.

1. Notwithstanding section 610.1 or 822.5, if the person bringing a civil action or appeal is an inmate of an institution or facility under the control of the department of corrections or a prisoner of a county or municipal jail or detention facility, the inmate or prisoner shall pay in full all fees and costs associated with the action or appeal.

a. Upon filing of the action or appeal, the court shall order the inmate or prisoner to pay a minimum of twenty percent of the required filing fee before the court will take any further action on the inmate's or prisoner's action or appeal and shall also order the inmate or prisoner to make monthly payments of ten percent of all outstanding fees and costs associated with the inmate's or prisoner's action or appeal.

b. If the inmate has an inmate account under section 904.702, the department of corrections shall withdraw moneys maintained in the account for the payment of fees and costs associated with the inmate's action or appeal in accordance with the court's order until the required fees and costs are paid in full. The inmate shall file a certified copy of the inmate's account balance with the court at the time the action or appeal is filed.

c. An inmate may authorize the department of corrections to make or the inmate may make an initial or subsequent payment beyond that required by this section.

d. The court may dismiss any civil action or appeal in which the inmate or prisoner has previously failed to pay fees and costs in accordance with this section.

e. If the inmate has unsuccessfully prosecuted three or more frivolous actions in the preceding five-year period, the court may stay the proceeding in accordance with section 617.16.

f. If the inmate has had three or more actions dismissed pursuant to section 610A.2, the inmate shall not be permitted to file an action pursuant to chapter 610.

2. The court may make the authorization provided for in section 610.1 if it finds that the inmate does not have sufficient moneys in the inmate's account or sufficient moneys flowing into the account to make the payments required in this section or, in the case of a prisoner of a county or municipal jail or detention facility, that the prisoner otherwise meets the requirements of section 610.1.

3. In any civil case filed by a petitioner who is an inmate or prisoner, the respondent may review the petition and, if applicable, file a pre-answer motion asserting, in addition to any other defense that must be asserted in such a motion under the rules of civil procedure, that the action or any portion of the action should be dismissed pursuant to this chapter because the action or any portion of the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or is otherwise subject to dismissal under section 610A.2.

95 Acts, ch 167, §1; 96 Acts, ch 1079, § 17; 98 Acts, ch 1147, §2, 3, 6

610A.2 Dismissal of action or appeal.

1. In addition to the penalty provided in section 610.5, if applicable, or any other applicable penalty under the Code, the court may dismiss an action or appeal that is subject to this chapter, in whole or in part, on a finding of any of the following:

a. The allegation of inability to pay asserted in an accompanying affidavit is false.

- b.* The action, claim, defense, or appeal is frivolous or malicious in whole or in part.
- c.* The inmate or prisoner has knowingly presented false testimony or evidence, or has attempted to create or present false testimony or evidence in support of the action, claim, defense, or appeal.
- d.* The actions of the inmate or prisoner in pursuing the action, claim, defense, or appeal constitute an abuse of the discovery process.
2. In determining whether an action or appeal is frivolous or malicious, the court may consider the following:
- a.* Whether the action, claim, defense, or appeal is without substantial justification, or otherwise has no arguable basis in law or fact, including that the action, claim, defense, or appeal fails to state a claim upon which relief could be granted, or the action, claim, defense, or appeal cannot be supported by a reasonable argument for a change in existing law.
- b.* Whether the action, claim, defense, or appeal is substantially similar to a previous action, claim, defense, or appeal, that was determined to be frivolous or malicious, either in that it is brought against the same party or in that the claim arises from the same operative facts.
- c.* Whether the action, claim, defense, or appeal is intended solely or primarily for harassment.
- d.* The fact that evidentiary support for the action, claim, defense, or appeal is unavailable, or is not likely to be discovered after investigation.
- e.* Whether the action, claim, defense, or appeal is asserted with an improper purpose, including but not limited to, causing an unnecessary expansion or delay in proceedings, increasing the cost of proceedings, or harassing an opponent.
- f.* Whether the defendant is immune from providing the relief sought.
3. In making the determination under subsection 1, the court may hold a hearing before or after service of process on its own motion or on the motion of a party. The hearing may be held by telephone or video conference on the motion of the court or of a party.
4. The court may dismiss the entire action or appeal or a portion of the action or appeal before or after service of process. If a portion of the action or appeal is dismissed, the court shall also designate the issues and defendants on which the action or appeal is to proceed without paying fees and costs. This order is not subject to interlocutory appeal.

95 Acts, ch 167, §2; 98 Acts, ch 1147, §4, 6

610A.3 Penalties.

1. If an action or appeal brought by an inmate or prisoner in state court is dismissed pursuant to section 610A.2, or, if brought in federal court, is dismissed under any of the principles enumerated in section 610A.2, the inmate shall be subject to the following penalties:
- a.* The loss of some or all of the earned time credits acquired by the inmate or prisoner. Previous dismissals under section 610A.2 may be considered in determining the appropriate level of penalty.
- b.* If the inmate or prisoner has no earned time credits to deduct, the order of the court or the disciplinary hearing may deduct up to fifty percent of the average balance of the inmate account under section 904.702 or of any prisoner account.

2. The court may make an order deducting the credits or the credits may be deducted pursuant to a disciplinary hearing pursuant to chapter 903A at the facility at which the inmate is held.

95 Acts, ch 167, §3; 98 Acts, ch 1147, §5, 6; 2000 Acts, ch 1173, §1, 10

610A.4 Cost setoff.

The state or a county or municipality shall have the right to set off the cost of incarceration of an inmate or prisoner at any time, following notice and hearing, against any claim made by or monetary obligation owed to an inmate or prisoner for whom the cost of incarceration can be calculated.

95 Acts, ch 167, §4; 96 Acts, ch 1079, § 18