

SUBJECT: Restricting inmate lawsuits

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — Hightower, Gray, Allen, Culberson, Farrar, Longoria, Pitts,
Serna, Telford

0 nays

WITNESSES: For — Sheriff Dan Smith, Sheriff's Association Legislative Committee;
Sheriff Robert Horn, Bee County; Sandra Clark, Bee County; Maxine
Barnette, Anderson County Government; Michelle Brinkman, Travis
County District Clerk's Office; Jim Allison, County Judges and
Commissioner Association of Texas

Against — None

On — Ann Kraatz, Attorney General's Office; Carl Reynolds, Texas Board
of Criminal Justice

DIGEST: CSHB 1343 would establish procedures for courts and the Texas
Department of Criminal Justice to limit court claims brought by TDCJ
inmates and require TDCJ to create a grievance system to deal with such
claims out of court and provide administrative remedies.

A court would be authorized to dismiss all or part of a claim of an inmate
in a facility operated by or for TDCJ upon finding the claim frivolous,
malicious or containing a false declaration of poverty. The provision
would apply in district, county, justice of the peace and small claims courts.
The court could consider whether the claim had a realistic chance of
success, had no arguable basis in law or was substantially similar to a
previous claim by the inmate.

TDCJ would be required to forfeit an inmate's good conduct time the
second time the inmate brought a frivolous lawsuit. The inmate's loss of
good time credit would increase with each finding of a frivolous suit filing,
up to 180 days. Before trial the inmate would be required to file an

affidavit stating the results of previous lawsuits, including whether the suits were dismissed as frivolous or malicious.

An inmate who won a monetary award from the state could have deducted from the award the money the state spent on the inmate's incarceration and any money the inmate owed the court for costs from previous lawsuits, except in cases of awards for damage or injury from a negligent act or omission or of a constitutional violation.

CSHB 1343 would allow a court to order an inmate to pay court fees and costs out of the inmate's trust account of personal funds. In addition to court costs, the court could order the inmate to pay for service of process, postage, transportation, medical care and housing associated with the court appearance, if the court found the inmate had previously filed a frivolous or malicious suit. The clerk of the court would not be able to accept for filing another claim by the inmate until previous court fees and costs were paid, unless the inmate showed a likelihood of being seriously harmed or permanently injured.

Before being allowed to file a claim — other than a writ of habeas corpus — in a state court, an inmate would have to first seek remedy through a grievance system that the bill would create, using federal standards. The inmate could file a claim only after receiving a written decision from the highest authority provided for in the grievance system or, failing receipt of a decision, at least 180 days after the grievance was filed.

Inmate claims would have to be accompanied with a copy of the written decision from the grievance system and the dates of filing and receipt of the decision. The court would have to dismiss a claim if the inmate failed to file it before the 31st day after the written grievance decision was received.

Claims would have to be filed in the county in which an inmate was housed when the claim accrued. A claim brought by two or more inmates would have to be brought in a county where at least one of the inmates was housed. CSHB 1343 would not apply to claims arising under the Family Code.

The court would be allowed to conduct a hearing on inmate claims at a detention facility or through the use of video technology. Courts could develop a questionnaire to be filled out by the inmate. Persons with evidence would not be required to appear in court for a preliminary screening of the evidence if they followed the court's requests to submit their admissible testimony and documents in writing.

TDCJ would have to notify inmates of the provisions in the bill. The bill's provisions, including the calculations for forfeiture of good conduct time, would apply only to inmate lawsuits that accrued on or after the bill's effective date. The bill would have immediate effect if approved by two thirds of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 1343 would make it easier for courts to dismiss frivolous claims while still protecting the right of inmates to have legitimate grievances fairly reviewed. Inmate lawsuits, often focused on trivial, imagined or trumped up grievances, clog the court system and waste the time and resources of state and local government. In 1993 the Attorney General's Office opened 659 inmate cases; in 1994 that number escalated to 994, resulting in 1,718 pending cases. The 16 most prolific inmate litigators in Texas have alone filed 498 cases. The minimum cost in lawyer time for the state is \$1,600 for a one-day bench trial, \$3,000 for a one-day jury trial, and another \$500 for the inevitable appeal.

The bill would provide a strong monetary disincentive to prevent inmate litigants from filing frivolous or malicious suits by allowing courts to deduct money out of the inmate's trust accounts to pay court fees and other costs. TDCJ could also forfeit some of an inmates's good conduct time for repeatedly abusing the court system.

Inmates could have legitimate complaints addressed by a federally approved grievance system within their institution, with a possible later opportunity to present the cases in court. CSHB 1343's only purpose is to reduce the large number of frivolous suits a small number of inmates file. Ending the current abuse of the legal system by frivolous jailhouse litigants would not prevent inmates with valid claims from having their day in court.

The provisions for hearings by video would reduce the use of court filings as an excuse for travel and keep down court costs.

**OPPONENTS
SAY:**

CSHB 1343, a purported attempt at efficiency and thrift, would instead merely have a chilling effect on the right of a prisoner to a day in court for grievances that may arise during confinement. The bill would actually have the effect of keeping the state from addressing the problems in prisons through nonviolent means.

Inmates, who do not have the benefit of counsel, often cannot accurately judge for themselves if a claim would be considered frivolous or malicious, and they could easily make an error in an affidavit. Yet CSHB 1343 would allow the state to penalize them, in addition to rejecting their claim.

Inmate lawsuits play an important role in preventing abuses and unhealthy conditions in prisons. Limiting inmates' access to the courts could allow problems such as prison overcrowding, substandard medical care and routine brutality to go unnoticed and unaddressed.

Inmate litigation is a way for prisoners to express their grievances through nonviolent means. If the rights of inmates to litigate is curtailed, then the prisons could become more violent and harder to control.

CSHB 1343 provides that the state would in some cases not be obligated to pay an inmate anything for damages he suffered, even if the courts agreed that a legitimate wrong had been done. The bill's provision for using damage awards to offset the cost of the inmate's incarceration or to pay off earlier legal bills are needlessly punitive. Without the threat of having to pay monetary damages, the state has no incentive to change its behavior.

**OTHER
OPPONENTS
SAY:**

While this bill promotes a worthy purpose, a better way to reduce the number of frivolous inmate lawsuits would be to require the state to provide inmates with legal assistance in determining whether their claims against the state are frivolous.

NOTES:

The committee substitute changed the definition of inmate to include inmates in jails. It would allow the court to advise the Department of Criminal Justice to conduct a mental health evaluation of an inmate

bringing a frivolous suit. The substitute reduced the notice requirements for a preliminary hearing and made the exception from the monetary offset requirements for constitutional cases. It would require TDCJ to take certain measures to notify inmates of the provisions of the bill.