

2018 Kansas Statutes

59-29a23. Civil action filed by sexually violent predator; costs related thereto; dismissal; limitations on future actions. (a) Whenever a person civilly committed pursuant to the Kansas sexually violent predator act files any civil action relating to such commitment, including, but not limited to, an action pursuant to K.S.A. 60-1501 et seq., and amendments thereto, the costs incurred, including, but not limited to, the filing fee, costs of appointed counsel fees and expenses, witness fees and expenses, expert fees and expenses and other expenses related to the prosecution and defense of such petition, shall be taxed to the civilly committed person bringing the action.

(b) (1) Subject to subsection (c), any court may authorize the commencement of any civil action, or appeal therein, without prepayment of fees or security therefor, by a civilly committed person who submits an affidavit that includes a statement of all assets that such person possesses and a statement that such person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the civil action or appeal and the affiant's belief that the person is entitled to redress.

(2) A civilly committed person seeking to bring a civil action, or appeal therein, without prepayment of fees or security therefor, in addition to filing the affidavit required by subsection (b)(1), shall submit a certified copy of the trust fund account statement, or institutional equivalent, for such person for the six-month period immediately preceding the filing of the action or notice of appeal, obtained from the appropriate official of each facility at which such person is or was committed. In addition, such person shall submit a certified copy of all private banking account and investment account statements for the six-month period immediately preceding the filing of the action or notice of appeal for which the person is the account owner or beneficiary.

(3) If the court determines, based on the affidavit and information provided pursuant to this subsection, that the person is indigent, the costs incurred shall be taxed to the county responsible for the costs.

(4) Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county, except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

(5) The county responsible for the costs incurred pursuant to this subsection shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(6) An appeal may not be taken in forma pauperis if the trial court certifies in writing that such appeal is not taken in good faith.

(c) (1) Notwithstanding subsection (b), if a civilly committed person brings a civil action or files an appeal in forma pauperis, such person 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% of the greater of:

(A) The average monthly deposits to the civilly committed person's trust account, or institutional equivalent; or
(B) the average monthly balance in the civilly committed person's trust account, or institutional equivalent, for the six-month period immediately preceding the filing of the action or notice of appeal.

(2) After payment of the initial partial filing fee, the civilly committed person shall be required to make monthly payments of 20% of the preceding month's income credited to the civilly committed person's account. The agency having custody of the civilly committed person shall forward payments from the civilly committed person's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid. The clerk shall then forward the payments to the county responsible for the costs for reimbursement.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

(4) In no event shall a civilly committed person be prohibited from bringing a civil action or appealing a civil action for the reason that such person has no assets and no means by which to pay the initial partial filing fee.

(d) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

(1) The allegation of poverty is untrue; or

(2) the action or appeal:

(A) Is frivolous or malicious;

(B) fails to state a claim on which relief may be granted; or

(C) seeks monetary relief against a defendant who is immune from such relief.

(e) (1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings.

(2) (A) If the judgment against a civilly committed person includes the payment of costs under this subsection, such person shall be required to pay the full amount of the costs ordered.

(B) The civilly committed person shall be required to make payments for costs under this subsection in the same manner provided for filing fees under subsection (c).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(f) In no event shall a civilly committed person bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if such person has, on three or more prior occasions, while confined in any facility, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless such person is under imminent danger of serious physical injury.

(g) As used in this section, "county responsible for the costs" means the county where the person was determined to be a sexually violent predator pursuant to the Kansas sexually violent predator act.

History: L. 2011, ch. 92, § 1; L. 2015, ch. 95, § 12; July 1.