

As Introduced

**124th General Assembly
Regular Session
2001-2002**

S. B. No. 168

SENATOR Oelslager

A B I L L

To amend sections 2323.52, 2501.16, 2503.17, 2969.21, 1
2969.22, and 2969.25 of the Revised Code to extend 2
the application of the vexatious litigator law to 3
actions commenced in a court of appeals and to 4
exclude the Supreme Court from the laws pertaining 5
to collection of fees from inmates filing civil 6
actions against a governmental entity or employee. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2323.52, 2501.16, 2503.17, 2969.21, 8
2969.22, and 2969.25 of the Revised Code be amended to read as 9
follows: 10

Sec. 2323.52. (A) As used in this section: 11

(1) "Conduct" has the same meaning as in section 2323.51 of 12
the Revised Code. 13

(2) "Vexatious conduct" means conduct of a party in a civil 14
action that satisfies any of the following: 15

(a) The conduct obviously serves merely to harass or 16
maliciously injure another party to the civil action. 17

(b) The conduct is not warranted under existing law and 18
cannot be supported by a good faith argument for an extension, 19

modification, or reversal of existing law. 20

(c) The conduct is imposed solely for delay. 21

(3) "Vexatious litigator" means any person who has 22
habitually, persistently, and without reasonable grounds engaged 23
in vexatious conduct in a civil action or actions, whether in the 24
court of claims or in a court of appeals, court of common pleas, 25
municipal court, or county court, whether the person or another 26
person instituted the civil action or actions, and whether the 27
vexatious conduct was against the same party or against different 28
parties in the civil action or actions. "Vexatious litigator" does 29
not include a person who is authorized to practice law in the 30
courts of this state under the Ohio Supreme Court Rules for the 31
Government of the Bar of Ohio unless that person is representing 32
or has represented self pro se in the civil action or actions. 33

(B) A person, the office of the attorney general, or a 34
prosecuting attorney, city director of law, village solicitor, or 35
similar chief legal officer of a municipal corporation who has 36
defended against habitual and persistent vexatious conduct in the 37
court of claims or in a court of appeals, court of common pleas, 38
municipal court, or county court may commence a civil action in a 39
court of common pleas with jurisdiction over the person who 40
allegedly engaged in the habitual and persistent vexatious conduct 41
to have that person declared a vexatious litigator. The person, 42
office of the attorney general, prosecuting attorney, city 43
director of law, village solicitor, or similar chief legal officer 44
of a municipal corporation may commence this civil action while 45
the civil action or actions in which the habitual and persistent 46
vexatious conduct occurred are still pending or within one year 47
after the termination of the civil action or actions in which the 48
habitual and persistent vexatious conduct occurred. 49

(C) A civil action to have a person declared a vexatious 50
litigator shall proceed as any other civil action, and the Ohio 51

Rules of Civil Procedure apply to the action. 52

(D)(1) If the person alleged to be a vexatious litigator is 53
found to be a vexatious litigator, subject to division (D)(2) of 54
this section, the court of common pleas may enter an order 55
prohibiting the vexatious litigator from doing one or more of the 56
following without first obtaining the leave of that court to 57
proceed: 58

(a) Instituting legal proceedings in the court of claims or 59
in a court of common pleas, municipal court, or county court; 60

(b) Continuing any legal proceedings that the vexatious 61
litigator had instituted in ~~any of the court of claims or in a~~ 62
~~court of common pleas, municipal court, or county court~~ courts 63
specified in division (D)(1)(a) of this section prior to the entry 64
of the order; 65

(c) Making any application, other than an application for 66
leave to proceed under division (F)(1) of this section, in any 67
legal proceedings instituted by the vexatious litigator or another 68
person in ~~any of the court of claims or in a court of common~~ 69
~~pleas, municipal court, or county court~~ courts specified in 70
division (D)(1)(a) of this section. 71

(2) If the court of common pleas finds a person who is 72
authorized to practice law in the courts of this state under the 73
Ohio Supreme Court Rules for the Government of the Bar of Ohio to 74
be a vexatious litigator and enters an order described in division 75
(D)(1) of this section in connection with that finding, the order 76
shall apply to the person only insofar as the person would seek to 77
institute proceedings described in division (D)(1)(a) of this 78
section on a pro se basis, continue proceedings described in 79
division (D)(1)(b) of this section on a pro se basis, or make an 80
application described in division (D)(1)(c) of this section on a 81
pro se basis. The order shall not apply to the person insofar as 82

the person represents one or more other persons in the person's
capacity as a licensed and registered attorney in a civil or
criminal action or proceeding or other matter in a court of common
pleas, municipal court, or county court or in the court of claims.
Division (D)(2) of this section does not affect any remedy that is
available to a court or an adversely affected party under section
2323.51 or another section of the Revised Code, under Civil Rule
11 or another provision of the Ohio Rules of Civil Procedure, or
under the common law of this state as a result of frivolous
conduct or other inappropriate conduct by an attorney who
represents one or more clients in connection with a civil or
criminal action or proceeding or other matter in a court of common
pleas, municipal court, or county court or in the court of claims.

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(3) A person who is subject to an order entered pursuant to
division (D)(1) of this section may not institute legal
proceedings in a court of appeals, continue any legal proceedings
that the vexatious litigator had instituted in a court of appeals
prior to entry of the order, or make any application, other than
the application for leave to proceed allowed by division (F)(2) of
this section, in any legal proceedings instituted by the vexatious
litigator or another person in a court of appeals without first
obtaining leave of the court of appeals to proceed pursuant to
division (F)(2) of this section.

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(E) An order that is entered under division (D)(1) of this
section shall remain in force indefinitely unless the order
provides for its expiration after a specified period of time.

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(F)(1) A court of common pleas that entered an order under
division (D)(1) of this section shall not grant a person found to
be a vexatious litigator leave for the institution or continuance
of, or the making of an application in, legal proceedings in the
court of claims or in a court of common pleas, municipal court, or

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county court unless the court of common pleas that entered that 115
order is satisfied that the proceedings or application are not an 116
abuse of process of the court in question and that there are 117
reasonable grounds for the proceedings or application. If a person 118
who has been found to be a vexatious litigator under this section 119
requests the court of common pleas that entered an order under 120
division (D)(1) of this section to grant the person leave to 121
proceed as described in ~~this~~ division (F)(1) of this section, the 122
period of time commencing with the filing with that court of an 123
application for the issuance of an order granting leave to proceed 124
and ending with the issuance of an order of that nature shall not 125
be computed as a part of an applicable period of limitations 126
within which the legal proceedings or application involved 127
generally must be instituted or made. 128

(2) A person who is subject to an order entered pursuant to 129
division (D)(1) of this section and who seeks to institute or 130
continue any legal proceedings in a court of appeals or to make an 131
application, other than an application for leave to proceed under 132
division (F)(2) of this section, in any legal proceedings in a 133
court of appeals shall file an application for leave to proceed in 134
the court of appeals in which the legal proceedings would be 135
instituted or are pending. The court of appeals shall not grant a 136
person found to be a vexatious litigator leave for the institution 137
or continuance of, or the making of an application in, legal 138
proceedings in the court of appeals unless the court of appeals is 139
satisfied that the proceedings or application are not an abuse of 140
process of the court and that there are reasonable grounds for the 141
proceedings or application. If a person who has been found to be a 142
vexatious litigator under this section requests the court of 143
appeals to grant the person leave to proceed as described in 144
division (F)(2) of this section, the period of time commencing 145
with the filing with the court of an application for the issuance 146
of an order granting leave to proceed and ending with the issuance 147

of an order of that nature shall not be computed as a part of an 148
applicable period of limitations within which the legal 149
proceedings or application involved generally must be instituted 150
or made. 151

(G) During the period of time that the order entered under 152
division (D)(1) of this section is in force, no appeal by the 153
person who is the subject of that order shall lie from a decision 154
of the court of common pleas or court of appeals under division 155
(F) of this section that denies that person leave for the 156
institution or continuance of, or the making of an application in, 157
legal proceedings in the court of claims or in a court of appeals, 158
court of common pleas, municipal court, or county court. 159

(H) The clerk of the court of common pleas that enters an 160
order under division (D)(1) of this section shall send a certified 161
copy of the order to the supreme court for publication in a manner 162
that the supreme court determines is appropriate and that will 163
facilitate the clerk of the court of claims and a clerk of a court 164
of appeals, court of common pleas, municipal court, or county 165
court in refusing to accept pleadings or other papers submitted 166
for filing by persons who have been found to be a vexatious 167
litigator under this section and who have failed to obtain leave 168
to proceed under this section. 169

(I) Whenever it appears by suggestion of the parties or 170
otherwise that a person found to be a vexatious litigator under 171
this section has instituted, continued, or made an application in 172
legal proceedings without obtaining leave to proceed from the 173
appropriate court of common pleas or court of appeals to do so 174
under division (F) of this section, the court in which the legal 175
proceedings are pending shall dismiss the proceedings or 176
application of the vexatious litigator. 177

Sec. 2501.16. (A) Each court of appeals may appoint one or 178

more official shorthand reporters, law clerks, secretaries, and 179
any other employees that the court considers necessary for its 180
efficient operation. 181

The clerk of the court of common pleas, acting as the clerk 182
of the court of appeals for the county, shall perform the duties 183
otherwise performed and collect the fees otherwise collected by 184
the clerk of the court of common pleas, as set forth in section 185
2303.03 of the Revised Code, and shall maintain the files and 186
records of the court. The clerk of the court of common pleas, 187
acting as the clerk of the court of appeals for the county, may 188
refuse to accept for filing any pleading or paper submitted for 189
filing by a person who has been found to be a vexatious litigator 190
under section 2323.52 of the Revised Code and who has failed to 191
obtain leave from the court of appeals to proceed under that 192
section. The overhead expenses pertaining to the office of the 193
clerk of the court of common pleas that result from the clerk's 194
acting as clerk of the court of appeals for the county, other than 195
wages and salaries, shall be paid from the funds provided under 196
sections 2501.18 and 2501.181 of the Revised Code. 197

Each officer and employee appointed pursuant to this section 198
shall take an oath of office, serve at the pleasure of the court, 199
and perform any duties that the court directs. Each shorthand 200
reporter shall have the powers that are vested in official 201
shorthand reporters of the court of common pleas under sections 202
2301.18 to 2301.26 of the Revised Code. Whenever an opinion, per 203
curiam, or report of a case has been prepared in accordance with 204
section 2503.20 of the Revised Code, the official shorthand 205
reporter immediately shall forward one copy of the opinion, per 206
curiam, or report to the reporter of the supreme court, without 207
expense to the reporter. 208

(B) The court of appeals may determine that, for the 209
efficient operation of the court, additional funds are necessary 210

to acquire and pay for special projects of the court, including, 211
but not limited to, the acquisition of additional facilities or 212
the rehabilitation of existing facilities, the acquisition of 213
equipment, the hiring and training of staff, the employment of 214
magistrates, the training and education of judges, acting judges, 215
and magistrates, community service programs, and other related 216
services. Upon that determination, the court by rule may charge a 217
fee, in addition to all other court costs, on the filing of each 218
case or cause over which the court has jurisdiction. 219

If the court of appeals offers a special program or service 220
in cases of a specific type, the court by rule may assess an 221
additional charge in a case of that type, over and above court 222
costs, to cover the special program or service. The court shall 223
adjust the special assessment periodically, but not retroactively, 224
so that the amount assessed in those cases does not exceed the 225
actual cost of providing the service or program. 226

All moneys collected under division (B) of this section shall 227
be paid to the county treasurer of the county selected as the 228
principal seat of that court of appeals for deposit into either a 229
general special projects fund or a fund established for a specific 230
special project. Moneys from a fund of that nature shall be 231
disbursed upon an order of the court in an amount no greater than 232
the actual cost to the court of a project. If a specific fund is 233
terminated because of the discontinuance of a program or service 234
established under division (B) of this section, the court may 235
order that moneys remaining in the fund be transferred to an 236
account established under this division for a similar purpose. 237

Sec. 2503.17. (A) Except as provided in division (B) and 238
subject to division (C) of this section, the clerk of the supreme 239
court shall charge and collect forty dollars, as a filing fee, for 240
each case entered upon the minute book, including, but not limited 241

to, original actions in the court, appeals filed as of right, and 242
cases certified by the courts of appeals for review on the ground 243
of conflict of decisions; and for each motion to certify the 244
record of a court of appeals or for leave to file a notice of 245
appeal in criminal cases. The filing fees so charged and collected 246
shall be in full for docketing the cases or motions, making 247
dockets from term to term, indexing and entering appearances, 248
issuing process, filing papers, entering rules, motions, orders, 249
continuances, decrees, and judgments, making lists of causes on 250
the regular docket for publication each year, making and 251
certifying orders, decrees, and judgments of the court to other 252
tribunals, and the issuing of mandates. Except as provided in 253
division (B) of this section, the party invoking the action of the 254
court shall pay the filing fee to the clerk before the case or 255
motion is docketed, and it shall be taxed as costs and recovered 256
from the other party if the party invoking the action of the court 257
succeeds, unless the court otherwise directs. 258

(B)(1) As used in this division, "prosecutor" has the same 259
meaning as in section 2935.01 of the Revised Code. 260

(2) The clerk of the supreme court shall not charge to and 261
collect from a prosecutor the forty-dollar filing fee prescribed 262
by division (A) of this section when all of the following 263
circumstances apply: 264

(a) In accordance with the Rules of Practice of the Supreme 265
Court of Ohio, an indigent defendant in a criminal action or 266
proceeding files in the appropriate court of appeals a notice of 267
appeal within thirty days from the date of the entry of the 268
judgment or final order that is the subject of the appeal. 269

(b) The indigent defendant fails to file or offer for filing 270
in the supreme court within thirty days from the date of the 271
filing of the notice of appeal in the court of appeals, a copy of 272
the notice of appeal supported by a memorandum in support of 273

jurisdiction and other documentation and information as required 274
by the Rules of Practice of the Supreme Court of Ohio. 275

(c) The prosecutor or a representative of the prosecutor 276
associated with the criminal action or proceeding files a motion 277
to docket and dismiss the appeal of the indigent defendant for 278
lack of prosecution as authorized by the Rules of Practice of the 279
Supreme Court of Ohio. 280

(d) The prosecutor states in the motion that the forty-dollar 281
filing fee does not accompany the motion because of the 282
applicability of this division, and the clerk of the supreme court 283
determines that this division applies. 284

~~(C) Under the circumstances described in sections 2969.21 to 285
2969.27 of the Revised Code, the clerk of the supreme court shall 286
charge the fees and perform the other duties specified in those 287
sections. 288~~

Sec. 2969.21. As used in sections 2969.21 to 2969.27 of the 289
Revised Code: 290

(A) "Clerk" means the elected or appointed clerk of any court 291
in this state, except the court of claims or the supreme court, in 292
which an inmate has commenced a civil action against a government 293
entity or employee or has filed an appeal of the judgment or order 294
in a civil action of that nature. 295

(B)(1) "Civil action or appeal against a government entity or 296
employee" means any of the following: 297

(a) A civil action that an inmate commences against the 298
state, a political subdivision, or an employee of the state or a 299
political subdivision in a court of common pleas, court of 300
appeals, county court, or municipal court ~~or in the supreme court;~~ 301

(b) An appeal of the judgment or order in a civil action of 302
the type described in division (B)(1)(a) of this section that an 303

inmate files in a court of appeals ~~or in the supreme court.~~ 304

(2) "Civil action or appeal against a governmental entity or 305
employee" does not include any civil action that an inmate 306
commences against the state, a political subdivision, or an 307
employee of the state or a political subdivision in the court of 308
claims or the supreme court or an appeal of the judgment or order 309
entered by the court of claims in a civil action of that nature, 310
that an inmate files in a court of appeals or the supreme court. 311

(C) "Employee" means an officer or employee of the state or 312
of a political subdivision who is acting under color of state law. 313

(D) "Inmate" means a person who is in actual confinement in a 314
state correctional institution or in a county, multicounty, 315
municipal, municipal-county, or multicounty-municipal jail or 316
workhouse or a releasee who is serving a sanction in a violation 317
sanction center. 318

(E) "Inmate account" means an account maintained by the 319
department of rehabilitation and correction under rules adopted by 320
the director of rehabilitation and correction pursuant to section 321
5120.01 of the Revised Code or a similar account maintained by a 322
sheriff or any other administrator of a jail or workhouse or by 323
the administrator of a violation sanction center. 324

(F) "Political subdivision" means a county, township, city, 325
or village; the office of an elected officer of a county, 326
township, city, or village; or a department, board, office, 327
commission, agency, institution, or other instrumentality of a 328
county, township, city, or village. 329

(G) "State" has the same meaning as in section 2743.01 of the 330
Revised Code. 331

(H) "State correctional institution" has the same meaning as 332
in section 2967.01 of the Revised Code. 333

(I) "Violation sanction center" means an alternative 334
residential facility that houses releasees who have violated a 335
post-release control sanction or the terms and conditions of 336
parole or of a conditional pardon and that is operated pursuant to 337
section 2967.141 of the Revised Code. 338

Sec. 2969.22. (A)(1) Whenever an inmate commences a civil 339
action or appeal against a government entity or employee on or 340
after October 17, 1996, all of the following apply: 341

(a) The clerk of the court in which the civil action or 342
appeal is filed shall notify the inmate and either the department 343
of rehabilitation and correction, the sheriff or other 344
administrator of the jail or workhouse, or the administrator of 345
the violation sanction center, whichever has physical custody of 346
the inmate, of the deductions and procedures required by divisions 347
(A) to (D) of this section, and shall identify in the notice the 348
civil action or appeal by case name, case number, name of each 349
party, and the court in which the civil action or appeal was 350
brought. 351

(b) The clerk of the court in which the civil action or 352
appeal is filed shall charge to the inmate either the total 353
payment of the requisite fees that are described in section 354
2303.20 of the Revised Code or that otherwise are applicable to 355
actions or appeals filed in that court or, if the inmate has 356
submitted an affidavit of indigency, all funds in the inmate 357
account of that inmate in excess of ten dollars, and shall notify 358
the inmate of the charge. 359

(c) Unless the amount charged under division (A)(1)(b) of 360
this section constitutes the total amount of the requisite fees, 361
all income in the inmate account of the inmate shall be forwarded 362
to the clerk of the court during each calendar month following the 363
month in which the inmate filed the civil action or appeal until 364

the total payment of the requisite fees occurs. The first ten
dollars in the inmate account of the inmate each month shall be
excluded from that forwarding requirement. If multiple charges are
assessed to an inmate account under this division, charges shall
be calculated on the basis of the inmate's total income and shall
be paid as described in this division until the charges exceed one
hundred per cent of nonexcluded funds in the inmate account;
thereafter, all unpaid fees shall be paid simultaneously from the
inmate account of the inmate to the appropriate court or courts
pro rata.

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(d) Upon receipt of the notice of the requisite fees payable
pursuant to divisions (A)(1)(a) to (c) of this section, the
department, sheriff or other administrator of the jail or
workhouse, or the administrator of the violation sanction center
shall deduct from the inmate account of the inmate and transmit to
the clerk of the appropriate court the appropriate amounts of the
requisite fees as described in divisions (A)(1)(b) and (c) of this
section.

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(2) The procedures described in this section apply
notwithstanding any contrary court rule or the filing of a poverty
affidavit.

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(3) This section does not limit the clerk of a court of
common pleas, court of appeals, county court, or municipal court
~~or the clerk of the supreme court~~ from considering any other
inmate resources separate and apart from an inmate account of an
inmate in evaluating the inmate's ability to pay court costs,
fees, awards, or other amounts.

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(B) An inmate who commences a civil action or appeal against
a governmental entity or employee on or after October 17, 1996,
shall be considered to have authorized payment as the plaintiff in
the civil action or the appellant in the appeal of the requisite
fees that are described in section 2303.20 of the Revised Code or

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that otherwise are applicable to actions or appeals filed in the 397
court in which the action or appeal is filed, using the procedures 398
set forth in this section, until total payment of the requisite 399
fees. 400

(C)(1) If an inmate files a civil action or appeal against a 401
government entity or employee on or after October 17, 1996, upon 402
the termination of the civil action or appeal, the clerk of the 403
court in which the action or appeal was filed shall notify the 404
department of rehabilitation and correction, the sheriff or other 405
administrator of the jail or workhouse, or the administrator of 406
the violation sanction center of the outcome of the civil action 407
or appeal and shall identify the civil action or appeal by case 408
name, case number, name of each party, and the court in which the 409
civil action or appeal was brought. 410

(2) The department of rehabilitation and correction, the 411
sheriff or other administrator of a jail or workhouse, or the 412
administrator of the violation sanction center shall keep in the 413
inmate's file a record of the information supplied by the clerk of 414
the appropriate court under division (C)(1) of this section. 415

(D) If an inmate is to be released from confinement prior to 416
the total payment of the requisite fees as provided in divisions 417
(A) and (B) of this section, the department of rehabilitation and 418
correction, the sheriff or other administrator of the jail or 419
workhouse, or the administrator of the violation sanction center, 420
whichever has physical custody of the inmate, shall inform the 421
clerk of the court of common pleas, court of appeals, county 422
court, or municipal court, ~~or supreme court~~ of the release. The 423
department, sheriff or other administrator of the jail or 424
workhouse, or administrator of the violation sanction center shall 425
deduct from the inmate account of the inmate in the month of the 426
inmate's release from custody an amount sufficient to pay the 427
remainder of the requisite fees owed and transmit that amount to 428

the clerk. If there are insufficient funds in the inmate account 429
of the inmate to totally pay the requisite fees, the department, 430
sheriff or other administrator of the jail or workhouse, or 431
administrator of the violation sanction center shall deduct the 432
balance of the account and transmit that amount to the clerk. The 433
clerk shall inform the court of the amount of the requisite fees 434
still owed. 435

Sec. 2969.25. (A) At the time that an inmate commences a 436
civil action or appeal against a government entity or employee, 437
the inmate shall file with the court an affidavit that contains a 438
description of each civil action or appeal of a civil action that 439
the inmate has filed in the previous five years in any state or 440
federal court. The affidavit shall include all of the following 441
for each of those civil actions or appeals: 442

(1) A brief description of the nature of the civil action or 443
appeal; 444

(2) The case name, case number, and the court in which the 445
civil action or appeal was brought; 446

(3) The name of each party to the civil action or appeal; 447

(4) The outcome of the civil action or appeal, including 448
whether the court dismissed the civil action or appeal as 449
frivolous or malicious under state or federal law or rule of 450
court, whether the court made an award against the inmate or the 451
inmate's counsel of record for frivolous conduct under section 452
2323.51 of the Revised Code, another statute, or a rule of court, 453
and, if the court so dismissed the action or appeal or made an 454
award of that nature, the date of the final order affirming the 455
dismissal or award. 456

(B) If an inmate who files a civil action in a court of 457
common pleas, court of appeals, county court, or municipal court 458
~~or in the supreme court~~ or an inmate who files an appeal from a 459

judgment or order in a civil action in any of those courts has 460
filed three or more civil actions or appeals of civil actions in a 461
court of record in this state in the preceding twelve months or 462
previously has been subject to the review procedure described in 463
this division, the court may appoint a member of the bar to review 464
the claim that is the basis of the civil action or the issues of 465
law that are the basis of the appeal and to make a recommendation 466
regarding whether the claim asserted in the action or the issues 467
of law raised in the appeal are frivolous or malicious under 468
section 2969.24 of the Revised Code, any other provision of law, 469
or rule of court. 470

(C) If an inmate who files a civil action or appeal against a 471
government entity or employee seeks a waiver of the prepayment of 472
the full filing fees assessed by the court in which the action or 473
appeal is filed, the inmate shall file with the complaint or 474
notice of appeal an affidavit that the inmate is seeking a waiver 475
of the prepayment of the court's full filing fees and an affidavit 476
of indigency. The affidavit of waiver and the affidavit of 477
indigency shall contain all of the following: 478

(1) A statement that sets forth the balance in the inmate 479
account of the inmate for each of the preceding six months, as 480
certified by the institutional cashier; 481

(2) A statement that sets forth all other cash and things of 482
value owned by the inmate at that time. 483

Section 2. That existing sections 2323.52, 2501.16, 2503.17, 484
2969.21, 2969.22, and 2969.25 of the Revised Code are hereby 485
repealed. 486