96-513 A

CRS Report for Congress

Prison Litigation Reform Act: An Overview

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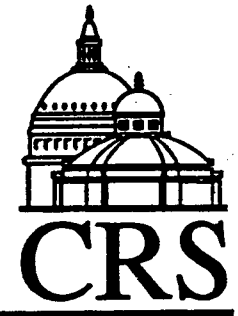
May 30, 1996



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PRISON LITIGATION REFORM ACT: AN OVERVIEW

SUMMARY

The Prison Litigation Reform Act, Public Law 104-134, effective April 26, 1996, makes major procedural and substantive changes in the federal civil rights of prisoners in federal or state custody. The Act also limits the authority of federal courts to grant prospective relief to remedy prison conditions that allegedly violate federal rights. This report briefly reviews the historical background of prisoner civil rights law, and summarizes and analyzes the Reform Act.

Prisoner civil rights litigation constitutes the largest category of federal civil rights cases, 17% of district court civil cases, and 22% of federal civil appeals. According to many observers, the federal courts have been inundated with frivolous or harassing prisoner suits that have drained the resources of the judicial system.

The opposing view is that prisoner civil rights cases reflect increased litigation in our society in general, are responsive to serious violations of constitutional rights, are necessary to correct inhumane prison conditions, and ventilate grievances that might otherwise lead to increased violence and unrest within prisons.

Prisoners file civil rights actions primarily to challenge their conditions of confinement in prisons or jails. Supreme Court decisions in the 1960s opened the federal courts to prisoner civil rights actions by finding jurisdiction over state prisoners under the Civil Rights Act of 1871, codified as 42 U.S.C. §1983. Alleged violations most commonly involve the "cruel and unusual punishments" clause of the Eighth Amendment, the free exercise of religion clause of the First Amendment, and the due process clause of the Fourteenth Amendment.

For the past 20 years, Supreme Court decisions have gradually curtailed the substantive rights of prisoners for relief under §1983. Generally, prison officials are not liable unless they act with subjective "deliberate indifference" to violate a prisoner's federal rights. These decisions have apparently had no effect on the number of suits filed. Until now, prisoners have been able to file as "paupers," seldom paid filing fees, and benefitted from pleading standards that made it difficult to dismiss cases.

The Prison Litigation Reform Act generally requires payment of filing fees and exhaustion of administrative remedies; curtails the authority of federal courts to order prospective relief; including early release of prisoners to remedy prison overcrowding; bars federal court-ordered prison construction and orders to raise taxes as remedies; places limits on repeat frivolous filers; requires judicial screening and early dismissal of nonmeritorious claims; and requires that prisoners who win monetary damage awards must use the money to pay their outstanding restitution orders to compensate crime victims.

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Prison Litigation Reform Act: An Overview

In the view of many observers, prisoner civil rights litigation has exploded in the last 25 years and strains the federal judicial system, diverting scarce resources from other fields of civil litigation. The strain on the judicial system is especially troublesome for these observers since they consider that the overwhelming number of the lawsuits are frivolous or harassing in nature. The opposing view is that prisoner civil rights litigation reflects increased litigation within our society in general, is responsive to serious violations of constitutional rights, is necessary to correct inhumane prison conditions, and ventilates grievances that might otherwise lead to increased violence and unrest within prisons.

The Prison Litigation Reform Act was enacted effective April 26, 1996 as Title VIII of the fiscal 1996 appropriations act for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies.[1] This Act makes major procedural and substantive changes in the federal civil rights of prisoners in federal or state custody. The Reform Act also curtails the authority of federal courts to remedy prison conditions, including prison overcrowding, that allegedly violate prisoners' federal rights.

This report briefly surveys the historical background of prisoner civil rights litigation,[2] and summarizes and analyzes the Prison Litigation Reform Act.

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[1] Pub. L. 104-134, Act of April 26, 1996. The Prison Litigation Reform Act amends 18 U.S.C. §3626 ("appropriate remedies with respect to prison conditions"); 18 U.S.C. §3624(b) (technical changes); 42 U.S.C. §1997 ("Civil Rights of Institutionalized Persons"); 28 U.S.C. §1915 ("*in forma pauperis* filings"); 28 U.S.C. §1346(b) ("federal tort claims"); and 11 U.S.C. §523(a) ("exception to discharge of debt in bankruptcy proceeding"). The Act also adds two new sections -- §1915A ("Screening") and §1932 ("Revocation of earned release credit") -- to title 28, and new free-standing provisions regarding satisfaction of victim restitution orders and notice to crime victims of pending damage awards to prisoners. By reference, the Act alters the rights of prisoners pursuant to 42 U.S.C. §§1983 and 1988. Finally, as a technical adjustment, the Act repeals subsections (b) and (d) of section 20409 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (Act of September 13, 1994).

[2] For a more comprehensive review and analysis of pre-1996 prisoner civil rights litigation, see D. Schrader, *Prisoner Civil Rights Litigation and the 1996 Reform Act*, CRS Report No. 96-468A.

BACKGROUND

At common law, a person imprisoned on a felony conviction could neither be a witness in, nor file, a lawsuit.[3] (The prisoner could challenge the jurisdiction of the court that convicted him/her through the equitable writ of habeas corpus;[4] this was not an action at law.) The convicted felon could not be trusted to abide by the oath to tell the truth, which was required of lawsuit witnesses.

Prisoner civil rights litigation in the United States had its primary genesis in Supreme Court decisions in the 1960s. These decisions changed legal doctrine that had formerly barred most prisoner civil rights suits.

Statutory Basis

Prisoners file civil rights actions primarily to challenge their conditions of confinement in prisons or jails.[5] Federal district courts have jurisdiction over cases by state prisoners under the Civil Rights Act, 42 U.S.C. §1983. The text of section 1983 is substantially the same as when it was originally enacted as Section 1 of the Civil Rights Act of 1871.[6] Section 1983 is now interpreted as creating a private cause of action against any person who, under color of state law, deprives another citizen or person within the jurisdiction of the United States of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States.

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[3] Doumar, *Prisoners' Civil Rights Suits: A Pompous Delusion,* 11 GEO. MASON L. REV. 1, 5 (1988).

[4] Concerns have also been expressed about the volume of prisoner petitions for writs of habeas corpus, which are filed to obtain release from prison, to delay execution of the death penalty, or have the death penalty reduced to life in prison. The caseload statistics of the Administrative Office of the U.S. Courts distinguish between prisoner civil rights filings and habeas corpus petitions. This report covers only prisoner civil rights filings. As a matter of interest, however, habeas corpus reform was enacted April 24, 1996 as Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132. For an overview of this Act, see C.Doyle, *Habeas Corpus & the Antiterrorism and Effective Death Penalty Act of 1996,* CRS Report No. 96-423.

[5] This report focuses on litigation by those confined in prisons rather than jails. Jails are both pretrial detention facilities and places of punishment for short periods -- usually one year or less -- for lesser offenses. Many of the prison conditions of confinement cases apply in the jail context. Pretrial detainees, however, retain more constitutional rights than convicted felons. *See*
Bell v. Wolfish, 441 U.S. 520, 539 (1979) (punishment "may not constitutionally be inflicted upon detainees *qua* detainees").

[6] Act of April 20. 1871, ch. 22, 17 Stat. 13. Section 1983 was amended slightly in 1979 to include the District of Columbia within its purview. Pub. L. 96-170, 93 Stat. 1284, Act of December 29, 1979.

The Civil Rights Act of 1871 was passed during the Reconstruction Period in response to Ku Klux Klan activity in the South primarily. The scope of the 1871 Act was circumscribed by the Supreme Court until the middle of the 20th Century.[7]

Although 42 U.S.C. §1983 provides the statutory cause of action for most prisoner civil rights claims, violations of civil rights may also be asserted under the Religious Freedom Restoration Act of 1993.[8] The Civil Rights of Institutionalized Persons Act of 1980[9] does not create a private cause of action.[10] The Act empowers the Attorney General to initiate suits and to certify that a place of civil confinement, prison, or other correctional facility meets appropriate standards relating to conditions of confinement and procedural due process in disciplinary proceedings.

Constitutional Norms

Section 1983 does not itself create any substantive rights. Instead, it is the vehicle for civil actions to obtain relief against violation of a constitutional right. The constitutional norms have been developed by the courts. In prisoner civil rights litigation, alleged violations most commonly involve the "cruel and unusual punishments" clause of the Eighth Amendment, the free exercise of religion clause of the First Amendment, or the due process clause of the Fourteenth Amendment.

Prisoners have filed suits alleging violations of constitutional rights in a wide variety of circumstances.[11] The following list is indicative but not exhaustive of the issues litigated: freedom from cruel and unusual punishment; freedom from unlawful physical violence by corrections officers or other inmates; procedural due process for a protected "liberty interest;" equal protection of laws; property rights; access to courts, including legal materials; religious freedom; medical care; right to receive and send communications; access to information; contacts with the press and media; freedom of speech; freedom of association; and protection from unreasonable searches and seizures.

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[7] Unlawful acts by state officials were not considered "state" actions. *Barney v. City of New York,* 193 U.S. 430, 438 (1904) (state courts can remedy acts of state officers done without the authority of or contrary to state law).

[8] Pub. Law 103-141, 107 Stat. 1488, Act of November 16, 1993; codified as 42 U.S.C. §2000bb.

[9] Pub. Law 96-247, 94 Stat. 349, Act of May 23, 1980; codified at 42 U.S.C. §1997; amended by Pub. Law 104-134, April 26, 1996.

[10] *Price v. Brittain,* 874 F.2d 252 (5th Cir. 1989).

[11] Their success rate is very low, however, which will be discussed in the section relating to judicial caseload in prisoner civil rights actions.

In some areas, the prisoners' claims have not been recognized at all. For example, there is no protection against searches and seizures in prison;[12] there is no right to meet with the press or media.[13] Where rights have been recognized, they are subject to many restrictions.

JUDICIAL INTERPRETATION BEFORE 1996: PROVIDING ACCESS TO PRISONERS' CLAIMS

Although the precursor of §1983 was enacted in 1871 to enforce the 14th Amendment, the statute was seldom successfully invoked before the 1960s (except for an initial period of activity soon after enactment). The federal courts followed a "hands- off" policy concerning prison administration.[14]

Monroe and Cooper Cases

The Supreme Court applied §1983 to an unauthorized illegal act by state officials for the first time in *Monroe v. Pape,* 365 U.S. 167 (1961), when it reversed a lower court dismissal of a civil action by black plaintiffs against the police for an unlawful search and seizure. The illegal search and seizure were held to occur "under color of law" even though the state law provided a remedy. Section 1983 was held supplementary to the state remedy and could be invoked without exhaustion of state remedies. This was a nonprisoner case.

After *Monroe,* plaintiffs alleging constitutional wrongs could invoke §1983 not only to attack the constitutionality of official state policies but also to attack individual misconduct in excess of state law. In the latter case, officials have personal liability for damages.[15]

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[12] *Hudson v. Palmer,* 468 U.S. 517 (1984).

[13] *Pell v. Procunier,* 417 U.S. 817 (1974).

[14] Two nonprisoner 1940s *criminal* cases prepared the way for the coming changes in prisoners' civil rights. *United States v. Classic,* 313 U.S. 299 (1941) (action is taken "under color of" state law if state election officials misused power granted by state law); *Screws v. United States,* 325 U.S. 91 (1945) (federal remedy is available for violation of constitutional right even if state police exceeded their state law authority and state law provides a remedy.

[15] Personal liability was emphasized initially because the *Monroe* case exempted local governments from paying the §1983 damages where state law was violated. This part of the *Monroe* decision was later reversed by *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978), which extended liability to municipalities. Even after the *Monell* decision, however, the Court continued initially to frame municipal liability in terms of individual wrongdoing. The most recent decisions clarify that where local policies or obviously inadequate training programs caused the constitutional wrongs, there is no need to search for individual wrongdoing.

The first case to apply §1983 to an action by a state prisoner was *Cooper v. Pate,* 378 U.S. 546 (1964). In a two-paragraph opinion, the Court reversed a lower court dismissal of the complaint, which alleged deprivation of the right to purchase Muslim religious publications and denial of other privileges to the prisoner because he practiced the Muslim religion.

"In light of the prior inaccessibility of courts to most prisoner civil suits, *Cooper v. Pate* was a monumental decision."[16] According to one federal judge, "[n]o one anticipated that this brief opinion would trigger the subsequent flood of cases, nor that it would have as profound an effect as it did upon the federal court system."[17] In fiscal year 1966, prisoners filed 218 civil rights cases. By 1972, the annual filing by state prisoners reached 3500; by 1982, these filings reached 16,000.[18] By fiscal 1995, prisoner civil rights filings numbered 41, 679.[19]

State governments are not liable for money damages in prisoner civil rights suits unless the state has waived its sovereign immunity under the 11th Amendment.[20] Nonmonetary relief may be obtained against the states. Local governments may be liable for monetary or nonmonetary relief under *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978). Individual prison officials may be personally liable if they violate the federal civil rights of prisoners.

In Forma Pauperis Filings

Before 1996, virtually all prisoner civil rights cases were filed *pro se* and *in forma pauperis.* The Supreme Court in 1972 ruled that a prisoner *pro se* petition cannot be dismissed for failure to state a claim unless it appears "beyond doubt" that the plaintiff can prove no set of facts to support the claim. *Haines v. Kerner.* 404 U.S. 519 (1972). Under this pleading standard, it has been difficult to dismiss prisoner claims as frivolous, without at least requiring the government defendants to respond to the claims with motions supported by affidavits or briefs. The Reform Act apparently alters this pleading standard.

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[16] Doumar, *Prisoners' Civil Rights Suits: A Pompous Delusion,* 11 GEO. MASON L. REV. 1, 5 (1988). Robert Doumar is a federal district judge for the Eastern District of Virginia, Norfolk Division.

[17] *Id.* at 6.

[18] *Ibid.*

[19] Administrative Office of the U.S. Courts.

[20] *Edelman v. Jordan,* 415 U.S. 651 (1974).

The Court also struck down prison regulations that banned the activities of "jailhouse lawyers"[21] -- inmates who provide "legal" services to other inmates. *Johnson v. Avery,* 393 U.S. 483 (1969). Moreover, prison authorities must either establish prison law libraries or otherwise establish systems for assuring access to the courts. *Bounds v. Smith,* 430 U.S. 817 (1977).[22]

Due Process in Prison Discipline

Prisoners are entitled to minimal due process before disciplinary punishment can be imposed by prison officials for violation of prison rules or other misconduct, except for the withdrawal of lesser privileges. *Wolff v. McDonnell,* 418 U.S. 539 (1974). Generally, the prisoner must be given notice of the charges, have an opportunity to be heard and present reasons why the discipline should not be imposed (but not necessarily the right to call other witnesses), and receive written notice of a specific decision by a neutral decision-maker. If minimal due process is not accorded prisoners before punishment, they can file §1983 actions. The Reform Act requires exhaustion of administrative remedies.

Actions Against Federal Officials

Section 1983 applies only to alleged violations of constitutional rights or federal law by state actors.

In the case of federal prisoner litigation against federal officials, however, the Supreme Court created a remedy analogous to §1983 for constitutional wrongs by federal officials. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). The Court held that where federal officials, acting under color of federal authority, conducted an illegal search and seizure, the complaint stated a cause of action under the Fourth Amendment for damages upon proof of injuries resulting from the constitutional violation. Prisoner civil rights cases against federal officials are referred to as *Bivens* cases.

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[21] Prison administrators sought to justify the ban as related to prison security and order. Jailhouse lawyers often received payments for "legal" services in drugs or sexual favors, or otherwise dispensed their services as a means of power and control over other inmates. The Supreme Court attached great importance to the need for access to the courts and assistance in prisoner habeas corpus petitions. Any problems relating to prison security and control could be resolved without a complete ban on inmate "lawyering." While this case involved habeas corpus petitions, it is clear that jailhouse lawyers also cannot be prohibited from providing assistance in civil rights petitions. Reasonable restrictions on the activities of jailhouse lawyers may be upheld.

[22] The scope of this obligation to provide access to legal materials is before the Supreme Court this term. Oral arguments were heard in *Lewis v. Casey,* No. 94-1511, on November 29, 1995. A group of inmates allege the Arizona prisons fail to provide adequate access to legal libraries and fail to provide foreign language services for non-English-speaking inmates.

Although federal prisoners account for only about 4% of the prisoner civil rights litigation,[23] they file proportionately more claims than state prisoners. An important distinction between §1983 and *Bivens* cases is that attorney's fees are available in §1983 cases[24] but not in *Bivens* actions.[25]

RECENT SUPREME COURT DECISIONS: PRISONER CIVIL RIGHTS LITIGATION

Within 10 years of opening the door to prisoner civil rights litigation, the Supreme Court began a 20-year series of decisions that significantly restrict prisoners' substantive rights. "The flow of prisoner filings continues, however, because these restrictive decisions merely limit the substantive rights of prisoners and not their procedural access to federal courts for any and all complaints."[26]

In providing guidance to the lower courts in the handling of §1983 prisoner claims, the Supreme Court has 1) developed state-of-mind standards governing the liability of individual government officials, and 2) developed due process standards relating to imposition of disciplinary punishment where official conduct threatens a protected "liberty interest."

State-of-Mind Standards

Section 1983 itself "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels v. Williams,* 474 U.S. 327 (1986). The particular state-of-mind requirement in any given §1983 case depends upon the constitutional violation for which the plaintiff seeks redress. Later cases have established that the prisoner must generally prove that the officials acted with "deliberate indifference" in violating a constitutional right.

In a 1994 opinion, the Court again held that "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane

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[23] H. Eisenberg, *Rethinking Prisoner Civil Rights Cases and the Provision of Counsel,* 17 SO.ILL. U. L. JOUR. 417, 422 (1993).

[24] A §1983 claimant who receives only nominal damages is nevertheless entitled to receive attorney's fees as the prevailing party, but the amount of damages is relevant to the issue of the reasonableness of the attorney's fee. *Farrar v. Hobby,* 506 U.S. 103 (1992).

[25] H. Eisenberg, *Rethinking Prisoner Civil Rights Cases and the Provision of Counsel,* 17 SO. ILL. U. L. JOUR. 417, 422 (1993).

[26] Doumar, *Prisoners' Civil Rights Suits: A Pompous Delusion,*" 11 GEO. MASON L. REV. 1, 15 (1988).

conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan,* 114 S.Ct. 1970, 1979 (1994). This is a standard of subjective deliberate indifference by prison officials to inmate health or safety.

Farmer clarifies that official violations of the Eighth Amendment in prison conditions cases give rise to liability under §1983 or *Bivens*[27] only if prison officials have a subjective knowledge and awareness of the risk of a constitutional wrong amounting to criminal recklessness.[28]

The Court also affirmed that, for liability to exist on the ground of a violation of the Eighth Amendment, the alleged deprivation of a constitutional right must be objectively "sufficiently serious."

Protected Liberty Interests

In its most recent prisoner civil rights case, the Court abandoned the methodology it had established in *Hewitt v. Helms,* 459 U.S. 460 (1983), in favor of a more restrictive standard or methodology for determining when a prisoner enjoys a protected liberty interest that cannot be changed or withdrawn without due process. Chief Justice Rehnquist wrote the majority opinion in both cases.

The new standard set by *Sandin v. Conner,* 115 S.Ct. 2293 (1995) in prison disciplinary punishment is that the prisoner must have suffered a hardship that is atypical and significant in ordinary prison life.

The Court spoke approvingly of the minimal due process standards created by *Wolff v. McDonnell,* 418 U.S. 539 (1974), and emphasized that the *Wolff* due process standards are required only in cases of serious misconduct involving issues of real substance. "Discipline by prison officials in a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law." 115 S.Ct. at 2301.

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[27] Although the *Farmer* case is a *Bivens* action against federal prison officials, it is clear that the same state-of-mind requirement applies in §1983 prison conditions cases.

[28] It is not clear how the Court will apply the subjective deliberate indifference standard in cases where the prisoner asserts that actions of prison officials pose an unreasonable risk of serious harm to the prisoner's *future* health. One year earlier, in *Helling v. McKinney,* 113 S.Ct. 2475 (1993), the Court refused to dismiss a complaint based on exposure to second-hand tobacco smoke without giving the prisoner a chance to prove his allegations. At the same time, the Court emphasized that the prisoner would have a high burden to carry in proving both subjective deliberate indifference and objectively serious harm. Moreover, the Court noted that the Nevada prisons had adopted smoking policies which undercut the prisoner's allegation of future harm and would bear heavily on the prisoner's ability to prove officials' deliberate indifference.

PRISON LITIGATION REFORM ACT

The Prison Litigation Reform Act, Public Law 104-134,[29] revises the criminal code regarding the appropriate remedies for prison conditions in violation of the Constitution or federal law, including prison overcrowding.[30] These provisions limit the authority of the federal courts to fashion remedies to correct violations of federal rights.

The Act also amends the Civil Rights of Institutionalized Persons Act (42 U.S.C. §1997) to make major changes in the procedural and substantive rights of federal and state prisoners and in their ability to sue for alleged violations of federal civil rights.

Limits on Prison Condition Remedies

The Reform Act prohibits 1) prospective relief[31] regarding prison conditions from extending further than necessary to correct violation of federal rights of particular plaintiffs; 2) the court from granting any relief other than the least intrusive means necessary to correct the violation.[32] The court is also directed to give substantial weight to any adverse impact on public safety or operation of the criminal justice system caused by the relief, and to respect principles of comity set out in the Reform Act. Termination of prospective relief is authorized upon motion of any party or intervenor within 2 years after its entry, or, in the case of pre-Reform Act orders, within 2 years after April 26, 1996.[33]

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[29] The Reform Act was passed as Title VIII of H.R. 3019, the fiscal 1996 appropriation for the Departments of Commerce, Justice, and State, and the Judiciary and related agencies. Act of April 26, 1996. The Senate version of the Reform Act was S. 1279. SEC. 611 of the appropriations act includes provisions similar to those in H.R. 663 ("No Frills Prison Act"), but these provisions only affect use of appropriated funds for the remainder of FY 1996. They do not change positive law, unlike the Prison Litigation Reform Act amendments.

[30] Amendment of 18 U.S.C. §3626. As enacted in the Violent Crime Control and Law Enforcement Act of 1994, section 3626 placed some limits on the authority of federal courts to order remedies for prison overcrowding. The Reform Act now places limits on the authority of federal courts not only with respect to prison overcrowding but also prison conditions in general.

[31] "Prospective relief" means all relief other than compensatory monetary damages.

[32] 18 U.S.C. §3626, as amended by Pub. L. 104-134.

[33] 18 U.S.C. §3626(b).

Bar on court-ordered prison construction. Federal courts are prohibited from ordering the construction of prisons or the raising of taxes as remedies for prison conditions in violation of federal rights.[34]

Preliminary relief. If the court orders preliminary injunctive relief, the injunction shall automatically expire 90 days after its entry, unless the court makes the statutory findings required to justify prospective relief and makes the order final before expiration of the 90-day period. The preliminary injunctive relief must also be narrowly drawn, extend no further than necessary to correct a violation, and be the least intrusive means necessary to correct the violation. In addition to giving substantial weight to any adverse impact on public safety in ordering preliminary relief, the court must respect principles of comity set out in the Reform Act.[35]

Comity. The statutory principles of comity require that the court not order any prospective relief that requires or permits a state or local government official to exceed his or her authority or otherwise violate state or local law unless the relief is necessary to correct the violation of a federal right and no other relief will correct the violation.[36]

Prisoner release orders. Only a three-judge court pursuant to 28 U.S.C. §2284 can enter a prisoner release order as relief for prison conditions violations of Federal rights. To enter such an order, the three-judge court must find by clear and convincing evidence that crowding is the primary cause of the violation of a federal right and that no other relief will remedy the violation.[37] As pre-conditions to convening a three-judge court, the district court must have issued a less intrusive prior order which failed to remedy the violation, and the defendants must have had a reasonable amount of time to comply with the previous court order.[38]

Any state or local official or unit of government whose jurisdiction or function includes responsibility for the jail, prison, or correctional facility affected by a possible prisoner release order has standing to oppose imposition of the order or its continuation.[39]

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[34] 18 U.S.C. §3626(a)(1)(C). The term "prison" is defined to mean any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law.

[35] 18 U.S.C. §3626(a)(2).

[36] 18 U.S.C. §3626(a)(1)(B).

[37] 18 U.S.C. §3626(a)(3).

[38] 18 U.S.C. §3626(a)(3)(A).

[39] 18 U.S.C. §3626(a)(3)(F).

Special masters. If special masters are appointed, they must be paid from funds appropriated to the Judiciary.[40]

Settlements. The courts are prohibited from entering or approving a consent decree unless it complies with the limitations on relief set by 18 U.S.C. §3626(a). Private settlement agreements must also comply with the same limitations on relief if the terms of the agreement are subject to court enforcement.[41]

All prospective relief affected. The amended section 3626 of title 18 U.S.C. applies to all orders for prospective relief in prison condition cases, including pre-Reform Act orders.[42]

Federal Intervention

The Attorney General must personally sign any complaint by the federal government to initiate a civil action, or any motion by the federal government to intervene in civil rights litigation, under the Civil Rights of Institutionalized Persons Act.[43] The Attorney General must also personally sign any certification of compliance with federal regulations or standards by state governments regarding conditions of confinement in state institutions.[44]

Exhaustion of Administrative Remedies

The Prison Litigation Reform Act mandates exhaustion of federal and state administrative remedies before filing any §1983 action or other federal action with respect to prison conditions.[45] Exhaustion is required for persons confined in any jail, prison, or other correctional facility.

Before passage of the Reform Act, the courts had discretion to require exhaustion, but they did not require exhaustion where monetary relief was sought and the state did not provide damages as an administrative remedy. Since most §1983 petitioners seek monetary relief, exhaustion was generally not required.

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[40] 18 U.S.C. §3626(f)(4).

[41] 18 U.S.C. §3626(c).

[42] SEC. 802(b) of Pub. L. 104-134.

[43] Amendments of 42 U.S.C. §§1997a and 1997c.

[44] Amendment of 42 U.S.C. §1997b.

[45] Amendment of 42 U.S.C. §1997e.

The Reform Act also provides that the failure of a state to adopt or adhere to an administrative grievance procedure for prisoners shall not constitute a basis for action under section 3 or 5 of the Civil Rights of Institutionalized Persons Act.

Judicial Screening

The Reform Act directs the courts to screen and dismiss actions, as soon as possible either before or after docketing, that are frivolous or malicious, fail to state a claim upon which relief could be granted, or seek monetary relief from defendants who are immune from such relief (i.e., state governments that have not waived sovereign immunity).[46]

The same standards are set out in a new dismissal provision in §1997e of the Civil Rights of Institutionalized Persons Act. Prisoner claims must be dismissed on the court's own motion or on the motion of a party if the claims are frivolous, malicious, fail to state a claim upon which relief can be granted, or seek monetary relief from a defendant who is immune to such relief.

Limitations on Relief for Prisoners

No prisoner confined in a jail, prison, or other correctional facility may bring a Federal civil rights action for mental or emotional injury suffered while in custody without a prior showing of a physical injury.[47]

For purposes of filing a federal civil rights action, the Reform Act defines "prisoner" to mean "any person incarcerated or detained" in any facility who is "accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."[48] The limitations on prisoner civil rights actions legislated by the Reform Act therefore apply to persons detained in jail awaiting trial, to juvenile detainees or offenders, and, of course, to adult offenders confined in a jail, prison, or other correctional facility.

Conduct of Hearings

To the extent practicable, where a prisoner's participation is required in pretrial proceedings, the proceedings shall be conducted by telephone, video

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[46] New §1915A added to title 28 U.S.C.

[47] SEC. 7(e) of 42 U.S.C. §1997e as amended by Pub. L. 104-134. The Reform Act erects the same bar on mental or emotional injury tort claims by convicted felons. 28 U.S.C. §1346(b)(2).

[48] SEC. 7(h) of 42 U.S.C. §1997e as amended by Pub. L. 104-134.

conference, or other telecommunications technology without removing the prisoner from his or her place of confinement. Subject to the agreement of the Federal or state custodial officials, hearings may be conducted at the place of confinement.[49]

Attorney's Fees

The Reform Act sets limits on an award of attorney's fees in prisoner civil rights actions. Attorney fee awards pursuant to 42 U.S.C. §1988 are prohibited except to the extent the fee was directly and reasonably incurred in proving an actual violation of a prisoner's rights protected by statute and then only if one of two other conditions is met: i) the amount of the fee is proportionately related to the court ordered relief, or ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.[50]

The first condition addresses cases where a jury has awarded a prisoner nominal damages (e.g., ten cents), but the court allows significant attorney's fees (e.g., $28,000).[51] The second condition relates to cases where attorneys are involved in enforcing nonmonetary relief.

The Reform Act also requires the prisoner to pay up to 25% of any monetary damages to satisfy the fees of his/her attorney. Also, the hourly rate shall not be greater than 150% of the rate established by 18 U.S.C. §3006A for court-appointed counsel.

In Forma Pauperis Filings

Filing fees. A prisoner seeking to file *in forma pauperis* must submit a certified copy of his prison trust fund for the most recent six-months and pay the full amount of a filing fee, if any funds are available. The court must set

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[49] SEC. 7(h) of 42 U.S.C. §1997e.

[50] SEC. 7(d) of 42 U.S.C. §1997e as amended by Pub. L. 104-134.

[51] These were the facts in *Lucas v. Guyton,* 901 F. Supp. 1047 (D. So. Car. 1995). A jury found for a death-row inmate on one claim and awarded 10 cents in damages. The evidence demonstrated that the inmate had a history of self inflicted injuries and a habit of fighting with guards. The day of the incident, the inmate was admittedly drunk, swung the first punch, possibly spat at the guard, and violently resisted transfer to an isolation cell. The district court thought it significant that the jury awarded even 10 cents in damages. (Apparently the court did not consider the possibility that the award was actually in effect an insulting award for wasting the jury's time.) The court awarded attorney's fees of $28,700 because counsel had been instrumental in vindicating a constitutional right. (The jury knew of course that the prisoner was on death-row but did not know the facts of the crime. Lucas had murdered two elderly people in their home.)

a schedule for collecting the fees from the individual trust fund.[52] If no funds are available to pay the filing fee, the prisoner may file the civil rights action without paying a fee.

False allegations of poverty. If the court finds that the allegation of poverty is untrue, it shall dismiss the case at any time. For a third time, the Reform Act also specifies dismissal of the case if the court determines the action or appeal is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Repeat frivolous filings. A prisoner is prohibited from filing *in forma pauperis* if three or more earlier actions or appeals have been dismissed on the grounds the case was frivolous, malicious, or failed to state a claim upon which relief could be granted, unless the prisoner is under imminent danger of serious physical injury.[53]

Satisfaction of Restitution Orders

Any compensatory damages award to a prisoner for a civil rights violation must be paid directly to satisfy any outstanding restitution orders pending against the prisoner.[54] The prisoner receives any amount that remains after full payment of the restitution order.

The Reform Act also requires, that prior to payment of an award to a prisoner, reasonable efforts shall be made to notify the prisoner's crime victims concerning the pending award.[55] The intent is to ensure that victims are compensated before the perpetrator of the crime receives a civil rights money damages award.

Revocation of Good Time Credit for Malicious Suits

Another disincentive to filing malicious or harassing suits applies only to prisoners in federal custody. The court on its own motion or on the motion of any party may order revocation of any earned good time credit under 18 U.S.C. §3624(b) that has not yet vested if the court finds the claim was filed for a

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[52] Amendment of 28 U.S.C. §1915.

[53] New 28 U.S.C. §1915(g), as added by Pub. L. 104-134.

[54] SEC. 807 of Pub. L. 104-134.

[55] SEC. 808 of Pub. L. 104-134.

malicious purpose or solely to harass the defendant, or the prisoner testifies falsely or knowingly presents false evidence.[56]

A related amendment provides that good time credit awarded under 18 U.S.C. §3624 after enactment of the Prison Litigation Reform Act (i.e., after April 26, 1996) shall vest on the date the prisoner is released from custody.

Waiver of Reply by Defendant: Pleading Standards

Any defendant in a prisoner civil rights case under 42 U.S.C. §1983 or any other federal law may waive the right to reply. This waiver shall not constitute an admission of the allegations in the complaint.[57]

No relief shall be granted to the prisoner unless a reply is filed.[58] The court may require any defendant to reply if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.[59]

If defendants exercise their initial right not to reply in prisoner civil rights cases, these waiver provisions coupled with the requirement for judicial screening to identify frivolous or malicious petitions, or petitions that fail to state a claim, could lead to early dismissals of a substantial number of prisoner petitions. Under pre-Reform Act law, the Supreme Court had held that a prisoner *in forma pauperis* petition could not be dismissed for failure to state a claim unless it appears "beyond doubt" that the plaintiff can prove no set of facts to support the claim. *Haines v. Kerner,* 404 U.S. 519 (1972). The Reform Act appears to change this pleading standard by requiring the court to find that the plaintiff has a reasonable opportunity to prevail on the merits before the court can order the defendant to reply. Arguably, the waiver provisions modify the *Haines* pleading standard.

CONCLUSION

The Prison Litigation Reform Act, Public Law 104-134, makes major procedural and substantive changes in prison conditions of confinement cases, including overcrowding, and in the federal civil rights of state and federal prisoners to litigate about prison conditions.

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[56] New 28 U.S.C. §1932.

[57] SEC. 7(g)(1) of 42 U.S.C. §1997e.

[58] *Ibid.*

[59] SEC. 7(g)(2) of 42 U.S.C. §1997e.

The Reform Act, which took effect April 26, 1996, curtails the authority of federal courts to remedy prison conditions, including overcrowding; requires that any prospective relief be drawn as narrowly as possible; requires prisoners to exhaust all state and federal administrative remedies before filing suit; requires payment of filing fees; restricts the availability of attorney's fees; directs the courts to screen and dismiss as soon as possible petitions that are frivolous, malicious, or fail to state a claim on which relief can be granted; bars in forma pauperis petitions if three or more earlier petitions were dismissed as frivolous, malicious, or for failure to state a claim -- except where the prisoner is in imminent danger of serious physical injury; requires that any damages awarded to a prisoner must be applied to satisfy pending restitution orders against the prisoner; and requires that reasonable efforts must be taken to notify victims of the prisoner that an award is pending.

Before passage of the Prison Litigation Reform Act, virtually all prisoner civil rights cases were filed *in forma pauperis*. The Reform Act mandates payment of filing fees, unless the prisoner has no funds whatsoever.

Prisoner civil rights litigation, although based upon the 1871 Civil Rights statute, is a modern phenomenon. Supreme Court decisions in the 1960s changed previously settled legal doctrine and gave prisoners access to the federal courts. The initial emphasis was on personal liability for official conduct in violation of federal rights. By the 1980s, the Court held local government entities liable in damages for misconduct of high ranking officials whose actions represent official policy. State governments are insulated from compensatory damages under the Eleventh Amendment, unless the state waives its sovereign immunity. Nonmonetary relief may be obtained if state officials violate the constitutional rights of prisoners. The Prison Litigation Reform Act significantly curtails the authority of the federal courts to order prospective relief, such as release of prisoners to correct prison overcrowding.

Supreme Court decisions have gradually curtailed the substantive rights of prisoners in the last 20 years. The standard of care imposed on prison officials varies with the nature of the constitutional violation, but generally prison officials are not liable unless they act with "deliberate indifference" with respect to a prisoner's rights. In *Farmer v Brennan,* the Court held this standard requires subjective recklessness as defined in criminal law. With respect to imposition of prison discipline, *Sandin v. Conner* holds that only serious deprivations of rights can be litigated under 42 U.S.C. §1983 and a wrong occurs only if the prisoner can show that the proposed punishment represents an atypical, significant deprivation of rights.

These restrictive decisions have had little effect on the volume of prisoner cases since they deal with substantive standards of liability rather than access to the courts. Unlike the general population, prisoners have not ordinarily made decisions to file lawsuits based on the relative probability of success balanced by any possible costs. Prior to passage of the Reform Act, the lawsuits were essentially cost-free to prisoners, and they have had time to pursue their cases.

It is expected that the Prison Litigation Reform Act will lead in due course to a significant reduction in prisoner civil rights petitions.

The following provisions seem especially likely to reduce the incentive to file: the requirements to pay filing fees and exhaust administrative remedies; the provisions concerning restitution; the limits on repeat frivolous petitioners; the required judicial screening to identify and dismiss frivolous or malicious petitions, or those that fail to state a claim upon which relief can be granted; and the altered pleading standard (the right of a defendant to waive reply without admitting the allegations, the denial of relief unless a reply is filed, and the requirement that the court must find the plaintiff has a reasonable opportunity to prevail on the merits before the court can order the defendant to reply).