

judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988.1 of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is

required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term "prisoner" means 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.

(Pub. L. 96–247, §7, May 23, 1980, 94 Stat. 352; Pub. L. 103–322, title II, §20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub. L. 104–134, title I, §101[(a)] [title VIII, §803(d)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 113–4, title XI, §1101(a), Mar. 7, 2013, 127 Stat. 134.)

References in Text

Section 1988 of this title, referred to in subsec. (d)(1), (4), was in the original a reference to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), and has been translated as reading section 722 of the Revised Statutes of the United States to reflect the probable intent of Congress. Section 2 of the Revised Statutes, which defined the term "county", was repealed and reenacted as section 2 of Title 1, General Provisions, by act July 30, 1947, ch. 388, 61 Stat. 633, 640.

Amendments

2013—Subsec. (e). Pub. L. 113–4 inserted "or the commission of a sexual act (as defined in section 2246 of title 18)" before period at end.

1996—Pub. L. 104–134 amended section generally, substituting provisions relating to suits by prisoners, consisting of subsecs. (a) to (h), for former provisions

relating to exhaustion of remedies, consisting of subsecs. (a) to (d).

1994—Subsec. (a). Pub. L. 103–322, §20416(a)(1), substituted "exceed 180 days" for "exceed ninety days" in par. (1) and inserted before period at end of par. (2) "or are otherwise fair and effective".

Subsec. (c). Pub. L. 103–322, §20416(a)(2), inserted "or are otherwise fair and effective" before period at end of par. (1) and "or is no longer fair and effective" before period at end of par. (2).

Effective Date of 1994 Amendment

Pub. L. 103–322, title II, §20416(b), Sept. 13, 1994, 108 Stat. 1834, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994]."

Nondisclosure of Information in Actions Brought by Prisoners

Pub. L. 105–277, div. A, §101(b) [title I, §127], Oct. 21, 1998, 112 Stat. 2681–50, 2681–74, provided that: "Notwithstanding any other provision of law, in any action brought by a prisoner under section 1979 of the Revised Statutes (42 U.S.C. 1983) against a Federal, State, or local jail, prison, or correctional facility, or any employee or former employee thereof, arising out of the incarceration of that prisoner—

"(1) the financial records of a person employed or formerly employed by the Federal, State, or local jail, prison, or correctional facility, shall not be subject to

disclosure without the written consent of that person or pursuant to a court order, unless a verdict of liability has been entered against that person; and

"(2) the home address, home phone number, social security number, identity of family members, personal tax returns, and personal banking information of a person described in paragraph (1), and any other records or information of a similar nature relating to that person, shall not be subject to disclosure without the written consent of that person, or pursuant to a court order."

[Pub. L. 105–277, div. A, §101(b) [title I, §127], set out above, applicable to fiscal year 2000 and thereafter, see Pub. L. 106–113, div. B, §1000(a)(1) [title I, §109], set out as an Applicability of Provisions Relating to Use of Counterterrorism Appropriations and Nondisclosure of Information in Actions Brought by Prisoners note under section 524 of Title 28, Judiciary and Judicial Procedure.]

1 See References in Text note below.

APPENDIX G

18 U.S.C.

United States Code, 2020 Edition

Title 18 - CRIMES AND CRIMINAL PROCEDURE

PART II - CRIMINAL PROCEDURE

CHAPTER 229 - POSTSENTENCE

ADMINISTRATION

SUBCHAPTER C - IMPRISONMENT

Sec. 3626 - Appropriate remedies with respect to
prison conditions

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§3626. Appropriate remedies with respect to prison conditions

(a) Requirements for Relief.—

(1) Prospective relief.—

(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a

criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless—

(i) Federal law requires such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) Preliminary injunctive relief.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires

preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief.

Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

(3) Prisoner release order.—

(A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless—

(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner

release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that—

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

(F) Any State or local official including a legislator or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

(b) Termination of Relief.—

(1) Termination of prospective relief.—

(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph;
or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) Termination or modification of relief.—Nothing in this section shall prevent any party

or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

(c) Settlements.—

(1) Consent decrees.—In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) Private settlement agreements.—

(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) State Law Remedies.—The limitations on remedies in this section shall not apply to relief

entered by a State court based solely upon claims arising under State law.

(e) Procedure for Motions Affecting Prospective Relief.—

(1) Generally.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay.—Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay.—The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good

cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay.— Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) Special Masters.—

(1) In general.—

(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that

the remedial phase will be sufficiently complex to warrant the appointment.

(2) Appointment.—

(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) Interlocutory appeal.—Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) Compensation.—The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) Regular review of appointment.—In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) Limitations on powers and duties.—A special master appointed under this subsection—

(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

(B) shall not make any findings or communications ex parte;

(C) may be authorized by a court to assist in the development of remedial plans; and

(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) Definitions.—As used in this section—

(1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the

parties but does not include private settlements;

(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;

(3) the term "prisoner" means any person subject to incarceration, detention, or admission to 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;

(4) the term "prisoner release order" includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

(5) the term "prison" means 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;

(6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term "prospective relief" means all relief other than compensatory monetary damages;

(8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

(9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

(Added Pub. L. 103-322, title II, §20409(a), Sept. 13, 1994, 108 Stat. 1827; amended Pub. L. 104-134, title I, §101[(a)] [title VIII, §802(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-66; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-119, title I, §123(a), Nov. 26, 1997, 111 Stat. 2470.)

Editorial Notes
References in Text

The date of enactment of the Prison Litigation Reform Act, referred to in subsec. (b)(1)(A)(iii), probably means the date of enactment of the Prison Litigation Reform Act of 1995, section 101[(a)] [title VIII] of Pub. L. 104–134, which was approved Apr. 26, 1996.

The Federal Rules of Civil Procedure, referred to in subsec. (g)(8), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Amendments

1997—Subsec. (a)(1)(B)(i). Pub. L. 105–119, §123(a)(1)(A), substituted "requires" for "permits".

Subsec. (a)(3)(A). Pub. L. 105–119, §123(a)(1)(B)(i), substituted "no court shall enter a prisoner release order unless" for "no prisoner release order shall be entered unless".

Subsec. (a)(3)(F). Pub. L. 105–119, §123(a)(1)(B)(ii), inserted "including a legislator" after "local official" and substituted "prison facilities" for "program facilities".

Subsec. (b)(3). Pub. L. 105–119, §123(a)(2), substituted "current and ongoing" for "current or ongoing".

Subsec. (e)(1). Pub. L. 105–119, §123(a)(3)(A), inserted at end "Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion."

Subsec. (e)(2). Pub. L. 105–119, §123(a)(3)(B), substituted "Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay" for "Any prospective relief subject to a pending motion shall be automatically stayed".

Subsec. (e)(3), (4). Pub. L. 105–119, §123(a)(3)(C), added pars. (3) and (4).

1996—Pub. L. 104–134 amended section generally, substituting provisions relating to appropriate remedies with respect to prison conditions for former provisions relating to appropriate remedies with respect to prison crowding.

Statutory Notes and Related Subsidiaries
Effective Date of 1997 Amendment

Pub. L. 105–119, title I, §123(b), Nov. 26, 1997, 111 Stat. 2471, provided that: "The amendments made by this Act [probably should be "section", amending this section] shall take effect upon the date of the enactment of this Act [Nov. 26, 1997] and shall apply to pending cases."

Effective Date of 1996 Amendment

Pub. L. 104–134, title I, §101[(a)] [title VIII, §802(b)(1)], Apr. 26, 1996, 110 Stat. 1321, 1321–70, provided that: "Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after the date of the enactment of this title [Apr. 26, 1996]."

Effective and Termination Dates

Pub. L. 103-322, title II, §20409(b), Sept. 13, 1994, 108 Stat. 1828, which provided that this section applied to all court orders outstanding on Sept. 13, 1994, and Pub. L. 103-322, title II, §20409(d), Sept. 13, 1994, 108 Stat. 1828, which provided for the repeal of this section 5 years after Sept. 13, 1994, were repealed by Pub. L. 104-134, title I, §101[(a)] [title VIII, §802(b)(2)], Apr. 26, 1996, 110 Stat. 1321, 1321-70; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

Severability

Pub. L. 104-134, title I, §101[(a)] [title VIII, §810], Apr. 26, 1996, 110 Stat. 1321, 1321-77, provided that: "If any provision of this title [see Short Title of 1996 Amendment note set out under section 3601 of this title], an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby."

Special Masters Appointed Prior to April 26, 1996; Prohibition on Use of Funds

Pub. L. 104-208, div. A, title I, §101(a) [title III, §306], Sept. 30, 1996, 110 Stat. 3009, 3009-45, provided that: "None of the funds available to the Judiciary in fiscal years 1996 and 1997 and hereafter shall be available for expenses authorized pursuant to section 802(a) of title VIII of section 101(a) of title I of the Omnibus Consolidated Rescissions and

Appropriations Act of 1996, Public Law 104-134 [amending this section], for costs related to the appointment of Special Masters prior to April 26, 1996."

Payment of Damage Award in Satisfaction of Pending Restitution Orders

Pub. L. 104-134, title I, §101[(a)] [title VIII, §807], Apr. 26, 1996, 110 Stat. 1321, 1321-75, provided that: "Any compensatory damages awarded to a prisoner in connection with a civil action brought against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. The remainder of any such award after full payment of all pending restitution orders shall be forwarded to the prisoner."

Notice to Crime Victims of Pending Damage Award

Pub. L. 104-134, title I, §101[(a)] [title VIII, §808], Apr. 26, 1996, 110 Stat. 1321, 1321-76, provided that: "Prior to payment of any compensatory damages awarded to a prisoner in connection with a civil action brought against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, reasonable efforts shall be made to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of any such compensatory damages."