

may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs. Nothing in this subsection precludes the award of attorney's fees available under any other provisions of the United States Code.

(Pub. L. 96-247, § 5, May 23, 1980, 94 Stat. 351; Pub. L. 104-134, title I, § 101[(a)] [title VIII, § 803(c)], Apr. 26, 1996, 110 Stat. 1321, 1321-71; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

#### AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104-134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted “the Attorney General” for “he” in introductory provisions and in cl. (iii).

Subsec. (b)(1)(B). Pub. L. 104-134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted “the Attorney General” for “he”.

Subsec. (b)(2). Pub. L. 104-134, § 101[(a)] [title VIII, § 803(c)(1)(B)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any certification made by the Attorney General pursuant to this subsection shall be personally signed by him.”

Subsec. (c). Pub. L. 104-134, § 101[(a)] [title VIII, § 803(c)(2)], amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any motion to intervene made by the Attorney General pursuant to this section shall be personally signed by him.”

#### § 1997d. Prohibition of retaliation

No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting.

(Pub. L. 96-247, § 6, May 23, 1980, 94 Stat. 352.)

#### § 1997e. Suits by prisoners

##### (a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

##### (b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

##### (c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

##### (d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988<sup>1</sup> of this title, such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988<sup>1</sup> of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the 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<sup>1</sup> 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.

##### (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

<sup>1</sup> See References in Text note below.

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.)

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

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

Section 20416(b) of Pub. L. 103-322 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.]

**§ 1997f. Report to Congress**

The Attorney General shall include in the report to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28—

(1) a statement of the number, variety, and outcome of all actions instituted pursuant to this subchapter including the history of, precise reasons for, and procedures followed in initiation or intervention in each case in which action was commenced;

(2) a detailed explanation of the procedures by which the Department has received, reviewed and evaluated petitions or complaints regarding conditions in institutions;

(3) an analysis of the impact of actions instituted pursuant to this subchapter, including, when feasible, an estimate of the costs incurred by States and other political subdivisions;

(4) a statement of the financial, technical, or other assistance which has been made available from the United States to the State in order to assist in the correction of the conditions which are alleged to have deprived a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and

(5) the progress made in each Federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.

(Pub. L. 96-247, § 8, May 23, 1980, 94 Stat. 353; Pub. L. 97-256, title II, § 201(b), Sept. 8, 1982, 96 Stat. 817; Pub. L. 104-134, title I, § 101[(a)] [title VIII, § 803(e)], Apr. 26, 1996, 110 Stat. 1321, 1321-73; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Pub. L. 104-134 substituted "the report" for "his report" in introductory provisions .

1982—Pub. L. 97-256 substituted "Attorney General" for "Attorney".

**§ 1997g. Priorities for use of funds**

It is the intent of Congress that deplorable conditions in institutions covered by this subchapter amounting to deprivations of rights protected by the Constitution or laws of the United States be corrected, not only by litigation as contemplated in this subchapter, but also by the voluntary good faith efforts of agencies of Federal, State, and local governments. It is the further intention of Congress that where Federal