

§ 1997c. Intervention in actions**(a) Discretionary authority of Attorney General; preconditions; time period**

(1) Whenever an action has been commenced in any court of the United States seeking relief from egregious or flagrant conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may intervene in such action upon motion by the Attorney General.

(2) The Attorney General shall not file a motion to intervene under paragraph (1) before 90 days after the commencement of the action, except that if the court determines it would be in the interests of justice, the court may shorten or waive the time period.

(b) Certification requirements by Attorney General

(1) The Attorney General shall certify to the court in the motion to intervene filed under subsection (a)—

(A) that the Attorney General has notified in writing, at least fifteen days previously, the Governor or chief executive officer, attorney general or chief legal officer of the appropriate State or political subdivision, and the director of the institution of—

(i) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(ii) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and

(iii) to the extent feasible and consistent with the interests of other plaintiffs, the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance; and

(B) that the Attorney General believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(2) The Attorney General shall personally sign any certification made pursuant to this section.

(c) Attorney General to personally sign motion to intervene

The Attorney General shall personally sign any motion to intervene made pursuant to this section.

(d) Discretionary award of attorney fees; other award provisions unaffected

In any action in which the United States joins as an intervenor under this section, the court

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 1988¹ 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 1988¹ 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 1988¹ 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 subssecs. (a) to (h), for former provisions relating to exhaustion of remedies, consisting of subssecs. (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

¹ See References in Text note below.

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 funds are available for use in improving such institutions, priority should be given to the correction or elimination of such unconstitutional or illegal conditions which may exist. It is not the intent of this provision to require the redirection of funds from one program to another or from one State to another.

(Pub. L. 96-247, §9, May 23, 1980, 94 Stat. 354.)

§ 1997h. Notice to Federal departments

At the time of notification of the commencement of an investigation of an institution under section 1997a of this title or of the notification of an intention to file a motion to intervene under section 1997c of this title, and if the relevant institution receives Federal financial assistance from the Department of Health and Human Services or the Department of Education, the Attorney General shall notify the appropriate Secretary of the action and the reasons for such action and shall consult with such officials. Following such consultation, the Attorney General may proceed with an action under this subchapter if the Attorney General is satisfied that such action is consistent with the policies and goals of the executive branch.

(Pub. L. 96-247, §10, May 23, 1980, 94 Stat. 354; Pub. L. 104-134, title I, §101[(a)] [title VIII, §803(f)], 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 action” for “his action” and “the Attorney General is satisfied” for “he is satisfied”.

§ 1997i. Disclaimer respecting standards of care

Provisions of this subchapter shall not authorize promulgation of regulations defining standards of care.

(Pub. L. 96-247, §11, May 23, 1980, 94 Stat. 354.)

§ 1997j. Disclaimer respecting private litigation

The provisions of this subchapter shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be conducting an investigation or contemplating litigation pursuant to this subchapter shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.

(Pub. L. 96-247, §12, May 23, 1980, 94 Stat. 354.)

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facili-