The Prison Litigation Reform Act: Implication for Prisoners with Disabilities

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Sixteen percent of the 1.9 million people in the prison and jail populations in the United States, or about 340,000 people, are reported to have a serious psychiatric disability.[1] The number of prisoners and detainees with mental retardation, developmental, learning, and physical disabilities is likewise very high. In the past several years, in recognition of the number of people with disabilities who are incarcerated, an increasing number of P&As have included representation of adult and juvenile inmates within their case priorities. Although most P&A assistance to inmates in is in administrative forums, occasionally litigation has been necessary. Indeed, for several decades, people with disabilities have used litigation to remedy inadequate, inappropriate, and unconstitutional conditions and practices in prisons, jails, and juvenile detention facilities.[2] However, legislation enacted in the mid-1990s makes such litigation, whether in state or federal court, much more difficult and limits the ability of prisoners with disabilities to remedy even serious deficiencies. This paper reviews that legislation, including some recent court interpretations, and assesses its impact on individuals with disabilities.

The PLRA: In the belief that courts were flooded with frivolous prisoner litigation, Congress enacted the Prison Litigation Reform Act (PLRA) in 1996 to discourage prisoners from filing lawsuits and to curb the power of federal courts to remedy unconstitutional prison conditions.[3] The stated purpose of PLRA was to enable courts to better manage their dockets by disposing of prisoner cases without evidentiary hearings, to limit filings using the *in forma pauperis* procedure, and to narrow the scope and lower the expense of judicial intervention in prison operations. Also, the law sought

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[1] Council on State Governments, Criminal Justice/Mental Health Consensus Project, 126 (2002).

[2] The Center for Public Representation has prepared a comprehensive annotated list of prison and jail cases which raise mental health related issues. The list was most recently updated in December 2002 and is available from TASC/NAPAS.

[3] The Prison Litigation Reform Act of 1995 (PLRA) is formally identified as Public Law 104-134, Title I sec. 101(a), Title VIII sec. 801-810 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, 110 Stat. 1321, sec. 66-77, and was signed into law by President Clinton on April 26, 1996. Its primary substantive impact is the amendment or creation of six statutes: 18 U.S.C. § 3626 (remedies for allegedly illegal prison conditions); 42 U.S.C. § 1997e (regulation of federal suits by federal and state prisoners); 28 U.S.C. § 1346(b)(2) (federal tort claims act); 28 U.S.C. § 1915 (availability of *in forma pauperis* process for prisoners); 28 U.S.C. § 1915A (pre-docketing screening of prisoner cases); and, 28 U.S.C. § 1932 (good time credit deductions for improper litigation tactics).

to end on-going judicial supervision of prison administration in the absence of proof of continuing violations of prisoner civil rights.

Accordingly, Congress made prospective relief more difficult to obtain and limited the duration of preliminary injunctive relief. The maximum allowable fees for prevailing prisoner counsel were limited to below market levels. Existing consent decrees governing prison conditions were subject to automatic termination in the absence of specific findings. Prisoner cases could be summarily dismissed with prejudice, and prisoners with multiple prior dismissals barred from filing new cases absent an immediate risk of serious harm.

The Supreme Court has upheld several provisions of the statute, even though they limit judicial discretion. *Porter v. Nussle,* 534 U.S. 516 (exhaustion)(exhaustion requirement); *Miller v. French,* 530 U.S. 327 (2000)(automatic stay provisions). *See also Cagle v. Hutto,* 177 F.3d 253 (4th Cir. 1999), cert. den. 530 U.S. 1264.

Who and what are covered by the PLRA?: The PLRA applies only to "prisoners," who are defined as "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". 28 U.S.C. § 1915(h); *see also* 42 U.S.C. § 1997e(h) (identical language). Thus, sentenced inmates and inmates who are currently awaiting trial (pre-trial detainees), including juveniles, are covered by the act, even if they are being confined in a hospital.[4]

The law applies to federal and state, adult and juvenile, post-conviction and pre-trial facilities. However, in *King v. Greenblatt*, 53 F.Supp. 2d 117 (D. Mass. 1999), the court concluded that residents of a treatment center for sex offenders were not "prisoners" for purposes of the PLRA, even though the center housed individuals who were serving criminal sentences, as well as being subject to a civil commitment.[5] S*ee also, Christina*

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[4] Read broadly, the PLRA could be interpreted to include individuals who have been found not guilty by reason of insanity, or who have completed their sentence, but remain civilly committed. The courts, however, have rejected this view. *See Page v. Torrey*, 201 F.3d 1136 (9th Cir. 2000) (patient civilly committed to Atascadero State Hospital under California's Sexually Violent Predators Act after he completed his prison term was not a "prisoner" for purposes of the PLRA); *West v. Macht*, 986 F.Supp. 1141, 1143 (W.D.Wisc.1997) ("Although petitioner has been convicted of a criminal violation, his current detention is not part of the punishment for that crime but is instead a civil commitment ...."). A Center for Public Representation analysis of the impact of PLRA on persons with criminal justice system involvement in mental hospitals entitled "Prison Litigation Reform Act ("PLRA") and Residents of Mental Health Facilities," is available from TASC/NAPAS.

[5] The court also ruled that PLRA provisions regarding termination of consent decrees did not apply because the treatment center was not a "prison" within the meaning of the

A. ex rel. Jennifer A. v. Bloomberg, 167 F.Supp.2d 1094 (D. S.D. 2001) (juvenile facility not a jail, thus PLRA attorney fee limits inapplicable).

P&As as plaintiff: A P&A, of course, has standing to litigate in its own name if it can meet the traditional test of "associational standing" and sufficiently allege that at least one of its constituents has suffered an actual concrete injury that would allow the individual to sue in his or her own right.[6] 42 U.S.C. § 10805 (PAIMI Act). See, most recently, *Aiken v. Nixon*, __ F.2d. __, 2002 WL 31491408 (N.D.N.Y. 2002)(New York P&A has associational standing to raise claims of deprivation of rights attendant to strip search policy at a psychiatric hospital). There is apparently yet no case that discusses whether a P&A could avoid some or all of the provisions of the PLRA if it litigates in its own name. The issue, however, has been joined in *Disability Advocates, Inc. v. New York State Office of Mental Health*, a federal case filed by a P&A in New York's Southern District. The case alleges that the State's mental health agency has ignored the serious mental health needs of the prison population in New York in violation of the 8th and 14th Amendments, the Rehabilitation Act, and the ADA. Although no individual prisoners are named as plaintiffs, the compliant describes in detail the plight of a number of prisoners and former prisoners with psychiatric disabilities. The defendants have answered the compliant and have raised the alleged failure to exhaust administrative remedies as required by the PLRA as a defense.

Prison conditions cases: The scope of prospective relief in prison conditions cases, a staple of disability related prison litigation, has been severely limited by the PLRA. Essentially, prospective relief must track ordinary limits of equitable relief and the trial court must give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. Prospective relief may not be granted, or prospective settlements approved, "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." 18 U.S.C.A. § 3626(a)(1)(A). Preliminary relief expires unless made permanent within 90 days of the preliminary order.

Prospective relief must be terminated on motion of any party unless the court finds that it "remains necessary to correct a current and ongoing violation of the Federal Right." 18 U.S.C. § 3626(b)(3). Prospective relief is terminable on motion two years after the entry of relief, 18 U.S.C. § 3626 (b)(1), and stayed 30-90 days after filing of motion to terminate regardless of docket congestion. 18 U.S.C. § 3626(e)(2). No federal agency, state or municipality can be ordered to build a prison or raise taxes.

PLRA, even though it was operated by the state department of correction, because residents were civilly committed there for treatment, not for punishment. *Id*. at 138-139.

[6] NAPAS has several documents available that discuss P&A standing issues. See the NAPAS web site (www.napas.org) – go to members only page, and see the Management Section; also go to the Disability Issues Section and see the Federal Practice and Procedures folder.

Claims alleging Eighth Amendment violation or excessive use of force are limited by PLRA restrictions. *Higginbottom v. Carter*, 223 F.3d 1259 (11 Cir. 2000). See also *Booth v. Churner*, 206 F.3d 289 (3 Cir. 2000), affirmed 532 U.S. 731.

PLRA limits can be applied to pre-PLRA relief orders that are extended after the PLRA's effective date. *Hallett v. Morgan*, 296 F.3d 732 (9 Cir. 2002).

Exhaustion: The PLRA's exhaustion of administrative remedies requirement has caused substantial problems for prisoners seeking to sue to remedy conditions. The statute requires that "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." 42 U.S.C. § 1997e (a). The PLRA's exhaustion requirement applies even where the internal grievance process does not permit money damages and the litigating inmate seeks only money damages, as long as grievance tribunal has authority to take some action in response to inmate's complaint. *Booth v. Churner*, 532 U.S. 731 (2001). However, some courts (both prior to and after *Booth*) have held that administrative remedies need not be pursued if they would be futile or inadequate. *Rumbles v. Hill*, 182 F.3d 1064 (9th Cir. 1999). *Porter v. Nussle*, 534 U.S. 516 (2002); *Giano v. Goord*, 250 F.3d 146 (2d Cir. 2001)(exhaustion not applicable to retaliation claim). Exhaustion is an affirmative defense, rather than an element of the claim. *Wyatt v. Terhune*, 305 F.3d 1033, 1042 (9th Cir. 2002) (collecting cases).

The exhaustion requirement is prospective only, not applicable to pre-PLRA claims. *Bishop v. Lewis*, 155 F.3d 1094 (9 Cir. 1998). Dismissal for failure to exhaust is permitted without any evidentiary hearing. *Knuckles El v. Toombs*, 215 F.3d 640 (6 Cir. 2000), cert. den. 531 U.S. 1040.

Physical Injury Requirement: Before the PLRA, both state and federal prisoners could seek damages for mental and emotional injuries arising out of unconstitutional racial segregation, denial of religious liberty, unwarranted disclosure of HIV status, and pervasive verbal and sexual harassment. State prisoners brought suit under 42 U.S.C. sec. 1983, and federal prisoners proceeded under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Now, damage cases have been limited by requiring proof of physical harm. "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." 42 U.S.C. § 1997e(e). The required "showing of physical injury" is akin to Eighth Amendment standards, "more than *de minimus* but need not be significant," *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997), cited by *Todd v. Graves*, 217 F.Supp.2d 958, 961 (S.D. Iowa 2002). *Todd* also noted, however, that while a lack of physical injury may bar compensatory relief, it would not bar punitive or injunctive relief. *See also Davis v.District of Columbia*, 158 F.3d 1342 (D.C. Cir. 1998) (PLRA not a bar to injunctive relief despite lack of physical injury); and, *Canell v. Lightner*, 143 F.3d 1210 (9 Cir. 1998) (physical injury irrelevant to discrimination claim). This requirement, therefore, might make it impossible for a prisoner with mental illness who has been denied access

to her medications and, therefore, suffered emotional anguish (but no physical harm), to recover damages. *E.g.*, *Davis, supra*, (no compensation for improper disclosure of HIV status, without physical injury, due to PLRA).[7]

Release of prisoners: An order to release prisoners to implement an unremedied conditions violation must be presented to a three-judge federal court under 28 U.S.C. §2284. 18 U.S.C. § 3626 (a)(3).

Masters: Masters are often used in prison litigation to monitor and oversee implementation of relief. The PLRA makes it more difficult to appoint and attract a Master. The process for selecting a master is defined and made subject to interlocutory appeal for partiality and compensation is limited to appointed counsel rates.

Restitution: If a prisoner is entitled to a damages award, any outstanding restitution orders shall first be paid from the prisoner's share. Also, the prison authority must attempt to identify the prisoner's crime victim, to determine if the victim is the beneficiary of an order for compensation from the prisoner.

Attorney Fee Restrictions: Attorney fees are limited to an amount proportionately related to the court ordered relief for the violation, or to the amount directly and reasonably incurred in enforcing the relief ordered for the violation. 42 U.S.C. § 1997e(d)(1). Specifically, the PLRA limits the hourly rate to 150% of the rate set by the Criminal Justice Act, 18 U.S.C. § 3006A, for lawyers in criminal cases. 42 U.S.C. § 1997e(d)(1). *Martin v. Hadix*, 527 U.S. 343 (1999). Additionally, the PLRA bars attorneys' fees except when "directly and reasonably incurred in proving an actual violation of plaintiff's rights." 42 U.S.A. § 1997e(d)(1(A). The fees must also be "proportionally related to the court ordered relief for the violation." 42 U.S.C. § 1997(d)(1)(B)(i). These provisions are similar to the restrictions announced by the Supreme Court in *Buckhannon Bd. & Care Home, Inc. v. West Va. Dep't of Health & Human Resources*, 532 U.S. 598 (2001). The interaction of *Buckhannon,* the PLRA, and the ADA in the context of fees is beyond the scope of this paper. However, the Eighth Circuit has considered several of the issues in *Cody v. Hillard*, 304 F.3d 767 (8th Cir. 2002) (award of fees for three separate phases of long standing litigation not barred by PLRA nor did private settlement agreement bar award).

Further, in damages actions, the PLRA mandates up to 25% of plaintiff's monetary judgment to be applied to pay defendant's attorney's fees. PLRA attorney fee limits may be inapplicable to prisoner ADA claims. *Beckford v. Irvin*, 60 F.Supp.2d 85, 88 (W.D. NY 1999).

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[7] There may remain federal tort claims jurisdiction to find damage awards against prison tort-feasors in their personal, un-official capacities. *See,* Stacey H. O'Bryan, Closing the Courthouse Door: The Impact of the Prison Litigation Reform Act's Physical Injury Requirement on the Constitutional Rights of Prisoners, 1997 U. Virginia L. Rev. 1189 (student note).

The Act's limits on attorney fees are prospective only, inapplicable to pre-PLRA attorney fees. *Blissett v. Casey*, 969 F.Supp. 118 (N.D. NY 1997), affirmed 147 F.3d 218, cert. den. 527 U.S. 1034. Attorney fees incurred in recovering attorney fees, or "fees_on_fees," are recoverable under the PLRA, although subject to that statute's fee cap. *Volk v. Gonzalez*, 262 F.3d 528 (5th Cir. 2001).

Case screening requirements: The PLRA establishes a number of processes designed to limit the ability of prisoners to file lawsuits. They include:

Filing fees: There are requirements that prisoner_plaintiffs seeking to proceed *in forma pauperis* submit a certified copy of their prisoner trust fund account statement for the previous six months. 28 U.S.C. § 1915(a)(2). Those who cannot afford to litigate and who therefore apply for permission to proceed *in forma pauperis* will be liable to pay the full filing fees, but on an installment plan. 28 U.S.C. § 1915(b)(1) and (2). Therefore, all litigating prisoners must pay some fee, and costs awarded if unsuccessful, regardless of indigency. 28 U.S.C. § 1915(b)(1) and (2). The PLRA's *in forma pauperis* provisions are not applicable to civil detainees, *Troville v. Venz*, 303 F.3d 1256 (11 Cir. 2002), aliens detained for deportation, *LaFontant v. INS*, 135 F.3d 158 (D.C. Cir. 1998), or post-conviction civil detention as sexual predator, *West v. Macht*, 986 F.Supp. 1141 (W.D. Wisc. 1997).

Multiple filings: The statute has a "three strikes and you're out" clause. A prisoner may not file a compliant or appeal *in forma pauperis* if he has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal...that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). *See Gresham v. Flowers*, 208 F.3d 226 (table) 2000 WL 192926 (10th Cir. 2000)(unpublished, not binding precedent)(plaintiff is "cautioned" that dismissal of ADA claim by district court for failure to state a claim is "strike one" for PLRA purposes). The bar to *in forma pauperis* process after "3-strikes" does not bar prisoner's suit after paying ordinary civil filing fee. *Abdul_Akbar v. McKelvie*, *supra*..

Dismissal after court screening: The PLRA makes it relatively easy for a court to dismiss a prisoner's case, even before docketing, after it is "screened." The grounds for dismissal are if the complaint:

1. is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

2. seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A.

Screening provisions are not applicable to post-incarceration filing regarding alleged misconduct endured by former prisoner while imprisoned. *Kane v. Lancaster County Dept. of Corrections,* 960 F.Supp. 219 (D. NB 1997).

Revocation of Earned Release Credit: There are risks, at least for Federal prisoners, that attend the filing of a lawsuit. In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit that has not yet vested, if, on its own motion or the motion of any party, the court finds that:

1. the claim was filed for a malicious purpose;

2 . the claim was filed solely to harass the party against which it was filed; or

3. the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court. 28 U.S.C. §1932.

Relationship of ADA to PLRA: Cases on behalf of prisoners with disabilities will often raise claims under the Americans with Disabilities Act and § 504. In *Armstrong v. Davis,* 275 F.3d 849 (9th Cir. 2002), for example, a class of prisoners with disabilities challenged the parole board's failure to accommodate prisoners with disabilities. The Court of Appeals affirmed a finding that the board's failure to abide by the ADA was not supported by a legitimate penological interests. The Court examined the trial court's injunction and found it to be narrowly tailored to remedy only those violations of the ADA established in the findings of fact and, therefore, determined it to satisfy the requirements of the PLRA.

Efforts to evade PLRA requirements in ADA cases have often not been successful. In *Cassidy v. Indiana Department of Corrections,* 199 F.3d 374 (7th Cir. 2000), for example, the court held that the PLRA's provision barring an inmate's claim for damages for emotional and mental injuries without prior showing of physical injury, prevented the blind inmate plaintiff from pursuing such claims under the ADA. Likewise, in *Saunders v. Goord,* 2002 WL 31159109 (S.D.N.Y. 2002), an inmate claimed discrimination because of prison officials' failure to make accommodations to his disabilities in, among other thing, attending to his medical needs. Although the inmate filed grievances, his "vague allegations" of disability discrimination were inadequate meet the PLRA's exhaustion requirement. *But see Mitchell v. Mass.Dept. of Correction,* 190 F.Supp.2d 204, 209-210 (D. Mass. 2002) (exhaustion not required for prisoner's ADA Title II claim). C*ontra Hicks v. Monteiro,* 2002 WL 654086 (N.D. Cal. 2002) (unreported) (inmate's ADA claims that prison failed to accommodate his disability by making the shower accessible are dismissed for failure to exhaust; plaintiff's claim that he need not exhaust prior to filing suit under the ADA is "without merit').

Conclusion

As protection and advocacy systems increase their outreach and services to inmates in prisons, jails, and detention facilities, they should be aware of the limitations and barriers imposed on litigation remedies by the PLRA. Advocates will need to advise their incarcerated clients of the difficulties inherent in filing prison conditions and damages cases. Despite these roadblocks, however, P&As should be prepared, when necessary, to use litigation to remedy unconstitutional prison conditions. While it makes the pursuit of prison litigation more demanding, the PLRA is not an impenetrable barricade.