

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1275

To provide for appropriate remedies for prison condition lawsuits, to discourage frivolous and abusive prison lawsuits, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 25), 1995

Mr. ABRAHAM (for himself, Mr. HATCH, Mr. SPECTER, Mr. KYL, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for appropriate remedies for prison condition lawsuits, to discourage frivolous and abusive prison lawsuits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prison Conditions Liti-  
5 gation Reform Act”.

6 **SEC. 2. APPROPRIATE REMEDIES FOR PRISON CONDI-**  
7 **TIONS.**

8 (a) IN GENERAL.—Section 3626 of title 18, United  
9 States Code, is amended to read as follows:

1 **“§ 3626. Appropriate remedies with respect to prison**  
2 **conditions**

3 “(a) REQUIREMENTS FOR RELIEF.—

4 “(1) PROSPECTIVE RELIEF.—Prospective relief  
5 in any civil action with respect to prison conditions  
6 shall extend no further than necessary to correct the  
7 violation of the Federal right of a particular plaintiff  
8 or plaintiffs. The court shall not grant or approve  
9 any prospective relief unless the court finds that  
10 such relief is narrowly drawn, extends no further  
11 than necessary to correct the violation of the Federal  
12 right, and is the least intrusive means necessary to  
13 correct the violation. In determining the intrusive-  
14 ness of the relief, the court shall give substantial  
15 weight to any adverse impact on public safety or the  
16 operation of a criminal justice system caused by the  
17 relief.

18 “(2) PRELIMINARY INJUNCTIVE RELIEF.—In  
19 any civil action with respect to prison conditions, to  
20 the extent otherwise authorized by law, the court  
21 may enter a temporary restraining order or an order  
22 for preliminary injunctive relief. Preliminary injunc-  
23 tive relief shall automatically expire on the date that  
24 is 90 days after its entry, unless the court makes the  
25 order final before the expiration of the 90-day pe-  
26 riod.

1           “(3) PRISONER RELEASE ORDER.—(A) In any  
2 civil action with respect to prison conditions, no pris-  
3 oner release order shall be entered unless—

4           “(i) a court has previously entered an  
5 order for less intrusive relief that has failed to  
6 remedy the deprivation of the Federal right  
7 sought to be remedied through the prisoner re-  
8 lease order; and

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

12           “(B) In any civil action in Federal court with  
13 respect to prison conditions, a prisoner release order  
14 shall be entered only by a three-judge court in ac-  
15 cordance with section 2284 of title 28, if the require-  
16 ments of subparagraph (E) have been met.

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

22           “(D) If the requirements under subparagraph  
23 (A) have been met, a Federal judge before whom a  
24 civil action with respect to prison conditions is pend-  
25 ing who believes that a prison release order should

1 be considered may sua sponte request the convening  
2 of a three-judge court to determine whether a pris-  
3 oner release order should be entered.

4 “(E) The court shall enter a prisoner release  
5 order only if the court finds—

6 “(i) by clear and convincing evidence—

7 “(I) that crowding is the primary  
8 cause of the violation of a Federal right;  
9 and

10 “(II) that no other relief will remedy  
11 the violation of the Federal right; and

12 “(ii) by a preponderance of the evidence—

13 “(I) that crowding has deprived a par-  
14 ticular plaintiff or plaintiffs of at least one  
15 essential, identifiable human need; and

16 “(II) that prison officials have acted  
17 with obduracy and wantonness in depriving  
18 a particular plaintiff or plaintiffs of at  
19 least one essential, identifiable human  
20 need.

21 “(F) Any State or local official or unit of gov-  
22 ernment whose jurisdiction or function includes the  
23 prosecution or custody of persons who may be re-  
24 leased from, or not admitted to, a prison as a result  
25 of a prisoner release order shall have standing to op-

1 pose the imposition or continuation in effect of such  
2 relief, and shall have the right to intervene in any  
3 proceeding relating to such relief.

4 “(b) TERMINATION OF RELIEF.—

5 “(1) TERMINATION OF PROSPECTIVE RELIEF.—

6 (A) In any civil action with respect to prison condi-  
7 tions in which prospective relief is ordered, such re-  
8 lief shall be terminable upon the motion of any  
9 party—

10 “(i) 2 years after the date the court grant-  
11 ed or approved the prospective relief;

12 “(ii) 1 year after the date the court has  
13 entered an order denying termination of pro-  
14 spective relief under this paragraph; or

15 “(iii) in the case of an order issued on or  
16 before the date of enactment of the Prison Liti-  
17 gation Reform Act, 2 years after such date of  
18 enactment.

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

23 “(2) IMMEDIATE TERMINATION OF PROSPEC-  
24 TIVE RELIEF.—In any civil action with respect to  
25 prison conditions, a defendant or intervener shall be

1 entitled to the immediate termination of any pro-  
2 spective relief if the relief was approved or granted  
3 in the absence of a finding by the court that the  
4 relief is narrowly drawn, extends no further than  
5 necessary to correct the violation of the Federal  
6 right, and is the least intrusive means necessary to  
7 correct the violation.

8 “(3) LIMITATION.—Prospective relief shall not  
9 terminate if the court makes written findings based  
10 on the record that prospective relief remains nec-  
11 essary to correct the violation of the Federal right,  
12 extends no further than necessary to correct the vio-  
13 lation of the Federal right, and that the prospective  
14 relief is the least intrusive means to correct the vio-  
15 lation.

16 “(4) TERMINATION OR MODIFICATION.—Noth-  
17 ing in this section shall prevent any party from seek-  
18 ing modification or termination before the relief is  
19 terminable under paragraph (1) or (2), to the extent  
20 that modification or termination would otherwise be  
21 legally permissible.

22 “(c) SETTLEMENTS.—

23 “(1) CONSENT DECREES.—In any civil action  
24 with respect to prison conditions, the court shall not  
25 enter or approve a consent decree unless it complies

1 with the limitations on relief set forth in subsection  
2 (a).

3 “(2) PRIVATE SETTLEMENT AGREEMENTS.—

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

11 “(B) Nothing in this section shall preclude any  
12 party claiming that a private settlement agreement  
13 has been breached from seeking in State court any  
14 remedy for breach of contract available under State  
15 law.

16 “(d) STATE LAW REMEDIES.—The limitations on  
17 remedies in this section shall not apply to relief entered  
18 by a State court based solely upon claims arising under  
19 State law.

20 “(e) PROCEDURE FOR MOTIONS AFFECTING PRO-  
21 SPECTIVE RELIEF.—

22 “(1) GENERALLY.—The court shall promptly  
23 rule on any motion to modify or terminate prospec-  
24 tive relief in a civil action with respect to prison con-  
25 ditions.

1           “(2) AUTOMATIC STAY.—Any prospective relief  
2 subject to a pending motion shall be automatically  
3 stayed during the period—

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

8           “(ii) beginning on the 180th day after such  
9 motion is filed, in the case of a motion made  
10 under subsection (b)(3); and

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

13           “(f) DEFINITIONS.—As used in this section—

14           “(1) the term ‘consent decree’ means any relief  
15 entered by the court that is based in whole or in  
16 part upon the consent or acquiescence of the parties;

17           “(2) the term ‘civil action with respect to prison  
18 conditions’ means any civil proceeding arising under  
19 Federal law with respect to the conditions of con-  
20 finement or the effects of actions by government of-  
21 ficials on the lives of persons confined in prison, but  
22 does not include habeas corpus proceedings challeng-  
23 ing the fact or duration of confinement in prison;

24           “(3) the term ‘prisoner’ means any person in-  
25 carcerated or detained in any facility who is accused

1 of, convicted of, sentenced for, or adjudicated delin-  
2 quent for, violations of criminal law or the terms  
3 and conditions of parole, probation, pretrial release,  
4 or diversionary program;

5 “(4) the term ‘prisoner release order’ includes  
6 any order, including a temporary restraining order  
7 or preliminary injunctive relief, that has the purpose  
8 or effect of reducing or limiting the prison popu-  
9 lation, or that directs the release from or  
10 nonadmission of prisoners to a prison;

11 “(5) the term ‘prison’ means any Federal,  
12 State, or local facility that incarcerates or detains  
13 juveniles or adults accused of, convicted of, sen-  
14 tenced for, or adjudicated delinquent for, violations  
15 of criminal law;

16 “(6) the term ‘prospective relief’ means all re-  
17 lief other than monetary damages; and

18 “(7) the term ‘relief’ means all relief in any  
19 form that may be granted or approved by the court,  
20 and includes consent decrees and settlement agree-  
21 ments (except a settlement agreement the breach of  
22 which is not subject to any court enforcement other  
23 than reinstatement of the civil proceeding that such  
24 agreement settled).”.

25 (b) APPLICATION OF AMENDMENT.—



1       tiff's rights protected by a statute pursuant to which  
2       a fee may be awarded under section 2 of the Revised  
3       Statutes; and

4               “(B) the amount of the fee is proportionately  
5       related to the court ordered relief for the violation.

6       “(2) Whenever a monetary judgment is awarded in  
7       an action described in paragraph (1), a portion of the  
8       judgment (not to exceed 25 percent) shall be applied to  
9       satisfy the amount of attorney's fees awarded against the  
10      defendant. If the award of attorney's fees is greater than  
11     25 percent of the judgment, the excess shall be paid by  
12     the defendant.

13      “(3) No award of attorney's fees in an action de-  
14     scribed in paragraph (1) shall be based on an hourly rate  
15     greater than the hourly rate established under section  
16     3006A of title 18, United States Code, for payment of  
17     court-appointed counsel.

18      “(4) Nothing in this subsection shall prohibit a pris-  
19     oner from entering into an agreement to pay an attorney's  
20     fee in an amount greater than the amount authorized  
21     under this subsection, if the fee is paid by the individual  
22     rather than by the defendant pursuant to section 2 of the  
23     Revised Statutes of the United States (42 U.S.C. 1988).

24      “(g) TELEPHONE HEARINGS.—To the extent prac-  
25     ticable, in any action brought in Federal court pursuant

1 to section 1979 of the Revised Statutes of the United  
2 States (42 U.S.C. 1983) by a prisoner crime confined in  
3 any jail, prison, or other correctional facility, pretrial pro-  
4 ceedings in which the prisoner's participation is required  
5 or permitted shall be conducted by telephone without re-  
6 moving the prisoner from the facility in which the prisoner  
7 is confined. Any State may adopt a similar requirement  
8 regarding hearings in such actions in that State's courts.

9       “(h) DEFINITION.—As used in this section, the term  
10 ‘prisoner’ means any person incarcerated or detained in  
11 any facility who is accused of, convicted of, sentenced for,  
12 or adjudicated delinquent for, violations of criminal law  
13 or the terms and conditions of parole, probation, pretrial  
14 release, or diversionary program.”.

15 **SEC. 4. SUCCESSIVE CLAIMS IN PROCEEDINGS IN FORMA**  
16 **PAUPERIS.**

17       Section 1915 of title 28, United States Code, is  
18 amended by adding at the end the following new sub-  
19 section:

20       “(f)(1) In no event shall a prisoner in any prison  
21 bring a civil action or appeal a judgment in a civil action  
22 or proceeding under this section if the prisoner has, on  
23 3 or more prior occasions, brought an action or appeal  
24 in a court of the United States that was dismissed on the  
25 grounds that it is frivolous, malicious, or fails to state a

1 claim upon which relief may be granted, unless the pris-  
2 oner is under imminent danger of serious bodily harm.

3       “(2) As used in this subsection, the term ‘prisoner’  
4 means any person incarcerated or detained in any facility  
5 who is accused of, convicted of, sentenced for, or adju-  
6 dicated delinquent for, violations of criminal law or the  
7 terms and conditions of parole, probation, pretrial release,  
8 or diversionary program.”.

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