1 of 100 DOCUMENTS

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH P.L. 108-279, APPROVED 7/22/04 ***
*** WITH GAPS OF P.L. 108-271 and 108-276 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21. CIVIL RIGHTS
INSTITUTIONALIZED PERSONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

42 USCS § 1997e (2004)

§ 1997e. Suits by prisoners

(a) Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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 3 or 5 of this Act [42 USCS § 1997a or 1997c].

(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 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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 2 of the Revised Statutes of the United States (42 U.S.C. 1988), 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 2 of the Revised Statutes; 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, United States Code, 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 2 of the Revised Statutes of the United States (42 U.S.C. 1988).

(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 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) 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.

HISTORY: (May 23, 1980, P.L. 96-247, § 7, 94 Stat 352; Sept. 13, 1994, P.L. 103-322, Title II, Subtitle D, § 20416(a), 108 Stat. 1833; April 26, 1996, P.L. 104-134, Title I [Title VIII, § 803(d)], 110 Stat. 1321-71; May 2, 1996, P.L. 104-140, § 1(a), 110 Stat. 1327.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:
Act May 2, 1996, P.L. 104-140, § 1(a), 110 Stat. 1327, inserted the heading "TITLE I--OMNIBUS APPROPRIATIONS" after the enacting clause of Act April 26, 1996, P.L. 104-134.

Amendments:
1994. Act Sept. 13, 1994 (effective on enactment as provided by § 20416(b) of such Act, which appears as a note to this section), in subsec. (a), in para. (1), substituted "180 days" for "ninety days", in para. (2), inserted "or are otherwise fair and effective"; and, in subsec. (c), in para. (1), inserted "or are otherwise fair and effective", and, in para. (2), inserted "or is no longer fair and effective".

1996. Act April 26, 1996 substituted this section for one which read:

"Exhaustion of remedies

"(a) Applicability of administrative remedies.

(1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

"(2) The exhaustion of administrative remedies under paragraph (1) may not be required unless the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b) or are otherwise fair and effective.

"(b) Minimum standards for development and implementation of system for resolution of grievances of confined adults; consultation, promulgation, submission, etc., by Attorney General of standards.

(1) No later than one hundred eighty days after the date of enactment of this Act, the Attorney General shall, after consultation with persons, State and local agencies, and organizations with background and expertise in the area of corrections, promulgate minimum standards for the development and implementation of a plain, speedy, and effective system for the resolution of grievances of adults confined in any jail, prison, or other correctional facility. The Attorney General shall submit such proposed standards for publication in the Federal Register in accordance with section 553 of title 5, United States Code. Such standards shall take effect thirty legislative days after publication unless, within such period, either House of Congress adopts a resolution of disapproval of such standards.

"(2) The minimum standards shall provide--

"(A) for an advisory role for employees and inmates of any jail, prison, or other correctional institution (at the most decentralized level as is reasonably possible), in the formulation, implementation, and operation of the system;

"(B) specific maximum time limits for written replies to grievances with reasons thereto at each decision level within the system;

"(C) for priority processing of grievances which are of an emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages;

"(D) for safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

"(E) for independent review of the disposition of grievances, including alleged reprisals, by a person or other entity not under the direct supervision

or direct control of the institution.

"(c) Procedure for review and certification of systems for resolution of grievances of confined adults for determination of compliance with minimum standards; suspension or withdrawal of certification for noncompliance; development, etc. by Attorney General.

(1) The Attorney General shall develop a procedure for the prompt review and certification of systems for the resolution of grievances of adults confined in any jail, prison, or other correctional facility, or pretrial detention facility, to determine if such systems, as voluntarily submitted by the various States and political subdivisions, are in substantial compliance with the minimum standards promulgated under subsection (b) or are otherwise fair and effective.

"(2) The Attorney General may suspend or withdraw the certification under paragraph (1) at any time that he has reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards promulgated under subsection (b) or is no longer fair and effective.

"(d) 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 consistent with this section shall not constitute the basis for an action under section 3 or 5 of this Act.".

Other provisions:

Effective date of Sept. 13, 1994 amendments. Act Sept. 13, 1994, P.L. 103-322, Title II, Subtitle D, § 20416(b), 108 Stat. 1834, provides: "The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act.".

Disclosure of financial records and other personal information in prisoners' actions under 42 USCS § 1983. Act Oct. 21, 1998, P.L. 105-277, § 101(b) [Title I, § 127], 112 Stat. 2681-74, provides:

"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.".

Applicability of provision relating to disclosure of financial records and other personal information in prisoners' actions under 42 USCS § 1983. For provision that § 127 of Title I of § 101(b) of Act Oct. 21, 1998, P.L. 105-277 (note to this section), shall apply to fiscal year 2000 and thereafter, see § 109 of H.R. 3421, as enacted into law by § 1000(a)(1) of Act Nov. 29, 1999, P.L. 106-113, which appears as 28 USCS § 524 note.

NOTES:

CODE OF FEDERAL REGULATIONS

Department of Justice--Standards for inmate grievance procedures, 28 CFR Part 40.

RESEARCH GUIDE

Federal Procedure:
6 Fed Proc L Ed, Civil Rights §§ 11:13, 947-949.

Am Jur:
15 Am Jur 2d, Civil Rights §§ 97, 159.
53 Am Jur 2d, Mentally Impaired Persons § 88.
60 Am Jur 2d, Penal and Correctional Institutions § 135.

Annotations:
Attorney's Fees Awards under § 803(d) of Prison Litigation Reform Act (42 U.S.C.A. § 1997e(d)[42 USCS § 1997e(d)]). 165 ALR Fed 551.
Sufficiency of Access to Legal Research Facilities Afforded Defendant Confined in State Prison or Local Jail. 98 ALR5th 445.
Constitutional and Statutory Validity of Judicial Videoconferencing. 115 ALR5th 509.
Rights of Prisoners in Private Prisons. 119 ALR5th 1.
Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 ALR4th 1099.

Law Review Articles:
Lay. Exhaustion of Grievance Procedures for State Prisoners Under § 1997e of the Civil Rights Act. 71 Iowa L Rev 935, May 1986.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Constitutionality
3. Applicability
4. Exhaustion of administrative remedies
4.5. Grounds
5. --Particular circumstances
6. Hearing
7. Limitation on damages
8. Dismissal
9. Attorneys' fees
10. Appeal and review

1. Generally

Congress enacted 42 USCS § 1997e(a)--which precluded bringing of any action with respect to prison conditions under 42 USCS § 1983, or any other federal law, by state prisoner confined in any jail, prison, or other correctional facility until available administrative remedies were exhausted--to reduce quantity and improve quality of prisoner suits; to this purpose, Congress afforded corrections officials time and opportunity to address complaints internally before allowing initiation of federal case. Porter v Nussle (2002) 534 US 516, 152 L Ed 2d 12, 122 S Ct 983, 2002 CDOS 1753, 15 FLW Fed S 121.

Although former version of 42 USCS § 1997e provided that states may voluntarily submit grievance procedures for certification, state's failure to do so did not give prisoner cause of action. Mann v Adams (1988, CA9 Ariz) 846 F2d 589, reh, en banc, den (1988, CA9 Ariz) 855 F2d 639 and cert den (1988) 488 US 898, 102 L Ed 2d 231, 109 S Ct 242.

Prisoner who had not sought leave to file an out-of-time grievance after his grievance was denied because it was untimely cannot be considered to have exhausted his administrative remedies, for purposes of 42 USCS § 1997e. Harper v Jenkin (1999, CA11 Ga) 179 F3d 1311, 12 FLW Fed C 989.

In cases governed by Prison Litigation Reform Act of 1996, prisoner's failure to exhaust administrative remedies is an affirmative defense to be pleaded by the defendant. Ray v Kertes (2002, CA3 Pa) 285 F3d 287.

Inmates' action against corrections officers was remanded to district court for development of record regarding exhaustion of administrative remedies; exhaustion was not jurisdictional, but it was nevertheless mandatory. Casanova v Dubois (2002, CA1 Mass) 289 F3d 142.

In forma pauperis inmate's § 1983 claims of retaliation and improper urine testing conditions are dismissed without prejudice pursuant to 42 USCS § 1997e (a), where all matters relating to prison conditions may be grieved, because, although court is sympathetic to serious nature of inmate's allegations, his failure to meet requirements of § 1997e(a) is fatal to his claims. Giano v Goord

(1998, WD NY) 9 F Supp 2d 235.

Prisoner's actions concerning his grievance against prison officials met requirement for exhaustion of administrative remedies under 42 USCS § 1997e, where prisoner filed grievance within 6 months and later appealed decision to proper authority, and prisoner twice contacted Administrative Review Board after hearing and did not receive response. Jones v Detella (1998, ND Ill) 12 F Supp 2d 824.

Application of attorney's fees provisions of amendments to 42 USCS § 1997e here will not have impermissible retroactive effect, even though case was filed several months prior to effective date of amendments, where attorney was not appointed for filer until almost 2 years after amendments took effect, because applying fee provisions in this situation will not "impair rights, increase liability for past conduct, or attach new duties to completed transactions." Roberson v Brassell (1998, SD Tex) 29 F Supp 2d 346, op withdrawn, motion gr (1999, SD Tex) 1999 US Dist LEXIS 12406.

Inmate's § 1983 action against prison officials is dismissed without prejudice, where administrative exhaustion requirements of 42 USCS § 1997e(a) apply even to prisoner claims for monetary relief only, because inmate took initial steps in grievance process but his efforts were incomplete and did not constitute exhaustion. Smith v Stubblefield (1998, ED Mo) 30 F Supp 2d 1168 (criticized in Royster v United States (1999, SD NY) 1999 US Dist LEXIS 18252).

Pro se prisoner's § 1983 complaint is dismissed without prejudice, where he admits he did not file any prior complaint regarding alleged beating by 2 prison officers with prison grievance program or in state court, because recent amendment to 42 USCS § 1997e makes exhaustion requirement mandatory rather than directory. Harris v Gunderman (1999, SD NY) 30 F Supp 2d 664.

Inmate's claim for improper treatment of hernia must be dismissed, where he does not even allege that he has pursued prison administrative remedies, focusing rather on speculative ultimate ineffectiveness of such remedies, because, under current version of 42 USCS § 1997e(a), Congress intended for prisoners to resort initially to administrative remedial procedures without regard to effectiveness of such procedures in providing specific relief requested. Massey v Helman (1999, CD Ill) 35 F Supp 2d 1110, affd (1999, CA7 Ill) 196 F3d 727 and (criticized in Royster v United States (1999, SD NY) 1999 US Dist LEXIS 18252).

Prisoner's claim that prison officials used race-based considerations to make housing assignments for temporary prisoners is not barred by 42 USCS § 1997e(e), even though statute can be read to bar all claims for mental or emotional injury, where majority view has been to confine statute's applicability to Eighth Amendment context, because court will not adopt interpretation that gives rise to serious constitutional problems and will adopt narrower interpretation of § 1997e(e) under which statute does not apply to Fourteenth Amendment equal protection claims. Mason v Schriro (1999, WD Mo) 45 F Supp 2d 709.

Requirement of 42 USCS § 1997e(a) that prisoner exhaust "such administrative remedies as are available" applied to prisoner's § 1983 claims against corrections official seeking monetary damages. Langford v Couch (1999, ED Va) 50 F Supp 2d 544.

Requirement under 42 USCS § 1997e(c) that federal prisoner exhaust his administrative remedies before bringing action challenging prison conditions mandates good-faith, bona fide effort to comply with Bureau of Prisons procedures for obtaining administrative remedy. Zolicoffer v Scott (1999, ND Ga) 55 F Supp 2d 1372.

Because nominal and punitive damages can be recovered for certain constitutional violations without showing of actual or physical injury, 42 USCS § 1997e(e) does not bar recovery. Hock v Thipedeau (2002, DC Conn) 238 F Supp 2d 446, on reconsideration, vacated, in part, on other grounds (2003, DC Conn) 245 F Supp 2d 451.

Court rejected city's and corrections officer's argument that there was heightened pleading standard requiring inmate to allege that inmate had exhausted prison's administrative remedies; however, court found that inmate had not presented any evidence, direct or indirect, to challenge city's and corrections officer's evidence that inmate did not pursue administrative remedies, so city's and corrections officer's motion for summary judgment for failure to exhaust administrative remedies, as required by Prison Litigation Reform Act of 1996, 42 USCS 1997e(a), was granted. Harvey v City of Philadelphia (2003, ED Pa) 253 F Supp 2d 827.

2. Constitutionality

42 USCS § 1997e neither nullifies Eighth Amendment by leaving violations without remedy nor violates Equal Protection Clause, as statute is rationally related to stated purpose of Congress to limit frivolous lawsuits. Zehner v Trigg (1997, CA7 Ind) 133 F3d 459.

Language of 42 USCS § 1997e(a) is not unconstitutionally vague. Higginbottom v Carter (2000, CA11 Ga) 223 F3d 1259, 13 FLW Fed C 1087.

Cap on attorney's fee award under 42 USCS § 1997e(d)(2) did not violate equal protection component of Fifth Amendment, as government could rationally choose to deter filing of marginal civil rights claims and to protect the public fisc by decreasing attorney's fee awards. Walker v Bain (2001, CA6 Mich) 257 F3d 660, 2001 FED App 232P.

Restrictions on attorney's fees in 42 USCS § 1997e(d) did not violate prisoner's right to equal protection under Fifth Amendment because 42 USCS § 1997e(d) was rationally related to legitimate government interest of decreasing marginal or trivial lawsuits, and prisoner failed to negate every conceivable basis which might have supported 42 USCS § 1997e(d); therefore, 42 USCS § 1997e (d) survived rational basis review. Jackson v State Bd. of Pardons & Paroles (2003, CA11 Ga) 331 F3d 790, 16 FLW Fed C 608.

Successful prisoner litigant is not limited to $ 629 attorney's fee award, even though government argues limit is necessary to deter frivolous filings and protect public fisc, because provision of 42 USCS § 1997e(d)(2) limiting attorney's fee award under 42 USCS § 1988 to 150 percent of judgment awarded in prisoner cases is not rationally related to any legitimate governmental interest and violates equal protection component of Fifth Amendment. Walker v Bain (1999, ED Mich) 65 F Supp 2d 591 (criticized in Morrison v Davis (2000, SD Ohio) 88 F Supp 2d 799).

42 USCS § 1997e(d)(A) did not violate equal protection rights of prisoners in relation to other claimants who could recover fees if their suit was catalyst for government action producing extrajudicial relief, where separate treatment of prisoners was rationally related to goal of deterring frivolous litigation. Waterman v Farmer (2000, DC NJ) 84 F Supp 2d 579.

3. Applicability

Provision of Prison Litigation Reform Act of 1995 (PLRA), as amended (42 USCS § 1997e(a))--which (1) precluded bringing of any action with respect to prison conditions under 42 USCS § 1983, or any other federal law, by state prisoner confined in any jail, prison, or other correctional facility until available administrative remedies had been exhausted; but (2) did not define "prison conditions"--applied to all inmate suits seeking redress for prison circumstances or occurrences, whether suits involved general circumstances or particular episodes, and whether suits alleged excessive force or some other wrong. Porter v Nussle (2002) 534 US 516, 152 L Ed 2d 12, 122 S Ct 983, 2002 CDOS 1753, 15 FLW Fed S 121.

Exhaustion requirement under 42 USCS § 1997e applied to inmate's 42 USCS § 1983 suit seeking both injunctive and monetary relief. Arvie v Stalder (1995, CA5 La) 53 F3d 702.

Administrative exhaustion requirement of amendment to 42 USCS § 1997e(a) does not apply to appeals already pending on enactment date, as statute expressly governs bringing of new actions rather than disposition of pending cases. Wright v Morris (1997, CA6 Ohio) 111 F3d 414, 1997 FED App 122P, subsequent app (1997, CA6 Ohio) 111 F3d 132, reported in full (1997, CA6) 1997 US App LEXIS 7301 and cert den, motion gr (1997) 522 US 906, 139 L Ed 2d 190, 118 S Ct 263.

Limitations on attorney's fee awards under 42 USCS § 1997e applied to fees awarded to group of incarcerated juveniles who successfully challenged constitutionality of juvenile prison conditions in South Carolina, and fee provisions of § 1997e applied retroactively to fee awards for work performed but not compensated prior to its enactment. Alexander S. v Boyd (1997, CA4 SC) 113 F3d 1373, cert den (1998, US) 139 L Ed 2d 869, 118 S Ct 880 and (criticized in Glover v Johnson (1998, CA6 Mich) 138 F3d 229, 1998 FED App 72P) and (criticized in Hadix v Johnson (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P) and (criticized in Inmates of D.C. Jail v Jackson (1998, App DC) 332 US App DC 451,

158 F3d 1357) and (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413).

42 USCS § 1997e would not be applied to an award of attorney's fees for legal assistance completed prior to enactment of PLRA. Glover v Johnson (1998, CA6 Mich) 138 F3d 229, 1998 FED App 72P, remanded (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413) and (criticized in Collins v Montgomery County Bd. of Prison Inspectors (1999, CA3 Pa) 1999 US App LEXIS 9037) and reh, en banc, den (1998, CA6) 1998 US App LEXIS 13682.

42 USCS § 1997e(e) did not apply to action brought by prisoner after he was released on parole, as prisoner was no longer "confined in a jail, prison, or other correctional facility". Kerr v Puckett (1998, CA7 Wis) 138 F3d 321.

Attorney's fee limitation section of PLRA, 42 USCS § 1997e(d), pertaining to civil rights actions by prisoners, does not apply to fee petitions for work performed prior to or after enactment of PLRA, in case filed before enactment date. Hadix v Johnson (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413) and (criticized in Collins v Montgomery County Bd. of Prison Inspectors (1999, CA3 Pa) 1999 US App LEXIS 9037).

42 USCS § 1997e(e) does not apply to First Amendment claims, regardless of form of relief sought, as deprivation of First Amendment rights entitles plaintiff to judicial relief wholly aside from any physical, mental, or emotional injury incurred. Canell v Lightner (1998, CA9 Or) 143 F3d 1210, 98 CDOS 3490, 98 Daily Journal DAR 4827.

PLRA limitations would not necessarily be applied to fee awards made after effective date of PLRA, for purposes of 42 USCS § 1983 action by attorneys who provided legal work for prisoner before effective date of PLRA but who were awarded fees after effective date. Blissett v Casey (1998, CA2 NY) 147 F3d 218.

42 USCS § 1997e(a) does not apply retroactively to claims filed prior to its enactment. Bishop v Lewis (1998, CA9 Ariz) 155 F3d 1094, 98 CDOS 7037, 98 Daily Journal DAR 9731.

42 USCS § 1997e(e) does not apply to action brought before enactment of PLRA. Swan v Banks (1998, CA9 Cal) 160 F3d 1258, 98 CDOS 8664, 98 Daily Journal DAR 12041.

42 USCS § 1997e(e) does not apply retroactively to cases filed prior to passage of Prison Litigation Reform Act, as language "may be brought" in § 1997e(e) clearly indicates that statute applies only to cases commenced after its enactment. Craig v Eberly (1998, CA10 Colo) 164 F3d 490, 1999 Colo J C A R 745.

42 USCS § 1997e(e) did not preclude claims for injunctive relief in action where prisoner sought relief for mental and emotional injury resulting from requirement that he wear face mask and from denial of outdoor exercise. Perkins v Kansas Dep't of Corrections (1999, CA10 Kan) 165 F3d 803.

Attorney's fees limitations of PLRA applied to all hours worked on case after

date of passage of PLRA, where inmate brought civil rights action under 42 USCS § 1983 prior to enactment of PLRA. Winters v Sissel (1999, CA8 Iowa) 167 F3d 413.

Fee cap under 42 USCS § 1997e applied to attorneys appointed after Prison Litigation Reform Act's enactment, even where action was filed before effective date of PLRA, as attorneys were on notice of hourly rate they could expect under cap. Chatin v Coombe (1999, CA2 NY) 186 F3d 82.

Term "prison conditions" as used in 42 USCS § 1997e(a) applies to claims of excessive force or equal protection. Hartsfield v Vidor (1999, CA6 Mich) 199 F3d 305, 1999 FED App 406P.

Term "prison conditions" as used in 42 USCS § 1997e(a) includes claims of excessive force, thereby subjecting inmate's 42 USCS § 1983 claim that he was assaulted by corrections officer to administrative exhaustion requirement. Wolff v Moore (1999, CA6 Ohio) 199 F3d 324, 1999 FED App 410P.

Provision of PLRA directing that no federal civil action may be brought by prisoner for mental or emotional injury suffered while in custody without prior showing of physical injury applied to constitutional torts as well as non-constitutional tort claims. Cassidy v Indiana Dep't of Corrections (2000, CA7 Ind) 199 F3d 374, 10 AD Cas 106.

Spanish-speaking inmates' challenge to adequacy of prison's provision of interpreters for Spanish-speaking inmates was challenge to prison conditions subject to exhaustion of administrative remedies requirement of 42 USCS § 1997e (a). Castano v Nebraska Dep't of Corrections (2000, CA8 Neb) 201 F3d 1023, reh, en banc, den (2000, CA8) 2000 US App LEXIS 6234.

Detainee who was civilly committed to state hospital under state's Sexually Violent Predators Act after he served time for criminal conviction was not a "prisoner" within meaning Prison Litigation Reform Act, and thus was not subject to financial account statement and exhaustion requirements. Page v Torrey (2000, CA9 Cal) 201 F3d 1136, 2000 CDOS 355, 2000 Daily Journal DAR 489.

42 USCS § 1997e(a)'s exhaustion requirement applies to excessive force claims. Booth v Churner (2000, CA3 Pa) 206 F3d 289 (criticized in Giannattasio v Artuz (2000, SD NY) 2000 US Dist LEXIS 3907).

42 USCS § 1997e does not apply to alien detainee awaiting deportation, and thus previous decisions of court regarding federal prisoners and exhaustion of administrative remedies were not directly applicable to alien detainee's challenge to disciplinary hearing procedures and punishment. Edwards v Johnson (2000, CA5 La) 209 F3d 772.

42 USCS § 1997e did not apply to arrestee confined after arrest for traffic offenses, as arrestee was not prisoner when complaint was filed, and Prison Litigation Reform Act applies only to suits filed by prisoners. Janes v Hernandez (2000, CA5 Tex) 215 F3d 541.

42 USCS § 1997e(e) applies to lawsuits filed while plaintiff is a confined prisoner but which are not decided until after prisoner is released from

confinement, as term "brought" in § 1997e(e) refers to filing or commencement of a lawsuit, not to its continuation. Harris v Garner (2000, CA11 Ga) 216 F3d 970, 13 FLW Fed C 755.

Excessive force claim by prisoner against prison guard was subject to statutory exhaustion requirement under 42 USCS § 1997e(a). Camp v Brennan (2000, CA3 Pa) 219 F3d 279.

Prison Litigation Reform Act's exhaustion requirements applied to inmate's excessive use of force claim, and exhaustion requirement cannot be waived based on prisoner's belief that pursuing administrative remedies would be futile. Higginbottom v Carter (2000, CA11 Ga) 223 F3d 1259, 13 FLW Fed C 1087.

Exhaustion requirement of the Prison Litigation Reform Act does not apply to allegations of particular instances of excessive force or assault by prison employees. Nussle v Willette (2000, CA2 Conn) 224 F3d 95.

Statutory cap of defendants' liability for attorneys' fees under Prison Litigation Reform Act at 150 percent of the judgment applies to awards of nominal damages. Boivin v Black (2000, CA1 Me) 225 F3d 36.

Exhaustion requirement under 42 USCS § 1997e(a) of Prison Litigation Reform Act does not apply to cases pending on date of enactment of statute. Ghana v Holland (2000, CA3 Pa) 226 F3d 175.

Inmate who was issued a series of misbehavior tickets in retaliation for his complaints to prison authorities was not required to exhaust administrative remedies under 42 USCS § 1997e(a), as exhaustion requirement referring to "prison conditions" does not apply to cases alleging individualized retaliation. Lawrence v Goord (2001, CA2 NY) 238 F3d 182.

Provision of 42 USCS § 1997e eliminating recovery for mental or emotional injury suffered while in custody without a prior showing of physical injury applied to plaintiff inmate's claim that prison officials violated his First Amendment right to free exercise of religion by denying him approval for a kosher diet. Searles v Van Bebber (2001, CA10 Kan) 251 F3d 869, 2001 Colo J C A R 2447.

Prisoner's complaints that he was harassed and retaliated against by correctional officers after he won a lawsuit against Department of Corrections for unreasonably refusing to authorize liver transplant for prisoner were "prison conditions" subject to exhaustion requirement under 42 USCS § 1997e(a). Johnson v Litscher (2001, CA7 Wis) 260 F3d 826.

Term in 42 USCS § 1997e(a), "with respect to prison conditions," applied to inmate's excessive force claim filed after he was beaten by guards. Larkin v Galloway (2001, CA7 Ill) 266 F3d 718, reh den (2001, CA7 Ill) 2001 US App LEXIS 22898.

42 USCS § 1997e(e) applies to claims in which a plaintiff alleged constitutional violations, such that plaintiff cannot recover damages for mental or emotional injury for a constitutional violation in absence of a showing of actual physical injury, but § 1997e(e) does not prevent a prisoner from

obtaining injunctive or declaratory relief. Thompson v Carter (2002, CA2 NY) 284 F3d 411.

42 USCS § 1997e(e) does not apply to state-law claims that are unrelated to prison conditions, are filed by prisoners in state court, and are removed to federal court solely on basis of diversity jurisdiction. Mitchell v Brown & Williamson Tobacco Corp. (2002, CA11 Ala) 294 F3d 1309, 15 FLW Fed C 675.

Where federal prisoner brought personal injury action against cigarette manufacturers, in state court and exclusively under state law, and case was removed to federal court on basis of diversity jurisdiction, 42 USCS § 1997e(e) had no application to prisoner's case, which was clearly not federal civil action when it was brought, since it was filed in state court and based solely on state law. Mitchell v Brown & Williamson Tobacco Corp. (2002, CA11 Ala) 294 F3d 1309, 15 FLW Fed C 675.

Although former inmate would have been free of strictures of Prison Litigation Reform Act (PLRA), 42 USCS § 1997e, if he had filed timely 42 USCS § 1983 complaint against prison officers after his release from prison, he was bound by PLRA because he filed his complaint almost three years before he was released from prison, even though he was released during pendancy of action. Ahmed v Dragovich (2002, CA3 Pa) 297 F3d 201.

Dismissal of prisoner's Eighth Amendment claims was vacated because prisoner 's allegations, if true, could only lead to conclusion that prison guards conducted strip search in manner designed to demean and humiliate, and although 42 USCS § 1997e(e) would bar recovery of compensatory damages "for" mental and emotional injuries suffered, statute was inapplicable to awards of nominal or punitive damages for Eighth Amendment violation itself. Calhoun v Detella (2003, CA7 Ill) 319 F3d 936.

Phrase "any action brought by prisoner" in 42 USCS § 1997e(d) means all lawsuits that are filed by prisoner and is not restricted to lawsuits challenging "prison conditions" that are filed by prisoner. Jackson v State Bd. of Pardons & Paroles (2003, CA11 Ga) 331 F3d 790, 16 FLW Fed C 608.

Phrase "any action brought by prisoner" in 42 USCS § 1997e(d) means all lawsuits that are filed by prisoner and is not restricted to lawsuits challenging "prison conditions" that are filed by prisoner; accordingly, § 1997e(d) applied to prisoner's underlying 42 USCS § 1983 action, and thus, his motion for attorney's fees and his supplemental application for attorney's fees. Jackson v State Bd. of Pardons & Paroles (2003, CA11 Ga) 331 F3d 790, 16 FLW Fed C 608.

Prison officials are not immune from attorney's fees award based on 42 USCS § 1997e(d)(1)(A), where prisoner proved that failure to remedy smoking situation at prison would result in Eighth Amendment violation and officials then changed policy and banned smoking, because that provision should not be applied retroactively and would not be applicable here, since fees were directly and reasonably incurred in proving actual violation of prisoner's rights at

preliminary injunction hearing. Weaver v Clarke (1996, DC Neb) 933 F Supp 831, affd (1997, CA8 Neb) 120 F3d 852, cert den (1998) 522 US 1098, 139 L Ed 2d 884, 118 S Ct 898.

Request cannot be granted as submitted, because cap on attorney's fees established by 42 USCS § 1997e applied to work performed by attorneys in prison litigation after statute's effective date. Hadix v Johnson (1996, ED Mich) 947 F Supp 1113.

42 USCS § 1997e(e) did not apply retroactively to inmate's pending § 1983 claim, where inmate was entitled to seek compensatory damages without suffering physical injury when he filed complaint, and application of statute to pending cases would eliminate claims that were legally cognizable and attach new legal consequences to events completed before enactment of statute. Thomas v Hill (1997, ND Ind) 963 F Supp 753.

Civil rights action brought by inmate and inmate's nonprisoner husband seeking declaratory and injunctive relief to permit husband to attend birth of his child was not suit "brought by prisoner" within meaning of 42 USCS § 1997e (d). Turner v Wilkinson (1999, SD Ohio) 92 F Supp 2d 697.

42 USCS § 1997e(e) did not preclude § 1983 action in which inmate sought injunctive relief and damages, but did not allege physical injury or ask for damages for mental or emotional distress. Jones-Bey v Cohn (2000, ND Ind) 115 F Supp 2d 936.

Where harm to prisoner that is constitutionally actionable is physical or emotional injury occasioned by violation of rights, 42 USCS § 1997e(e) applies, but where such harm is violation of intangible rights, regardless of actual physical or emotional injury, statute does not govern. Shaheed-Muhammad v Dipaolo (2001, DC Mass) 138 F Supp 2d 99 (criticized in Searles v Van Bebber (2001, CA10 Kan) 251 F3d 869, 2001 Colo J C A R 2447).

42 USCS § 1997e(e) did not bar state inmate's claims for declaratory and injunctive relief with respect to alleged efforts of corrections officers to incite physical confrontations between inmate and other prisoners. Montero v Crusie (2001, SD NY) 153 F Supp 2d 368.

42 USCS § 1997e(e) did not apply retroactively, and, thus, did not foreclose state prisoner from recovering for mental or emotional damages in suit brought against state officials under Americans with Disabilities Act and Rehabilitation Act before provision's effective date. Key v Grayson (2001, ED Mich) 163 F Supp 2d 697, accepted, in part, mod, claim dismissed (2001, ED Mich) 163 F Supp 2d 697.

Requirement of 42 USCS § 1997e(a) that inmate exhaust his administrative remedies before bringing § 1983 action with respect to prison conditions did not retroactively apply to state prisoner's § 1983 action for violation of his Eighth Amendment right to be free from deliberate indifference to his medical needs that was pending before enactment of exhaustion requirement. Torrence v Pelkey (2001, DC Conn) 164 F Supp 2d 264, affd, on reconsideration, motion gr

(2001, DC Conn) 164 F Supp 2d 264.

Former inmates are entitled to summary judgment declaration of unconstitutionality of strip-search procedure at county jail, even though they have not alleged physical injury, where plaintiffs filed claims following their detention, because 42 USCS § 1997e(e) "physical injury" requirement does not apply to claims brought by former inmates. Doan v Watson (2001, SD Ind) 168 F Supp 2d 932.

Plaintiff's claim that as pretrial detainee he should not have been placed on punitive pod without due process and/or solely as punishment was non-frivolous. Davis v Milwaukee County (2002, ED Wis) 225 F Supp 2d 967.

Plaintiff's claim that he had to pay too much for postage on his letters because jail had no meter mail service to weigh them was frivolous, but his claim that jail and sheriff had rejected his mail without notifying him was non-frivolous. Davis v Milwaukee County (2002, ED Wis) 225 F Supp 2d 967.

Plain language of Prison Litigation Reform Act suggests that former prisoners do not fall within its scope as 42 USCS § 1997e(a), (e), and (h) speak of those prisoners confined in jail, prison or other correction facility or incarcerated or detained, status to be determined at time suit is brought. Smith v Franklin County (2002, ED Ky) 227 F Supp 2d 667.

Physical injury requirement of 42 USCS § 1997e(e) did not apply where inmate 's claims regarding placement in keeplock were based on First Amendment violations, rather than 42 USCS § 1983 claims for mental or emotional injury. Auleta v LaFrance (2002, ND NY) 233 F Supp 2d 396.

Defendants in inmate's excessive force suit were entitled to amend their answer following U.S. Supreme Court decision that 42 USCS § 1997e(a) exhaustion of administrative remedies requirement applied to all prisoners seeking redress for prison circumstances or occurrences; although defendants were presumably aware of § 1997e(a) exhaustion requirement at time they filed their answer, it would have been futile for them to have asserted exhaustion defense at that time given that law in Second Circuit was that exhaustion requirement did not apply to claims pertaining to isolated incidents affecting particular inmates. Livingston v Piskor (2003, WD NY) 215 FRD 84.

Some courts have concluded that 42 USCS § 1997e(d)(2) gives district court discretion to determine what constitutes proper portion, up to 25 per cent; statute is not model of clarity, but more plausible interpretation, especially given other limits that § 1997e places on both prisoners and courts, is that court must automatically apply plaintiff's fee award against his damages to extent that it does not exceed 25 per cent of damages. Jackson v Austin (2003, DC Kan) 267 F Supp 2d 1059.

Illinois General Assembly had not adopted Prison Litigation Reform Act, 42 USCS § 1997 (2000), and Supreme Court of Illinois refused to do so by judicial fiat to resolve action filed by inmate against Illinois Department of Corrections officials. Beahringer v Page (2003) 204 Ill 2d 363, 789 NE2d 1216.

4. Exhaustion of administrative remedies

It can be fairly inferred that Congress, by amending the exhaustion of administrative remedies requirement of 42 USCS § 1997e(a) so as to eliminate the qualification that such remedies be "effective," meant to preclude the result in McCarthy v Madigan (1992) 503 US 140, 117 L Ed 2d 291, 112 S Ct 1081, which held that exhaustion was not required under previous version of § 1997e(a) when an inmate sought only monetary relief and the administrative process offered none. Booth v Churner (2001) 532 US 731, 149 L Ed 2d 958, 121 S Ct 1819, 2001 CDOS 4277, 2001 Daily Journal DAR 5257, 2001 Colo J C A R 2679, 14 FLW Fed S 281, 69 USLW 4387.

District Courts have power to enforce exhaustion requirement under former version of 42 USCS § 1997e by dismissal with prejudice, following continuance granted under § 1997e if prisoner fails to pursue administrative remedies. Rocky v Vittorie (1987, CA5 La) 813 F2d 734, 93 ALR Fed 699.

Exhaustion requirement under 42 USCS § 1997e applied to inmate's 42 USCS § 1983 suit seeking both injunctive and monetary relief. Arvie v Stalder (1995, CA5 La) 53 F3d 702.

Administrative exhaustion requirement of amendment to 42 USCS § 1997e(a) does not apply to appeals already pending on enactment date, as statute expressly governs bringing of new actions rather than disposition of pending cases. Wright v Morris (1997, CA6 Ohio) 111 F3d 414, 1997 FED App 122P, subsequent app (1997, CA6 Ohio) 111 F3d 132, reported in full (1997, CA6) 1997 US App LEXIS 7301 and cert den, motion gr (1997) 522 US 906, 139 L Ed 2d 190, 118 S Ct 263.

42 USCS § 1997e does not impose exhaustion of administrative remedies as prerequisite to jurisdiction, and available administrative remedies are exhausted for purposes of prisoner's civil rights action when the time limits for the prison's response set forth in prison Grievance Procedures have expired. Underwood v Wilson (1998, CA5 Tex) 151 F3d 292, cert den (1999, US) 67 USLW 3716.

42 USCS § 1997e(a) does not apply retroactively to claims filed prior to its enactment. Bishop v Lewis (1998, CA9 Ariz) 155 F3d 1094, 98 CDOS 7037, 98 Daily Journal DAR 9731.

Pro se in forma pauperis claim under 42 USCS § 1983 by prisoner alleging excessive force by prison officers was properly dismissed for failure to exhaust administrative remedies prior to filing suit as required by 42 USCS § 1997e, where prisoner did not raise any valid excuse for failing to exhaust available administrative remedies, and prisoner would be able to refile action once he exhausted his remedies under § 1997e. Wendell v Asher (1998, CA5 Tex) 162 F3d 887.

Litigants who file prison condition actions after release from confinement are no longer "prisoners" for purposes of 42 USCS § 1997e(a), and therefore they need not satisfy the exhaustion requirements of that provision. Greig v Goord

(1999, CA2 NY) 169 F3d 165.

Exhaustion requirement of amended 42 USCS § 1997e(a) would not be applied to action pending as of effective date of Prison Litigation Reform Act. Salahuddin v Mead (1999, CA2 NY) 174 F3d 271.

Inmate exhausted administrative remedies as required under 42 USCS § 1997e (a), where record demonstrated that inmate's grievance under 42 USCS § 1983 against policy prohibiting him from wearing his hair in dreadlocks had been denied by warden and Assistant Director of correctional facility at time court ruled. Williams v Norris (1999, CA8 Ark) 176 F3d 1089.

Prisoners who filed 42 USCS § 1983 claim that prison officials failed to protect him and tried to cover up their failure by issuing false disciplinary charge exhausted his administrative remedies under 42 USCS § 1997e(a), where inmate followed two-step grievance procedure, and state's time for responding thereto had expired. Powe v Ennis (1999, CA5 Tex) 177 F3d 393.

Failure to exhaust administrative remedies under 42 USCS § 1997e does not deprive federal court of subject matter jurisdiction where money damages is sole relief sought and money damages are not available through prison's administrative grievance process. Rumbles v Hill (1999, CA9 Cal) 182 F3d 1064, 99 CDOS 5232, 99 Daily Journal DAR 6703.

Federal inmate filing Bivens complaint must exhaust administrative remedies under 42 USCS § 1997e(a) before filing claim. Lavista v Beeler (1999, CA6 Ky) 195 F3d 254, 1999 FED App 371P.

Prisoner was required to exhaust administrative remedies as required under 42 USCS § 1997e, even though inmate sought money damages not provided by state prison grievance procedures. Freeman v Francis (1999, CA6 Ohio) 196 F3d 641, 1999 FED App 372P.

Under 42 USCS § 1997e, where prison has internal administrative grievance system through which a prisoner can seek to correct a problem, prisoner must utilize that administrative system before filing 42 USCS § 1983 claim, and potential effectiveness of administrative response or whether prisoner's preferred remedy is available has no relationship to requirements of § 1997e. Massey v Helman (1999, CA7 Ill) 196 F3d 727.

State claims brought in federal court pursuant to diversity jurisdiction are not exempted from exhaustion requirement under 42 USCS § 1997e(a). Hartsfield v Vidor (1999, CA6 Mich) 199 F3d 305, 1999 FED App 406P.

42 USCS § 1997e(a) requires mandatory exhaustion of all administrative remedies, whether or not they provide inmate-plaintiff with relief sought in federal action. Nyhuis v Reno (2000, CA3 Pa) 204 F3d 65.

Statute of limitations which applied to prisoner's 42 USCS § 1983 claim of denial of court access would be tolled for period during which his available state remedies were being exhausted. Brown v Morgan (2000, CA6 Ky) 209 F3d 595, 2000 FED App 127P.

Where prison had administrative process that would review prisoner's 42 USCS

§ 1983 complaint, prisoner must exhaust administrative remedies even though money damages were not available. Knuckles El v Toombs (2000, CA6 Mich) 215 F3d 640, 2000 FED App 202P.

Failure to exhaust administrative remedies under 42 USCS § 1997e(a) does not deprive federal court of jurisdiction, as statutory language is insufficient to create a jurisdictional requirement, and other portions of the PLRA indicate that federal courts do have jurisdiction in cases where administrative remedies remain. Chelette v Harris (2000, CA8 Ark) 229 F3d 684, reh, en banc, den (2000, CA8) 2000 US App LEXIS 29604.

Failure to exhaust administrative remedies under 42 USCS § 1997e(a) does not deprive federal court of jurisdiction, as statutory language is insufficient to create a jurisdictional requirement, and other portions of the PLRA indicate that federal courts do have jurisdiction in cases where administrative remedies remain. Chelette v Harris (2000, CA8 Ark) 229 F3d 684, reh, en banc, den (2000, CA8) 2000 US App LEXIS 29604.

Prisoner is required to exhaust administrative remedies pursuant to 42 USCS § 1997e(a) only if challenged conduct on part of correctional employees was conduct which was either clearly mandated by prison policy or undertaken pursuant to systemic practice. Marvin v Goord (2001, CA2 NY) 255 F3d 40.

Accumulation of water in cell and exposure of defendant to second-hand smoke in cell are examples of "prison conditions" for which 42 USCS § 1997(e) requires exhaustion of administrative remedies. Gibson v Goord (2002, CA2 NY) 280 F3d 221.

PLRA's exhaustion requirement under 42 USCS § 1997e(a) is affirmative defense. Wyatt v Terhune (2002, CA9 Cal) 280 F3d 1238, 2002 CDOS 1430, 2002 Daily Journal DAR 1726.

Failure to comply with exhaustion requirement under 42 USCS § 1997e is affirmative defense to be pleaded by defendant. Ray v Kertes (2002, CA3 Pa) 285 F3d 287.

Where plaintiff was no longer prisoner at time of his appeal, and thus could not exhaust his administrative claims, it did not excuse his failure to comply with exhaustion requirement of Prison Litigation Reform Act of 1995, as exhaustion was precondition to filing of complaint in federal court. Dixon v Page (2002, CA7 Ill) 291 F3d 485.

Fact that inmate happened to be prisoner in various locations, and under custody of different officials, did not affect his obligation to exhaust his administrative remedies before filing suit. Medina-Claudio v Rodriguez-Mateo (2002, CA1 Puerto Rico) 292 F3d 31.

District court had erred in finding that plaintiff inmate had failed to exhaust his remedies in prison disciplinary system, and inmate's right to pursue claims under Eighth Amendment was not limited to or by contents of his intra-prison grievances. Strong v David (2002, CA7 Ill) 297 F3d 646.

District court's dismissal of prisoner's suit without prejudice was proper,

since failure to protect claim was action brought with respect to prison conditions; thus, it was subject to Prison Litigation Reform Act's administrative exhaustion requirements. Clifford v Gibbs (2002, CA5 La) 298 F3d 328.

District court properly dismissed prisoner's complaint against Federal Bureau of Prisons for lack of exhaustion; Prison Litigation Reform Act of 1995 requires prisoner to exhaust all available administrative remedies before filing any federal lawsuit challenging prison conditions, including suit brought to enforce settlement agreement and superseding that agreement's provision on exhaustion. Smith v Fed. Bureau of Prisons (2002, CA6 Ky) 300 F3d 721, 2002 FED App 277P.

Where state inmate filed grievance against prison official for failing to protect inmate from attack by cellmate, grievance was denied, prison policy provided for 30-day period to appeal, and inmate, rather than filing timely appeal, waited for promised responses to various requests that never came, his federal civil rights claim was properly dismissed under Prison Litigation Reform Act of 1995 for failure to exhaust administrative remedies; neither substantial compliance exception nor equitable estoppel applied to inmate's situation. Lewis v Washington (2002, CA7 Ill) 300 F3d 829.

Where plaintiff did not receive timely response to prison administrative grievance, and did not follow up on deficiency as required by director of department of corrections on appeal, plaintiff did not exhaust all of available administrative remedies, and plaintiff's 42 USCS § 1983 action was properly dismissed. Jernigan v Stuchell (2002, CA10 Okla) 304 F3d 1030.

Prisoner may not amend 42 USCS § 1983 complaint to cure failure to plead exhaustion of administrative remedies, if action is covered by Prison Litigation Reform Act of 1995. Baxter v Rose (2002, CA6 Tenn) 305 F3d 486, 2002 FED App 328P.

Where prison grievance procedure was available, plaintiff was aware of it, and plaintiff chose not to follow it, judgment for plaintiff in his civil rights action was reversed based on exhaustion requirement in 42 USCS § 1997e(a). Lyon v Vande Krol (2002, CA8 Iowa) 305 F3d 806.

Summary judgment in favor of wardens was vacated because non-exhaustion under Prison Litigation Reform Act of 1995, specifically 42 USCS § 1997e(a), did not impose pleading requirement, but rather, created defense and wardens failed to show that inmate did not exhaust administrative remedies. Wyatt v Terhune (2002, CA9 Cal) 305 F3d 1033, 2002 CDOS 9748, 2002 Daily Journal DAR 10997.

For purposes of exhausting administrative remedies, remedy need not be formally adopted through regulations to be considered administrative remedy within scope of 42 USCS § 1997e(a)'s exhaustion requirement. Concepcion v Morton (2002, CA3 NJ) 306 F3d 1347.

Prisoner's alleged blindness clearly did not prevent him from filing 42 USCS § 1983 action, from appealing disciplinary hearing, or from filing prison grievances after his transfer to another facility, and his quarrel with any

details of detention center grievance procedure was irrelevant, inasmuch as he never attempted to utilize procedure and was well aware of general procedural requirements described in inmate handbook; therefore, prisoner had failed to exhaust his administrative remedies pursuant to Prison Litigation Reform Act, 42 USCS § 1997e(a), before bringing this action. Ferrington v La. Dep't of Corr. (2002, CA5 La) 315 F3d 529.

District court's dismissal of prisoner's conditions-of-confinement claim, for failure to exhaust administrative remedies, was premature; under 42 USCS 1997e (c), failure to exhaust was not permissible basis for sua sponte dismissal. Mitchell v Horn (2003, CA3 Pa) 318 F3d 523.

Summary judgment was affirmed for corrections officers when inmate alleged that inmate was required to work in excessive heat because inmate had not exhausted administrative remedies as required by 42 USCS § 1997e. Martin v Shelton (2003, CA8 Ark) 319 F3d 1048, reh den (2003, CA8 Ark) 2003 US App LEXIS 5351.

Facts as alleged by prisoner indicated that his injury actually prevented him from timely filing grievance and that his untimely grievance was returned unprocessed; thus, under circumstances, prisoner sufficiently alleged that, prior to filing 42 USCS § 1983 suit, he exhausted administrative remedies, as required by 42 USCS § 1997e, that were personally available to him as administrative remedies were deemed unavailable when (1) inmate's untimely filing of grievance was because of physical injury and (2) grievance system rejected inmate's subsequent attempt to exhaust his remedies based on untimely filing of grievance. Days v Johnson (2003, CA5 Tex) 322 F3d 863.

Where plaintiff's complaint raised complex issues concerning informal exhaustion of remedies under Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66 (1996), and whether "total exhaustion" of all claims was required before any one exhausted claim could be addressed, appellate court retained jurisdiction over appeal, and ordered that counsel be appointed for plaintiff, if he so chose. Ortiz v McBride (2003, CA2 NY) 323 F3d 191.

Where inmate did not exhaust administrative remedies on inmate's failure-to-supervise claim against warden in 42 USCS § 1983 action, pursuant to 42 USCS § 1997e, inmate failed to exhaust all available administrative remedies as to all of claims. Kozohorsky v Harmon (2003, CA8 Ark) 332 F3d 1141, 55 FR Serv 3d 1168.

Inmate's complaint is dismissed without prejudice to renewal of viable claims, if any, following exhaustion of administrative remedies, even though he seeks monetary damages for assault by prison guards, because Congress intended, under 42 USCS § 1997e, to apply exhaustion requirement to all actions brought by prisoners with respect to prison conditions, including claims alleging excessive force or assault by prison guards, and regardless of what relief is sought. Beeson v Fishkill Correctional Facility (1998, SD NY) 28 F Supp 2d 884 (criticized in Carter v Kiernan (1999, SD NY) 1999 US Dist LEXIS 178).

Section 1983 action challenging conditions of plaintiff's confinement by state youth authority may proceed, even though grievance procedure was in place at facility and had been explained to plaintiff, where he was no longer suffering wrongs alleged at time complaint was filed, because he sought only money damages, and no administrative remedy was "available" to him under grievance procedure within meaning of 42 USCS § 1997e(a). Plasencia v California (1998, CD Cal) 29 F Supp 2d 1145.

Notice of claim procedure contained in state statute requiring service upon attorney general for purposes of encouraging possible settlement did not qualify as "administrative remedy" under exhaustion requirement of 42 USCS § 1997e(a). Blas v Endicott (1999, ED Wis) 31 F Supp 2d 1131.

42 USCS § 1997e(a) did not impose total exhaustion requirement on prisoner civil rights litigation and, thus, prisoner civil rights action, including both exhausted and unexhausted claims, would not be dismissed in its entirety without prejudice, rather than simply dismissing without prejudice unexhausted claims. Jenkins v Toombs (1999, WD Mich) 32 F Supp 2d 955.

Where prisoner is pursuing only monetary damages and prison grievance procedure does not provide for monetary relief, exhaustion requirement of 42 USCS § 1997e(a)(1) does not apply. Davis v Woehrer (1999, ED Wis) 32 F Supp 2d 1078.

Inmate's Bivens claim against federal correctional institution officials was subject to 42 USCS § 1997e(a), and thus he was required to exhaust institutional administrative remedies before bringing suit in federal court, even though he was seeking money damages and institution could not provide monetary relief. Sallee v Joyner (1999, ED Va) 40 F Supp 2d 766.

42 USCS § 1997e(e) operated as bar to inmate's claims under ADA and Rehabilitation Act, to extent that inmate asserted claims for mental or emotional injury. Cassidy v Indiana Dep't of Correction (1999, SD Ind) 59 F Supp 2d 787, affd (2000, CA7 Ind) 199 F3d 374, 10 AD Cas 106.

If inmate had attempted to use administrative grievance procedure within 30-day time limit, as claimed, but received no response, such that he was unable to appeal because of regulation requiring written resolution of claims before appeals process could be used, then inmate would have exhausted his "available" administrative remedies, as required by 42 USCS § 1997e(a). Taylor v Barnett (2000, ED Va) 105 F Supp 2d 483.

In cases governed by provisions of 42 USCS § 1997e(a), prisoner must demonstrate that all available administrative remedies have been exhausted. Rivera v Garcia (2000, DC Puerto Rico) 192 FRD 57.

In forma pauperis prisoner's failure to exhaust administrative remedies does not constitute failure to state claim under 42 USCS § 1997e(a). Henry v Med. Dep 't at SCI-Dallas (2001, MD Pa) 153 F Supp 2d 553.

Dismissal was mandatory, where prisoner failed to exhaust available administrative remedies, even though prisoner attempted to overcome the

exhaustion requirement by insisting that prisoner never received copy of the jail handbook and, therefore, was unaware of procedure set forth for filing grievance; while it was not entirely clear whether prisoner knew of the existence of complaint forms, there was no indication that prisoner had made any effort to submit any form of written complaint. Floyd v Shelby County (2001, WD Tenn) 197 F Supp 2d 1101.

In an action by inmates for damages based on the violation of their civil rights by prison officials, under Prison Litigation Reform Act, 42 USCS § 1997e, even when the inmates sought relief not available in grievance proceedings, notably money damages, exhaustion was a prerequisite to suit for all actions brought with respect to prison conditions. Webb v Goord (2002, SD NY) 192 F Supp 2d 208.

Inmate's claims of retaliation against certain prison officials were dismissed under 42 USCS § 1997e(a) where inmate failed to exhaust available administrative remedies by challenging term of special confinement and failed to allege any cognizable basis for holding supervising prison officials liable. Richardson v Hillman (2002, SD NY) 201 F Supp 2d 222.

Exhaustion requirement of Prison Litigation Reform Act of 1995 (42 USCS § 1997e(a)) applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong; dismissal of any claim of excessive force by prison inmate is mandated if inmate has failed to exhaust his administrative remedies with respect to that claim. White v Sassi (2002, SD NY) 202 F Supp 2d 195.

Litigants who file prison condition actions after release from confinement are no longer prisoners for purposes of 42 USCS § 1997e(a) and, therefore, need not satisfy its exhaustion requirements. Morris v Eversley (2002, SD NY) 205 F Supp 2d 234.

Prisoner failed to file grievance for alleged denial of medical treatment, and so prisoner failed to exhaust his administrative remedies. Rodriguez v Hahn (2002, SD NY) 209 F Supp 2d 344.

After prison superintendent denied prisoner's claim of excessive force, prisoner then submitted appeal statement to central office review committee (CORC); however, merely submitting appeal statement was insufficient for exhaustion of available remedies without final disposition from CORC. Rodriguez v Hahn (2002, SD NY) 209 F Supp 2d 344.

Former county jail inmate was ordered to show cause why 42 USCS § 1983 claims against county board of supervisors arising from inmate's fall in county jail kitchen and subsequent care and treatment should not have been dismissed for failure to exhaust administrative remedies under 42 USCS § 1997e(a), where court 's pretrial order did not reflect that inmate had exhausted administrative remedies. Smith v Bd. of County Comm'rs (2002, DC Kan) 216 F Supp 2d 1209.

Corrections officers' motion for summary judgment was granted and inmate's 42 USCS § 1983 civil rights complaint was dismissed without prejudice because,

while inmate wrote to superintendent and contacted inspector general's office, inmate failed to exhaust administrative remedies, neither filing formal grievance nor properly initiating harassment grievance procedure. Houze v Segarra (2002, SD NY) 217 F Supp 2d 394.

Where inmate alleged wrongful supervision and training of corrections officers, but there was no grievance procedure available to inmate, government was required to advise innate of whether administrative remedies were available. Barnard v D.C. (2002, DC Dist Col) 223 F Supp 2d 211.

Detainee's 42 USCS § 1983 claim against jail officers failed as claims were not exhausted as required under Prison Litigation Reform Act, except as to claim that denial of phone access interfered with detainee's bail rights, and this claim failed as mail was reasonable alternative. Simpson v Gallant (2002, DC Me) 223 F Supp 2d 286.

Defendant jail and sheriff interfered with plaintiff detainee's ability to exhaust in three ways; first, because of absence of any legal materials at jail, detainee was unable to learn about newly enacted Prison Litigation Reform Act (PLRA) and its requirement that he exhaust; second, even if detainee had known about PLRA, absence of materials at jail about grievance procedure itself would have prevented him from knowing how to fully exhaust; and third, when defendants rejected detainee's grievance they advised him that it was not grievable situation, causing him not to pursue matter further. Davis v Milwaukee County (2002, ED Wis) 225 F Supp 2d 967.

Because inmate did not attempt to resolve his retaliation claims informally, nor did he file remedy request with warden and even though inmate reasonably believed that attempting to resolve his grievances at institutional level would have been waste of time, he could not bypass those stages unless agency agreed with him; accordingly, inmate failed to exhaust his administrative remedies. Jeanes v United States DOJ (2002, DC Dist Col) 231 F Supp 2d 48.

Civil rights claims of prisoner who partially failed to exhaust administrative remedies in prison grievance system were dismissed without prejudice. Smeltzer v Hook (2002, WD Mich) 235 F Supp 2d 736 (criticized in Hattley v Goord (2003, SD NY) 2003 US Dist LEXIS 4856).

Because grievance procedure applicable to inmate's claim constituted all of "available remedies," and that procedure nowhere required or provided for appeal of unanswered grievance, inmate had exhausted all available administrative remedies for purposes of Prison Litigation Reform Act. Abney v County of Nassau (2002, ED NY) 237 F Supp 2d 278.

Prisoner's motion for reconsideration, which was based upon assertion that prisoner did not need to exhaust grievance procedure remedies because matters were being reviewed by state inspector general, was denied because even if matters were before inspector general, prisoner still had obligation to exhaust available administrative remedies. Berry v Kerik (2002, SD NY) 237 F Supp 2d 450.

In suit by inmate against prison officials, where officials moved for dismissal pursuant to Fed. R. Civ. P. 12(b)(6) for failure to exhaust administrative remedies under Prison Litigation Reform Act (PLRA), 42 USCS § 1997e(a), district court applied Second Circuit rule that failure to exhaust administrative remedies under PLRA was affirmative defense and thus not ground for dismissal under Rule 12(b)(6) (although court noted that dismissal would have been proper had failure to exhaust been readily apparent from inmate's pleadings, and in such case, court would have dismissed case, sua sponte and without prejudice). Torrence v Pesanti (2003, DC Conn) 239 F Supp 2d 230.

Inmate's action under 42 USCS § 1983 against three corrections officers was dismissed without prejudice because inmate had not exhausted administrative remedies when inmate had not gone through entire three level prison grievance procedure set forth in N.Y. Comp. Codes R. & Regs. tit. 7, § 701.7. Santos v Hauck (2003, WD NY) 242 F Supp 2d 257.

Where department of correctional services employees moved to dismiss inmate's 42 USCS § 1983 complaint pursuant to Fed. R. Civ. P. 12(b)(6) on ground that inmate failed to exhaust inmate's administrative remedies as required by 42 USCS § 1997e(a), part of Prison Litigation Reform Act of 1995, employees' motion was properly construed as motion to dismiss complaint for lack of jurisdiction over subject matter pursuant to Fed. R. Civ. P. 12(b)(1) because employees were raising challenge to court's jurisdiction. Harris v Totten (2003, SD NY) 244 F Supp 2d 229 (criticized in Arnold v Goetz (2003, SD NY) 245 F Supp 2d 527).

Department of correctional services employees' Fed. R. Civ. P. 12(b)(1) motion to dismiss inmate's 42 USCS § 1983 complaint was granted and complaint was dismissed without prejudice to inmate refiling it once inmate exhausted inmate's administrative remedies where (1) inmate conceded that inmate did not present inmate's claims through inmate grievance procedure, even though inmate was aware of its existence, (2) inmate's various letters to superintendent did not satisfy exhaustion requirement of 42 USCS § 1997e(a), part of Prison Litigation Reform Act of 1995 (PLRA), because inmate failed to follow established grievance procedures, (3) inmate's subsequent filing of grievance did not satisfy exhaustion requirement because there had been no final disposition of grievance at administrative level, and PLRA required inmate to exhaust administrative remedies prior to commencing federal action, and (4) inmate put forth no additional arguments or evidence that excused inmate's failure to exhaust administrative remedies. Harris v Totten (2003, SD NY) 244 F Supp 2d 229 (criticized in Arnold v Goetz (2003, SD NY) 245 F Supp 2d 527).

As inmate made no attempt to initiate and follow to end prescribed grievance procedures, any responsive action taken by state department of correction to resolve problem brought to its attention, regardless of its source or who took part in its resolution, could not be basis for determining that exhaustion requirement was satisfied; inmate was obliged to exhaust administrative procedures and she did not; consequently, inmate's Eighth Amendment claim should

have been dismissed due to her failure to satisfy exhaustion requirement of 42 USCS § 1997e(a). Hock v Thipedeau (2003, DC Conn) 245 F Supp 2d 451.

Court denied correction officers' motion to dismiss inmate's 42 USCS § 1983 action under Fed. R. Civ. P. 12(b)(1), holding that inmate's failure to exhaust administrative remedies in accordance with Prison Litigation Reform Act, 42 USCS § 1997e(a), did not divest federal court of jurisdiction, as defendant's claim that inmate failed to comply with exhaustion requirement was properly assessed as affirmative defense. Arnold v Goetz (2003, SD NY) 245 F Supp 2d 527.

Because of ambiguity concerning inmate's efforts to complete exhaustion process, as required by 42 USCS § 1997e(a), part of Prison Litigation Reform Act of 1995, before filing his Eighth Amendment claims against several prison guards, prison guards' summary judgment motion was denied. Evans v Jonathan (2003, WD NY) 253 F Supp 2d 505.

Inmate did not file prison grievance until after inmate had brought civil rights suit in federal court; therefore, inmate had failed to exhaust available remedies and claims were subject to dismissal on summary judgment. Rivera v Goord (2003, SD NY) 253 F Supp 2d 735.

District Court did not need to address issue of whether prison nurse's acts arose to level of deliberate indifference, or whether she was entitled to invoke qualified immunity, because Court concluded that inmate did not exhaust his available administrative remedies, as required by 42 USCS 1997e(a). Long v Lafko (2003, SD NY) 254 F Supp 2d 444.

For purposes of Prison Litigation Reform Act of 1995, District Court holds that if nonexhaustion of prisoner's claims is clear from face of complaint (and incorporated documents), motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to exhaust should be granted. McCoy v Goord (2003, SD NY) 255 F Supp 2d 233.

For purposes of Prison Litigation Reform Act of 1995, District Court holds that if nonexhaustion is not clear from face of prisoner's complaint, defendant 's motion to dismiss should be converted, pursuant to Fed. R. Civ. P. 12(b), to one for summary judgment limited to narrow issue of exhaustion and relatively straightforward questions about prisoner's efforts to exhaust, whether remedies were available, or whether exhaustion might be, in very limited circumstances, excused. McCoy v Goord (2003, SD NY) 255 F Supp 2d 233.

Prison officials' Fed. R. Civ. P. 12(b)(6) motion to dismiss former state inmate's 42 USCS § 1983 claims was converted to summary judgment motion where it was not clear from face of complaint whether inmate failed to exhaust available prison grievance procedures as required by 42 USCS § 1997e(a), and court was required to look to extrinsic materials to determine exhaustion McCoy v Goord (2003, SD NY) 255 F Supp 2d 233.

Pursuant to 42 USCS § 1997e(a), former inmate failed to exhaust available administrative remedies before bringing civil rights claims against prison official and employees where inmate had only appealed disciplinary determination

and had not filed grievances for all of claims raised. McCoy v Goord (2003, SD NY) 255 F Supp 2d 233.

Prisoner's constitutional claims against certain correctional employees were dismissed for failure to exhaust administrative remedies as required under 42 USCS § 1997e where prisoner failed to specifically complain about their action or inaction during either step of prison's two-step grievance procedure. Thompson v Eason (2003, ND Tex) 258 F Supp 2d 508.

Prisoner had exhausted available administrative remedies for purposes of 42 USCS § 1997e where complaint about one correctional employee's action was raised in both steps of two-step grievance procedure and prisoner may have assumed that raising complaint about another correctional employee in first step of grievance procedure was sufficient. Thompson v Eason (2003, ND Tex) 258 F Supp 2d 508.

Inmate did not exhaust inmate's administrative remedies at appropriate time where inmate filed grievance six weeks after filing civil rights action alleging Eighth Amendment violations. Burgess v Morse (2003, WD NY) 259 F Supp 2d 240.

Prisoner's Fourth Amendment claim arose while prisoner was incarcerated and was directly related to prisoner's incarceration, so prisoner was required to exhaust administrative remedies pursuant to Prison Litigation Reform Act of 1995. Morgan v Maricopa County (2003, DC Ariz) 259 F Supp 2d 985.

In 42 USCS § 1983 action by inmate against doctors alleging alleging deliberate indifference to his medical needs in violation of U.S. Const. amend. VIII, doctors' motion to dismiss pursuant to, inter alia, 42 USCS § 1997e(a) and (c), 28 USCS § 1915(e)(2)(B)(i), and Fed. R. Civ. P. 12(b)(1) was denied where inmate exhausted his administrative remedies as required by 42 USCS § 1997e(a) due to his complaints about not receiving proper medical care and alleging improper transfer. Sulton v Wright (2003, SD NY) 265 F Supp 2d 292.

One class member's exhaustion of administrative remedies satisfied exhaustion requirement of Prison Litigation Reform Act, 42 USCS § 1997e(a), as to entire class. Lewis v Washington (2003, ND Ill) 265 F Supp 2d 939.

In inmate's action against prison officials alleging violation of his constitutional rights due to officials' application of prison directive prohibiting inmates from receiving or possessing obscene material, inmate failed to exhaust his administrative remedies pursuant to 42 USCS § 1997e(a) regarding his as applied challenge to prison officials' prison reading library purge. Cline v Fox (2003, ND W Va) 266 F Supp 2d 489.

4.5. Grounds

Inmate's allegation that he was not "breathing normally" during time cell windows were shut, and that he needed to use his inhaler to help him breathe normally, was insufficient assertion of physical injury to maintain suit under 42 USCS § 1997e to recover for alleged mental or emotional injury. Sarro v Essex County Correctional Facility (2000, DC Mass) 84 F Supp 2d 175.

County jail inmate could not recover compensatory damages for emotional

distress arising from alleged assault by guards, where inmate's counsel in § 1983 action sent letter to opposing counsel waiving inmate's claims for physical injury, and inmate was required by 42 USCS § 1997e to show physical injury to claim mental or emotional injury. Jessamy v Ehren (2001, SD NY) 153 F Supp 2d 398.

5. --Particular circumstances

Under 42 USCS § 1997e(a) as amended by Prison Litigation Reform Act of 1995--which requires prisoner to exhaust "such administrative remedies as are available" before suing over prison conditions--a prisoner who seeks only money damages must complete prison administrative process even though the process has no provision for recovery of money damages. Booth v Churner (2001) 532 US 731, 149 L Ed 2d 958, 121 S Ct 1819, 2001 CDOS 4277, 2001 Daily Journal DAR 5257, 2001 Colo J C A R 2679, 14 FLW Fed S 281, 69 USLW 4387.

In cases covered by 42 USCS § 1997e(a)--which precludes bringing of any action with respect to prison conditions under 42 USCS § 1983, or any other federal law, by state prisoner confined in any jail, prison, or other correctional facility until available administrative remedies are exhausted--all available remedies, including those that do not meet federal standards or are not plain, speedy, and effective, must be exhausted; even when prisoner seeks relief not available in grievance proceedings, notably money damages, exhaustion is prerequisite to suit. Porter v Nussle (2002) 534 US 516, 152 L Ed 2d 12, 122 S Ct 983, 2002 CDOS 1753, 15 FLW Fed S 121.

Pro se prisoner's 42 USCS § 1983 complaint was properly dismissed where prisoner had failed to pursue prison grievance proceeding authorized by former version of 42 USCS § 1997e after court order requiring that prisoner exhaust prison remedies on pain of dismissal with prejudice. Lay v Anderson (1988, CA5 La) 837 F2d 231.

Inmate's personal injury claim under 42 USCS § 1983, which was based on alleged deliberate indifference to her medical needs after she slipped and fell in prison, was properly dismissed under 42 USCS § 1997e, where administrative remedies could have afforded monetary relief sought, and inmate failed to exhaust administrative remedies. Marsh v Jones (1995, CA5 La) 53 F3d 707.

Federal prisoner who brought civil rights action alleging violations of Eighth Amendment was required to exhaust prison administrative remedies under 42 USCS § 1997e. Garrett v Hawk (1997, CA10 Colo) 127 F3d 1263, 1997 Colo J C A R 2635.

For purposes of exhaustion requirement under 42 USCS § 1997e, federal prisoners pressing Bivens claims against federal officials need not pursue prison remedies when they are seeking exclusively monetary relief, and no prison remedies afford monetary relief. Whitley v Hunt (1998, CA5 Tex) 158 F3d 882, 42 FR Serv 3d 121.

42 USCS § 1997e(a) required prisoner to submit his claims for monetary and

injunctive relief through available prison grievance program, even if relief offered by that program did not appear to be "plain, speedy, and effective," before filing claims in federal court, and judicially created futility and inadequacy doctrines would not survive mandatory exhaustion requirement. Alexander v Hawk (1998, CA11 Fla) 159 F3d 1321, reh, en banc, den (1999, CA11 Ga) 1999 US App LEXIS 9153 and (criticized in Fever v Booker (1999, CA10 Kan) 1999 Colo J C A R 1455).

Prisoner's 42 USCS § 1983 action seeking damages for alleged cruel and unusual punishment when state refused to authorize back surgery and instead recommended conservative approach including exercise and physical therapy was properly dismissed under 42 USCS § 1997e, where prisoner did not exhaust administrative remedies for complaints regarding deficient medical care, and prisoner's claim that he sought only money damages or that exhaustion would be futile would not alter exhaustion requirements under § 1997e. Perez v Wisconsin Dep't of Corrections (1999, CA7 Wis) 182 F3d 532.

Exhaustion of administrative remedies under 42 USCS § 1997e(a) is not required if prisoner's 42 USCS § 1983 claim seeks only money damages and correctional facility's administrative grievance process does not allow for such an award. Rumbles v Hill (1999, CA9 Cal) 182 F3d 1064, 99 CDOS 5232, 99 Daily Journal DAR 6703.

Although under 42 USCS § 1997e prisoners must exhaust prison's grievance procedures before filing suit in federal court even though damages remedy sought is not available remedy in administrative process, inmate who was raped substantially complied with exhaustion requirement as result of numerous complaints he filed with prison officials and contacts he had with prison officials about injury, where § 1997e(a) was not yet law when rape occurred or complaints were made. Wyatt v Leonard (1999, CA6 Ohio) 193 F3d 876, 1999 FED App 356P.

Prisoner's 42 USCS § 1983 excessive force claim involved a "prison condition" within the meaning of 42 USCS § 1997e(a). Freeman v Francis (1999, CA6 Ohio) 196 F3d 641, 1999 FED App 372P.

Inmate did not fail to exhaust his administrative remedies as required by 42 USCS § 1997e when he failed to sign or date his grievance form, where directions to sign and date grievances were not included in written requirements in grievance standard operating procedures for prison, and neither did inmate fail to exhaust administrative remedies when he failed to file appeal after being told unequivocally that appeal of an institutional-level denial was precluded. Miller v Tanner (1999, CA11 Ga) 196 F3d 1190, 13 FLW Fed C 166.

For purposes of claim under 42 USCS § 1997e, even if prisoner did file initial grievance, he was required to continue to next step in grievance process within proper time frame, if no response was received from prison officials or if prisoner was not satisfied with response; inmate cannot simply fail to file grievance or abandon process before completion and claim he has exhausted

remedies or that it is futile for him to do so. Hartsfield v Vidor (1999, CA6 Mich) 199 F3d 305, 1999 FED App 406P.

In 42 USCS § 1983 action by inmate alleging that he was assaulted by corrections officer, where claim arose before passage of PLRA but claim was filed after effective date, exhaustion precondition was satisfied by substantial compliance with applicable administrative process, where inmate participated in four investigations of corrections officers' actions. Wolff v Moore (1999, CA6 Ohio) 199 F3d 324, 1999 FED App 410P.

Inmate seeking only monetary relief in 42 USCS § 1983 action was not required to exhaust administrative remedies prior to filing suit, where prison grievance procedure did not permit an award of monetary damages. Wright v Hollingsworth (2000, CA5 Tex) 201 F3d 663.

Inmate was required to exhaust administrative procedures under 42 USCS § 1997e(a), even where procedures did not provide him with monetary relief he sought in his civil rights action alleging excessive force. Booth v Churner (2000, CA3 Pa) 206 F3d 289 (criticized in Giannattasio v Artuz (2000, SD NY) 2000 US Dist LEXIS 3907).

District court erred in dismissing prisoner's 42 USCS § 1983 complaint for failure to exhaust administrative remedies under 42 USCS § 1997e(a) because he did not name warden or commissioner in two administrative grievances, as § 1997e(a) required prisoner to provide only as much relevant information about his claims, including the identity of those directly involved in the alleged deprivations, as prisoner reasonably could provide. Brown v Sikes (2000, CA11 Ga) 212 F3d 1205, 13 FLW Fed C 682.

Inmate asserting constitutional claims related to his private prison industry work assignment was not required to exhaust administrative remedies under 42 USCS § 1997e(a), to extent that inmate sought money damages, as no administrative procedures were available to provide monetary relief. Miller v Menghini (2000, CA10 Kan) 213 F3d 1244.

Prisoner did not satisfy his burden of showing that he exhausted available administrative remedies as required by 42 USCS § 1997e(a), where although prisoner submitted to court evidence indicating that his administrative remedies to at least one of his claims may have been exhausted before he filed his 42 USCS § 1983 action, prisoner neither attached this evidence to his § 1983 complaint nor alleged full exhaustion in his complaint. McAlphin v Morgan (2000, CA8 Ark) 216 F3d 680.

Inmates' 42 USCS § 1983 claim challenging conditions of confinement was properly dismissed under 42 USCS § 1997e(a) for failure to exhaust available prison administrative remedies, where prison grievances were in process when suit was filed, and some of claims were not fully exhausted at time district court dismissed action without prejudice. Graves v Norris (2000, CA8 Ark) 218 F3d 884.

Prisoner's allegation that prison's restrictions on prisoners' unmonitored

telephone calls violated their constitutional rights was properly dismissed under 42 USCS § 1997e, where prisoner did not plead that he exhausted all administrative remedies, but instead averred that there were no available administrative remedies and that any administrative remedies claimed to exist were a sham, as there was no futility exception to PLRA exhaustion requirement. Massey v Wheeler (2000, CA7 Ill) 221 F3d 1030.

Prisoner was not prevented from claiming he had religious beliefs from combination of Buddhism and Christianity, for purposes of inmate's request for pastoral visit by Christian minister after inmate called himself Buddhist for purposes of receiving special diet, on basis that inmate failed to adequately explain during administrative appeals that he had beliefs in both Christianity and Buddhism, as litigant's failure to raise religious beliefs issue during administrative appeal was not failure to exhaust administrative remedies under 42 USCS § 1997e(a), where prison did not require inmates to register under a certain religion for purposes of receiving pastoral visits. Kikumura v Hurley (2001, CA10 Colo) 242 F3d 950, 2001 Colo J C A R 1350.

Inmates challenging practice by which prison and jail granted one phone company the exclusive right to provide telephone service to inmates in return for 50 percent of revenues generated by service failed to exhaust their administrative remedies as required by 42 USCS § 1997e(a), notwithstanding inmates' claim that they had no remedy against exorbitant phone bills, as court would reject "futility" exception to requirement of exhaustion. Arsberry v State (2001, CA7 Ill) 244 F3d 558, 2001-1 CCH Trade Cases P 73205.

Allegations in motion to reinstate 42 USCS § 1983 action were sufficient to raise inference that prisoner had exhausted his "available" remedies, where prisoner claimed that he had requested in writing administrative forms for filing a grievance but Department of Corrections did not respond to his requests for forms. Miller v Norris (2001, CA8 Ark) 247 F3d 736.

District court's refusal to dismiss excessive force claim of inmates against corrections officers on exhaustion grounds under 42 USCS § 1997e(a) was not erroneous, where inmates provided documentation of their efforts to pursue grievance process of prison to its completion, and challenged conduct either predated effective date of PLRA or occurred almost simultaneously. Curry v Scott (2001, CA6 Ohio) 249 F3d 493, 2001 FED App 139P.

Challenge to drug testing procedures in prison is made "with respect to prison conditions", for purposes of exhaustion requirement under 42 USCS § 1997e (a). Giano v Goord (2001, CA2 NY) 250 F3d 146.

Inmate's claim that he was beaten by prison guards was not exempt from PLRA's exhaustion requirement; an exception for particularized instances of force directed at specific inmate would be cumbersome to apply, assault by prison guard could be by-product of systemic problems and management failure, rather than random act of violence, restricting frivolous claims was not only purpose or benefit of 42 USCS § 1997e, and requiring administrative review did not

foreclose prisoner's ability to file suit, but rather created necessary precondition. Smith v Zachary (2001, CA7 Ill) 255 F3d 446.

Prisoner who had delay in treatment of abdominal hernia and who failed to use prison's four-step administrative review procedure to raise grievance regarding his medical care failed to exhaust administrative remedies under 42 USCS § 1997e (a), notwithstanding claims that grievance procedure could not provide prisoner with money damages, which was only form of relief sought, and that prison wardens would have dual status as decision-makers in grievance proceedings and as defendants in prisoner's lawsuit, where prisoner offered no evidence of bias. Massey v Helman (2001, CA7 Ill) 259 F3d 641, reh den (2001, CA7 Ill) 2001 US App LEXIS 21759.

Prisoner's 42 USCS § 1983 action was properly dismissed because he failed to exhaust administrative remedies under 42 USCS § 1997e, notwithstanding prisoner 's claims that he did not need to exhaust administrative remedies if money damages were unavailable through grievance procedure, and that he substantially complied with administrative procedures by filing a Step One grievance, which put prison on notice of his complaint, but he did not pursue grievance remedy to conclusion, as required by statute. Wright v Hollingsworth (2001, CA5 Tex) 260 F3d 357.

Prisoner's action was properly dismissed pursuant to 42 USCS § 1997e(a), where although prisoner stated that his counselor refused to give him a grievance form, prisoner did not allege that there was no other source for obtaining a grievance form or that he made any other attempt to obtain a form or to file a grievance without a form. Jones v Smith (2001, CA6) 266 F3d 399, 12 AD Cas 511, 2001 FED App 338P, reh den (2001, CA6) 2001 US App LEXIS 26406.

Prisoner failed to exhaust remedies within meaning of 42 USCS § 1997e, where although § 1997e was enacted several months after inmate was injured by beatings by guards, inmate never submitted formal, written complaint within 20 days of alleged offense or demonstrated valid reason for delay, as required by prison's grievance policy. McCoy v Gilbert (2001, CA7 Ill) 270 F3d 503, reh den (2002, CA7 Ill) 2002 US App LEXIS 1089.

Claim by inmate who alleged he was not permitted to attend Jewish services and possess Jewish items was barred by 42 USCS § 1997e(a), where inmate failed to exhaust his available administrative remedies. Walker v Maschner (2001, CA8 Iowa) 270 F3d 573, reh, en banc, den, reh den (2002, CA8) 2002 US App LEXIS 357.

Exhaustion requirements of PLRA did not apply to prisoner's retaliation claims. Morales v Mackalm (2002, CA2 NY) 278 F3d 126.

Prison inmate's claims of verbal abuse, and his claim that he was forced to once beg for food that he eventually received, were not actionable because neither claim alleged physical injury to inmate. Calhoun v Hargrove (2002, CA5 Tex) 312 F3d 730.

Dismissal of inmates' action under 42 USCS § 1983 was affirmed because inmates did not exhaust their administrative remedies as required by Prison

Litigation Reform Act, 42 USCS § 1997e(a), because exhaustion requirement was applicable even if inmates were seeking money damages. Beaudry v Corr. Corp. of Am. (2003, CA10 Okla) 331 F3d 1164.

Inmate challenging grooming policies of prison did not exhaust his administrative remedies under 42 USCS § 1997e, where although inmate complained to three prison officials, and warden told prisoner to file in court, no unequivocal statement was made that prisoner had exhausted the prison's grievance procedures, no one alleged that prisoner risked discipline if he pursued grievance, and prisoner in fact did file an informal complaint with his unit manager, and after receiving a negative response, filed an initial level formal grievance and appeal. Jackson v District of Columbia (2001, App DC) 254 F3d 262.

Prisoner was required by 42 USCS § 1997e(a) to exhaust his administrative remedies before bringing § 1983 action, where prisoner brought action alleging that prison officials had endangered him by identifying him as homosexual and child molester to prison population and then failed to protect him from attacks, and argued that exhaustion of administrative remedies was not necessary because assaults did not constitute "prison condition" under statute, because prisoner's action, which arose under federal law, encompassed effects of actions by state corrections officials. Morgan v Arizona Dep't of Corrections (1997, DC Ariz) 976 F Supp 892 (criticized in Plasencia v California (1998, CD Cal) 29 F Supp 2d 1145).

Pro se federal inmate's Bivens claim alleging Eighth Amendment violation of his right to medical and mental health treatment is dismissed for failure to complete administrative exhaustion of claim, although no court has yet squarely ruled that new exhaustion requirement of 42 USCS § 1997e is applicable to this type of claim, because it is clear that Bureau of Prisons' 4-step process for resolution of prisoner complaints could be used to resolve inmate's complaint. Gibbs v Bureau of Prison Office (1997, DC Md) 986 F Supp 941.

Prisoner's suit complaining about humiliating strip search is not subject to dismissal under 42 USCS § 1997e(e), even though he has not pursued in-house grievance procedure, where his complaint alleges single incident and seeks money damages, because § 1997e(e) exhaustion requirement is inapplicable since grievance procedure does not allow recovery of monetary damages. Hollimon v DeTella (1998, ND Ill) 6 F Supp 2d 968.

Inmate's § 1983 claim for monetary damages premised on allegations that he received inadequate medical care survives but injunctive aspect of case is dismissed, where inmate failed to follow through with grievance by filing it with grievance officer, because 42 USCS § 1997e(a) requires exhaustion of prison administrative remedies when available, and injunctive relief was available through grievance process. Russo v Palmer (1998, ND Ill) 990 F Supp 1047.

Inmate's § 1983 complaint is dismissed without prejudice pursuant to 42 USCS § 1997e(a), even though he has met statutory requirements of 28 USCS § 1915(a),

filed Authorization with respect to filing fee, and been granted request to proceed in forma pauperis, because his "failure-to-protect" claim is grievable, and he has not exhausted his administrative remedies regarding it. Soto v Elston (1998, WD NY) 993 F Supp 163.

Inmate's § 1983 due process claim is dismissed without prejudice for failure to exhaust available state administrative remedies, even though remedy available under state code of regulations does not explicitly provide for monetary relief and inmate prays for $ 5,000 compensatory and $ 5,000 punitive damages in his suit, because Congress recently amended 42 USCS § 1997e(a) to delete language making exhaustion requirement dependent on effectiveness of state remedy. Spence v Mendoza (1998, ED Cal) 993 F Supp 785, 98 Daily Journal DAR 4336 (criticized in Plasencia v California (1998, CD Cal) 29 F Supp 2d 1145) and (criticized in York v Huerta-Garcia (1999, SD Cal) 36 F Supp 2d 1231).

Even if prisoner's complaint stated viable claim that his constitutional rights had been violated, his § 1983 action was subject to dismissal for failure to exhaust administrative remedies, as required by 42 USCS § 1997e(a). Payton v Horn (1999, ED Pa) 49 F Supp 2d 791.

Inmate's "failure to protect" claim is dismissed without prejudice for failure to exhaust administrative remedies, even though federal administrative remedy program does not authorize prison officials to grant monetary and declaratory relief that inmate seeks, because, based on legislative history, best interpretation of 42 USCS § 1997e is one which requires exhaustion even where inmate only seeks relief which cannot be obtained through administrative procedures. Odumosu v Keller (1999, ND NY) 53 F Supp 2d 545.

Prisoner's § 1983 excessive force claim against guards may proceed, even if he cannot document his pursuit of administrative redress, because excessive force claim does not address "prison conditions" and exhaustion of administrative remedies is not required under 42 USCS § 1997e(a). Wright v Dee (1999, SD NY) 54 F Supp 2d 199.

Inmate's pro se civil rights complaint for money damages under § 1983 is dismissed for failure to exhaust administrative remedies, where he alleges he was denied prescribed drugs, medical treatment, and therapy needed for his HIV-positive condition during 6-day period, because complaint relates to his prison conditions, he clearly was familiar with administrative process for filing grievances, having previously used it, but he did not first challenge this alleged deprivation via that process as required under 42 USCS § 1997e(a). Overton v Claussen (1999, DC Colo) 65 F Supp 2d 1165.

State inmate claiming retaliation against him in violation of First Amendment sufficiently alleged exhaustion of administrative remedies under 42 USCS § 1997e (a) with respect to rescission of offer of prison library employment, where he maintained that he filed informal grievance with deputy superintendent, that it was resolved in his favor, although no action had yet been taken on it, and that there was no opportunity for further appeal. McGrath v Johnson (1999, ED Pa) 67

F Supp 2d 499.

Inmate's appeal of guilty finding in disciplinary proceeding to prison superintendent satisfied exhaustion-of-administrative-remedies requirement under 42 USCS § 1997e with respect to claim of retaliatory discipline, despite claim that he had to seek certiorari relief to satisfy statutory requirement, since state statute providing for certiorari relief was not administrative remedy within meaning of federal statute. Shabazz v Cole (1999, DC Mass) 69 F Supp 2d 177.

Federal prisoner's § 1983 action alleging that he suffered various harms and damages as result of state corrections officials' refusal to act upon their detainer/warrant in timely fashion amounted to "civil action with respect to prison conditions" within meaning of 42 USCS § 1997e(a), and, thus, was subject to exhaustion requirements of statute. Onapolis v Lamanna (1999, ND Ohio) 70 F Supp 2d 809.

For purposes of exhaustion requirement imposed on inmate civil rights litigation under 42 USCS § 1997e(a), excessive force by correctional officers most assuredly constitutes effects of actions by government officials on lives of persons confined in prison. Diezcabeza v Lynch (1999, SD NY) 75 F Supp 2d 250.

Inmates' complaint about inadequate medical treatment is dismissed, where inmate's request for administrative claim forms was tardy and ineffective, even though money damages they seek are unavailable through administrative procedure, because inmates have not yet even attempted to exhaust administrative remedies as required by 42 USCS § 1997e(a). Massey v Helman (1999, CD Ill) 78 F Supp 2d 806.

Inmate's § 1983 case alleging deliberate indifference to his medical needs may proceed in federal court, where New York attorney general now insists that formal hearing procedures involving counsel and transcript record are not available under inmate grievance program, because, regarding past and irreducible injuries, grievance procedures are empty formality and are not "available" administrative remedy under 42 USCS § 1997e(a). Cruz v Jordan (1999, SD NY) 80 F Supp 2d 109.

Inmate's claim concerning lost personal property must fail, where he failed to exhaust his available administrative remedies when he omitted to file appeal of initial disposition of his grievance, because 42 USCS § 1997e(a) provision that "no action shall be brought" becomes operative and requires dismissal of inmate's claim. Gonzalez Feliciano v Servicios Correccionales (2000, DC Puerto Rico) 79 F Supp 2d 31.

Inmate's § 1983 abuse claim against prison mental health counselor and others is dismissed without prejudice, even though it appears that he filed some sort of complaint with legal services office, where he has not shown any compliance with grievance procedure outlined in standard operating procedures, because 42 USCS § 1997e(a) exhaustion requirement applies to claims of abuse or excessive

force. Dillard v Jones (2000, ND Ga) 89 F Supp 2d 1362.

Fact that monetary damages that prisoner sought were not available through administrative remedy scheme did not eliminate requirement under 42 USCS § 1997e (a) that he exhaust his administrative remedies before suing based on claim that his access to certain legal materials was intentionally delayed during course of his then-pending civil suit against New York Department of Corrections. Royster v United States (2000, SD NY) 91 F Supp 2d 626.

Inmate's § 1983 action against state seeking injunction and damages for personal injuries sustained while performing his duties as inmate electrician was barred in its entirety under 42 USCS § 1997e(a), even though inmate could not recover damages in state administrative proceedings. Thorp v Kepoo (2000, DC Hawaii) 100 F Supp 2d 1258.

Fact that inmate complaining of medical care had been transferred to another prison facility did not necessarily render moot requirement of 42 USCSA § 1997e(a) that he exhaust available administrative remedies before bringing § 1983 suit. Rodriguez v Senkowski (2000, ND NY) 103 F Supp 2d 131.

Inmate failed to exhaust administrative remedies as required by 42 USCS § 1997e(a) before filing § 1983 cruel and unusual punishment suit against correctional officers, thereby requiring dismissal of action, where inmate filed action before filing appeal from initial grievance response and before seeking final administrative review. Ahmed v Sromovski (2000, ED Pa) 103 F Supp 2d 838.

Prisoners who challenged Department of Corrections' dismissal of their complaint under inmate complaint review system, were not required to seek declaratory ruling pursuant to state statute giving administrative agencies discretionary authority to make declaratory rulings of issues raised by affected parties in order to satisfy exhaustion requirement of 42 USCS § 1997e(a). Aiello v Litscher (2000, WD Wis) 104 F Supp 2d 1068.

Prisoner must pursue his claim through grievance program to administrative exhaustion, where he complains of violation of his First Amendment rights by confiscation of newspaper, because it is claim "with respect to prison conditions" under 42 USCS § 1997e(a), and exhaustion is required even though monetary relief sought is unavailable through grievance procedure. Majid v Wilhelm (2000, SD NY) 110 F Supp 2d 251.

Inmate's § 1983 claim asserting inadequate provision of educational programs is dismissed for failure to exhaust administrative remedies, where jail maintains detailed formal grievance policy of which inmate never availed herself, because term "prison conditions," as intended in 42 USCS § 1997e, includes quality and availability of institution's educational programs, activities, and opportunities. A.N.R. v Caldwell (2000, MD Ala) 111 F Supp 2d 1294.

Inmate claiming correctional captain beat him while interrogating him about allegedly fraternizing with female officer need not file prisoner grievance before proceeding with § 1983 claim, where there is no relief he could receive

through administrative appeals process for this incident, because mandatory exhaustion under 42 USCS § 1997e(a) in this case would be useless act wasting time of both inmate and prison official. Wells v Payne (2000, ND Ind) 114 F Supp 2d 795.

Section 1983 Eighth Amendment claim of one-legged prisoner is dismissed, even though he filed 2 inmate grievances in 1998, where neither alleged anything other than disability discrimination resulting in his being removed from prison storehouse position, because 42 USCS § 1997e requires him to exhaust administrative remedies with respect to his claims of inadequate medical assistance, inaccessible facilities, and unsafe conditions. Parkinson v Goord (2000, WD NY) 116 F Supp 2d 390.

State prisoner failed to exhaust administrative remedies before filing suit, as required by 42 USCS § 1997e(a), even if letter listing complaints satisfied requirement of filing grievance complaint, where suit was filed on same date as letter was sent, since prisoner did not give prison officials adequate time to investigate and hear grievances raised in letter. Graham v Perez (2000, SD NY) 121 F Supp 2d 317.

Death row inmates' "as applied" free-speech challenge to state corrections department's policy prohibiting oral final statements, and requiring instead submission of written statements to be read only after execution, was not subject to exhaustion requirement of 42 USCS § 1997e(a), where inmates challenged actions that would occur both before and after their deaths, and, thus, challenged actions did not exclusively concern "prison conditions." Treesh v Taft (2000, SD Ohio) 122 F Supp 2d 887.

Exhaustion requirement of 42 USCS § 1997e(a) did not apply to inmate's due process claim against correctional institution officials, where inmate's ability to exhaust administrative remedies expired before enactment of amended version of Prisoner Litigation Reform Act that mandated exhaustion of administrative remedies. Williams v Wilkinson (2000, SD Ohio) 122 F Supp 2d 894, motion den, in part, motion gr, in part, injunction gr, in part (2001, SD Ohio) 2001 US Dist LEXIS 1770.

Prisoner's § 1983 excessive force claims may proceed, where state prison's attempt to fill void by establishing grievance process in its handbook is unavailing, because state department of corrections has failed to enact administrative remedy for grievances in state prison system and thus there is no "administrative" remedy capable of being exhausted under 42 USCS § 1997e(a). Concepcion v Morton (2000, DC NJ) 125 F Supp 2d 111.

Pro se inmate's § 1983 action alleging that he was subjected to supervisory indifference, abuse of governmental authority, conspiratorial abuses, excessive uses of force, deliberate indifference to his serious medical needs, failure of officials to protect him from known dangers, and unlawful retaliation need not be dismissed, even if complaint contains both exhausted and unexhausted claims, where any attempt by inmate to further exhaust such claims under Adult Inmate

Grievance Procedure would be futile, because 42 USCS § 1997e(a) has not been found by Fourth Circuit courts to impose exhaustion of administrative remedies as prerequisite to jurisdiction. Johnson v True (2000, WD Va) 125 F Supp 2d 186.

Prisoner's § 1983 claim of malicious use of force against him may proceed, even though grievance coordinator claims he filed 2 separate grievance forms that were returned to him for failure to first file informal complaint, because prisoner has attached carbon copy of informal complaint and original regular grievance form demonstrating, at least facially, that he did exhaust his administrative remedies prior to filing this suit. Velasco v Head (2000, WD Va) 166 F Supp 2d 1100.

"No action shall be brought," as provided in 42 USCS § 1997e(a), extends to claims for monetary damages. Rivera v Garcia (2000, DC Puerto Rico) 192 FRD 57.

Prison officials' motion to dismiss is granted for inmate's failure to exhaust administrative remedies, where he allegedly was attacked and sodomized by other inmates, even though prison grievance procedure does not provide for monetary damages he seeks, because court is convinced, by language and legislative history of 42 USCS § 1997e, that Congress intended to make exhaustion mandatory when administrative procedure is available and not only when such procedure furnishes effective remedy. Torres v Alvarado (2001, DC Puerto Rico) 143 F Supp 2d 172, dismd without prejudice, judgment entered (2001, DC Puerto Rico) 2001 US Dist LEXIS 12083.

Inmate's § 1983 excessive force and deliberate-indifference-to-safety claims are dismissed for failure to exhaust administrative remedies under 42 USCS § 1997e(a), even though he argues these are not claims "with respect to prison conditions," where prisoner's safety is condition of confinement, because such claims are subject to administrative exhaustion requirement. Freytes v Laboy (2001, DC Puerto Rico) 143 F Supp 2d 187.

Inmate's admission that he failed to exhaust institutional remedies before bringing § 1983 action alleging that he was deprived of necessary medical treatment mandated dismissal of action pursuant to 42 USCS § 1997e(a), even though inmate sought only money damages and such relief could not be granted administratively. Sonds v St. Barnabas Hosp. Corr. Health Servs. (2001, SD NY) 151 F Supp 2d 303.

Prisoner did not satisfy requirement of 42 USCS § 1997e that he exhaust administrative remedies before bringing civil rights suit with respect to prison employee who was not identified or referred to in any of prisoner's prison grievances. Gibbs v Bolden (2001, ED Mich) 151 F Supp 2d 854.

Inmate's multifaceted § 1983 complaint will be dismissed without prejudice, where he asserts claims under First, Eighth, and Fourteenth Amendments, some of which he has exhausted and some of which he has not, because plain language of 42 USCS § 1997e(a), as well as legislative intent and policy reasons behind it, compels "total exhaustion" rule. Rivera v Whitman (2001, DC NJ) 161 F Supp 2d 337.

State inmate's grievances alleging that he had been sprayed with pesticide sufficiently exhausted his administrative remedies under 42 USCS § 1997e(a) against personnel responsible for spraying, even though they were not specifically named in grievances, where grievances presented relevant factual circumstances giving rise to potential claim and requested identities of individuals responsible for spraying pesticide, facts were investigated and developed, and nothing indicated that officials would have done anything differently if inmate had pursued more specific claims against those individuals. Irvin v Zamora (2001, SD Cal) 161 F Supp 2d 1125.

Pregnant inmate's § 1983 sexual assault claim will not be dismissed under 42 USCS § 1997e(a), even though plaintiff inmate must exhaust administrative remedies under statute, where record indicates she filed grievance form over alleged incident and prison failed to respond, because court finds she has exhausted her administrative remedies. Goode v Corr. Med. Servs. (2001, DC Del) 168 F Supp 2d 289.

Prisoner was required by 42 USCS § 1997e(a) to exhaust administrative remedies before bringing § 1983 action for damages related to prison conditions, even though he contended that grievance procedure in place did not provide adequate remedy. Serrano v Alvarado (2001, DC Puerto Rico) 169 F Supp 2d 14.

Pro se inmate has habeas petition dismissed without prejudice, and court extends time for him to file administrative appeal to regional director, where inmate is trying, on his own, to arrange for kidney transplant, and it appears likely that excusable confusion has occurred, because he must be allowed to exhaust administrative remedies as required by 42 USCS § 1997e. Cardona v Winn (2001, DC Mass) 170 F Supp 2d 131.

Prisoner's § 1983 Eighth Amendment claim is not barred pursuant to 42 USCS § 1997e(a), where he pursued his administrative remedies by filing grievance form, even though he allegedly failed to appeal rejection of his form, because corrections officials have presented insufficient evidence to suggest he was adequately notified of rejection and his obligation to appeal. Santiago v Fields (2001, DC Del) 170 F Supp 2d 453.

Inmate's § 1983 excessive-force claim is not barred by 42 USCS § 1997e(a), where he filed grievance form over alleged incident but prison officials failed to respond, because court finds that inmate has exhausted his administrative remedies. Amaro v Taylor (2001, DC Del) 170 F Supp 2d 460.

Fact that one inmate exhausted his administrative remedies with respect to claim at issue at preliminary injunction hearing in inmates' class action against prison officials under § 1983 regarding supermaximum prison conditions was sufficient to satisfy exhaustion requirement of 42 USCS § 1997e(a) for other class members. Jones 'El v Berge (2001, WD Wis) 172 F Supp 2d 1128, injunction gr, in part, motion gr (2001, WD Wis) 164 F Supp 2d 1096.

Inmate's § 1983 claim of deliberate indifference to his hepatitis infection may proceed, even though he did not pursue internal grievance procedure to

highest level of appeal, where he indicated during interview at second level review that his concerns about lack of treatment had been addressed, because inmate adequately exhausted his claim of inadequate medical treatment under 42 USCS § 1997e(a). Gomez v Winslow (2001, ND Cal) 177 F Supp 2d 977.

Even if inmate failed to exhaust administrative remedies, his § 1983 claim alleging denial of access to courts was not subject to 42 USCS § 1997e(a), where claim did not relate to prison-wide policy categorizing photocopied currency as contraband, but, rather, alleged that he was singularly subjected to unconstitutional treatment while all other prisoners with pending drug charges were permitted to receive photocopied currency. John v N.Y.C. Dep't of Corr. (2002, SD NY) 183 F Supp 2d 619.

Inmate's failure to exhaust administrative remedies before bringing § 1983 action alleging deliberate indifference to medical needs warranted dismissal of complaint under 42 USCS § 1997e(a), even if inmate had filed grievances to which he received no reply, since he could have and should have appealed grievance in accordance with grievance procedures. Martinez v Williams (2002, SD NY) 186 F Supp 2d 353.

Inmate alleged more than de minimis injury where he alleged he had been sexually assaulted for two hours, suffered cuts, bruises and abrasions, and was so physically ill that he vomited and was in shock for hours afterward. Kemner v Hemphill (2002, ND Fla) 199 F Supp 2d 1264.

Prisoner did not allege physical injury, but he did bring suit for alleged violations of his First Amendment rights, rather than for mental or emotional injury; accordingly, 42 USCS § 1997e(e) did not present obstacle to action. Cancel v Mazzuca (2002, SD NY) 205 F Supp 2d 128, reconsideration den, motions ruled upon (2002, SD NY) 2002 US Dist LEXIS 15201.

Inmate failed to set forth cause of action for alleged sexual harassment by prison guard and dismissal was proper when female guard allegedly peeped through inmate's window and made obscene gestures, but there was no allegation of physical injury. Johnson v Medford (2002, WD NC) 208 F Supp 2d 590, affd (2002, CA4 NC) 37 Fed Appx 622.

Former county jail inmate's Eighth Amendment inadequate conditions of confinement claims against county board of supervisors were subject to dismissal where inmate failed to show that delay in four or five occasions in providing clean clothing or bedding caused inmate any physical injury as required by 42 USCS § 1997e(e). Smith v Bd. of County Comm'rs (2002, DC Kan) 216 F Supp 2d 1209.

To extent inmate sought compensatory and punitive damages premised upon violation of his Eighth Amendment right to be free from cruel and unusual punishment, 42 USCS § 1997e(e) barred claim because inmate presented no evidence of physical injury resulting from prison officials' alleged failure to protect inmate from other inmates. Wolff v Hood (2002, DC Or) 242 F Supp 2d 811.

Defendants in inmate's excessive force suit were not entitled to summary

judgment on grounds that inmate had not exhausted administrative remedies pursuant to 42 USCS § 1997e(a), as inmate claimed that inmate's habit was to file grievance as to any incident that happened to inmate and that grievances often were not responded to or were returned; although defendants alleged that they were unable to find any record of grievance, that did not necessarily mean that none was filed. Livingston v Piskor (2003, WD NY) 215 FRD 84.

Because administrative process of Connecticut Department of Correction provided prison officials with authority to take some form of action in response to inmate's complaint, had she filed one, remedial scheme was available to her; consequently, no futility exception could be read into 42 USCS § 1997e(a) under these circumstances. Hock v Thipedeau (2003, DC Conn) 245 F Supp 2d 451.

In petitioner inmate's action challenging her transfer from community confinement center to prison in another state due to retroactively applied Bureau of Prison's policy change, exhaustion of administrative remedies was not required, because any such attempt would be futile, as it was clear that claim would be rejected by Bureau, given Bureaus insistence that former policy was illegal. Howard v Ashcroft (2003, MD La) 248 F Supp 2d 518.

Where inmate sued corrections officers under Eighth and Fourteenth Amendments for failure to protect inmate from other prisoners, claims were dismissed without prejudice for failure to exhaust administrative remedies under 42 USCS § 1997e(a); inmate apparently attempted to bypass both initial state grievance resolution process and first level appeal. Labounty v Johnson (2003, WD NY) 253 F Supp 2d 496.

Where inmate sued corrections officers for retaliation in violation of inmate 's First Amendment rights by identifying inmate as gang member after inmate successfully pursued grievance against officers, court declined to dismiss claim for failure to exhaust administrative remedies under 42 USCS § 1997e(a); discovery was required to resolve issue whether inmate was precluded from meaningful appeal, as inmate's grievance had been consolidated under another prisoner's name and inmate was confused by initial decision in grievance process. Labounty v Johnson (2003, WD NY) 253 F Supp 2d 496.

Especially in light of inmate's prior experience in filing grievances, court could not accept inmate's argument that inmate's reporting of incident involving inmate's altercation with corrections officer to prisoner volunteer group constituted properly filed grievance with prison officials; thus, city's and corrections officer's motion for summary judgment for failure to exhaust administrative remedies, as required by Prison Litigation Reform Act of 1996, 42 USCS 1997e(a), was granted. Harvey v City of Philadelphia (2003, ED Pa) 253 F Supp 2d 827.

6. Hearing

Court erred in dismissing 42 USCS § 1983 action under Civil Rights of Institutionalized Persons Act (42 USCS §§ 1997 et seq.) without holding hearing

or giving notice of its intent to rule, where inmate who had reasonably and in good faith pursued administrative remedies promptly attempted to secure relief from prison authorities, and only because of prison's requirement that prisoner submit grievance letter rather than federal complaint that timeliness became an issue, and on remand prisoner should have opportunity to present evidence in support of contention that grievance letter was mailed within 30 day limit required by prison rule. Rocky v Vittorie (1987, CA5 La) 813 F2d 734, 93 ALR Fed 699.

In absence of particularized averments concerning exhaustion of administrative remedies showing nature of administrative proceeding and its outcome, 42 USCS § 1983 action must be dismissed under 42 USCS § 1997e, as district courts should not have to hold time-consuming evidentiary hearings in order to determine whether court should reach merits or decline under mandatory language of § 1997e. Knuckles El v Toombs (2000, CA6 Mich) 215 F3d 640, 2000 FED App 202P.

7. Limitation on damages

42 USCS § 1997e(e) did not apply to action brought by prisoner after he was released on parole, as prisoner was no longer "confined in a jail, prison, or other correctional facility". Kerr v Puckett (1998, CA7 Wis) 138 F3d 321.

42 USCS § 1997e(e) does not apply to First Amendment claims, regardless of form of relief sought, as deprivation of First Amendment rights entitles plaintiff to judicial relief wholly aside from any physical, mental, or emotional injury incurred. Canell v Lightner (1998, CA9 Or) 143 F3d 1210, 98 CDOS 3490, 98 Daily Journal DAR 4827.

Claim by prisoner seeking compensatory damages for mental or emotional harm suffered for alleged violation of his First Amendment rights to practice his religion in prison was barred by 42 USCS § 1997e(e), where no physical injury was alleged, but claims for nominal damages were not barred by § 1997e(e), and to the extent that prisoner's claims for punitive damages were premised on alleged violation of his right to free exercise of religion rather than on any emotional or mental distress suffered as result of violation, claims were not barred under § 1997e(e). Allah v Al-Hafeez (2000, CA3 Pa) 226 F3d 247.

Subsec. (e) of 42 USCS § 1997e requires more than de minimis physical injury before emotional injury may be alleged; prisoner's allegations in his conditions-of-confinement claim--that he was deprived of food, drink, and sleep for four days--were insufficient to state claim for physical injury, but prisoner was granted leave to amend his complaint in order to cure deficiency. Mitchell v Horn (2003, CA3 Pa) 318 F3d 523.

Bivens claims are held to be claims within meaning of any other Federal law under 42 USCS § 1997e(a). Stoutt v Banco Popular de P.R. (2003, CA1 Puerto Rico) 320 F3d 26.

Section 1983 complaint seeking damages for alleged emotional and mental

injuries must be dismissed without prejudice, where plaintiffs cannot show at this time any physical injuries, because prisoners and former prisoners may not obtain such damages for injuries occurring while in custody without showing "physical injury" within meaning of new 42 USCS § 1997e(e). Zehner v Trigg (1997, SD Ind) 952 F Supp 1318 (criticized in Hollimon v DeTella (1997, ND Ill) 1997 US Dist LEXIS 1083) and (criticized in Calhoun v DeTella (1997, ND Ill) 1997 US Dist LEXIS 1745) and affd (1997, CA7 Ind) 133 F3d 459.

42 USCS § 1997e(e) did not apply retroactively to inmate's pending § 1983 claim, where inmate was entitled to seek compensatory damages without suffering physical injury when he filed complaint, and application of statute to pending cases would eliminate claims that were legally cognizable and attach new legal consequences to events completed before enactment of statute. Thomas v Hill (1997, ND Ind) 963 F Supp 753.

Pro se inmate's claim against prison officials must fail under 42 USCS § 1997e(e), even if he has demonstrated failure to protect him against threats and assaults upon him as "snitch," where record only supports finding of cuts and bruises lasting no longer than 2 or 3 days, because such injuries are de minimis and not actual physical injury required to sustain claim. Luong v Hatt (1997, ND Tex) 979 F Supp 481.

Inmate's § 1983 claims for mental and emotional injuries are dismissed with leave to amend, where only alleged physical contact is that he had "bodily fluids thrown on" him, because in order to recover for mental or emotional injury he must allege prior physical injury pursuant to 42 USCS § 1997e(e). Evans v Allen (1997, ND Ill) 981 F Supp 1102.

Allegations by military prisoners that they had been sexually assaulted by prison staff established "physical injury" for showing under 42 USCS § 1997e(e) of prior physical injury before prisoner could bring federal civil action to recover for mental or emotional injury suffered while in custody. Marrie v Nickels (1999, DC Kan) 70 F Supp 2d 1252.

State prisoners' § 1983 claims against prison officials are dismissed, to extent they seek damages for "mental and emotional distress among adherents of Sunni Muslim community" at prison, because 42 USCS § 1997e(e) states "no federal civil action may be brought by prisoner . . . for mental or emotional injury suffered while in custody without prior showing of physical injury." Craig v Cohn (2000, ND Ind) 80 F Supp 2d 944.

42 USCS § 1997e(e) is meant to exclude recovery for mere emotional or mental distress. Lewis v Washington (2000, ND Ill) 197 FRD 611.

Malicious prosecution claims of federal inmate are barred by 42 USCS § 1997e (e), even though he alleges his wrongful prosecution for assault was part of conspiracy to cover up officers' planned physical assault of him, because he has failed to show physical injury in connection with his malicious prosecution claims. Turner v Schultz (2001, DC Colo) 130 F Supp 2d 1216.

Inmate has failed to establish any constitutionally significant physical

injury resulting from jail officials' alleged conduct, where he claims they did not shower or "debug" inmates or test them for communicable diseases before double bunking and mixing them with general population, because inmate's toe fungus, even if attributable to "sanitation," was treated with medication and was, at most, minor irritation. Canell v Multnomah County (2001, DC Or) 141 F Supp 2d 1046.

Provision of Litigation Reform Act, 42 USCS § 1997e(d), imposing cap on attorney's fees recoverable by prisoner litigants pursuing civil rights complaints does not violate equal protection. Sallier v Scott (2001, ED Mich) 151 F Supp 2d 836.

Reasoning of Greig cannot be extended to physical injury requirement of 42 USCS § 1997e(e) which is substantive limitation on type of actions that can be brought by prisoners; its purpose is to weed out frivolous claims where only emotional injuries are alleged--this purpose is accomplished whether § 1997e(e) is applied to suits brought by inmates incarcerated at time of filing or by former inmates incarcerated at time of alleged injury but subsequently released. Cox v Malone (2002, SD NY) 199 F Supp 2d 135.

Inmate was not barred from filing action for violation of his Fourteenth Amendment rights; however, he was barred from recovering compensatory damages for mental or emotional injuries stemming because his physical injuries did not pass Prison Litigation Reform Act, specifically 42 USCS § 1997e(e), de minimus test. Todd v Graves (2002, SD Iowa) 217 F Supp 2d 958.

8. Dismissal

Although court possesses inherent authority to dismiss inmate's 42 USCS § 1983 pro se in forma pauperis complaint on its own motion based on failure to comply with exhaustion requirement under 42 USCS § 1997e, court was first obligated to provide plaintiff notice and opportunity to be heard, as existence of administrative procedure may be matter of fact, but whether procedure qualifies as an administrative remedy that must be exhausted under § 1997e is question of law. Snider v Melindez (1999, CA2 NY) 199 F3d 108.

42 USCS § 1997e(c)(1) did not change procedures that district court previously adopted regarding the dismissal of a complaint without granting leave to amend. Shane v Fauver (2000, CA3 NJ) 213 F3d 113.

Impact of language "while in custody" in Prison Litigation Reform Act (PLRA), 42 USCS 1997e(e) was that PLRA covered all federal civil lawsuits filed by prisoners concerning emotional or mental injury suffered while in past or present custody, even if subject of filed lawsuits was unrelated to current imprisonment; therefore, district court did not abuse its discretion by dismissing prisoner's complaint under 42 USCS § 1983 because PLRA forbade litigation of this lawsuit while prisoner was imprisoned, as he complained of injury occurring while he was in custody as result of mistaken arrest, and he did not allege physical injury arising from actions of deputies. Napier v

Preslicka (2002, CA11 Fla) 314 F3d 528, 16 FLW Fed C 114, reh, en banc, den (2003, CA11 Fla) 16 FLW Fed C 638.

Prisoner's civil rights complaint alleging that collection of DNA sample by appellee prison officials for registration in DNA database pursuant to Tex. Gov 't Code Ann. § 411.148 violated prisoner's rights under Fourth Amendment was properly dismissed as frivolous pursuant to 28 USCS §§ 1915A and 1915(e)(2) and 42 USCS § 1997e(c)(1). Velasquez v Woods (2003, CA5 Tex) 329 F3d 420.

Dismissal of inmate's 42 USCS § 1983 civil rights action for failure to exhaust administrative remedies with respect to claims against warden, pursuant to 42 USCS § 1997e, was reversed and remanded to grant inmate's motion to amend complaint to strike claims against warden where (1) inmate's request to amend complaint and dismiss warden would have cured defect necessitating dismissal, (2) deletion of warden as defendant would not have required any additional discovery or changed any of pretrial deadlines or trial schedule, (3) inmate was not attempting to add any claims or defendants, and (4) inmate had not previously amended complaint, and it did not appear that inmate showed any bad faith in failing to dismiss warden earlier; district court's implicit denial of inmate's motion to amend was abuse of discretion. Kozohorsky v Harmon (2003, CA8 Ark) 332 F3d 1141, 55 FR Serv 3d 1168.

Rule permitting plaintiff to file amended habeas corpus petition, which includes only exhausted claims after district court dismisses action due to unexhausted claims, is applicable in 42 USCS § 1983 action where 42 USCS § 1997e mandates dismissal due to unexhausted claims. Kozohorsky v Harmon (2003, CA8 Ark) 332 F3d 1141, 55 FR Serv 3d 1168.

Inmate's claim against prison doctor is dismissed sua sponte under 42 USCS § 1997e(c)(1), even though inmate suffered extreme pain after accidentally dropping 30-pound weight on his thumb, where doctor treated inmate several times, ordered X-ray to determine if thumb was broken, and prescribed antibiotics when infection became apparent, because complaint clearly sounds in medical malpractice/negligence and fails to state claim under § 1983. Proctor v Vadlamudi (1998, ND NY) 992 F Supp 156.

There was no suggestion that prisoner was qualified for premium-pay jobs that existed at prisoner's current place of confinement, and even absent any discrimination, it was likely that prisoner would not have premium-pay job, so prisoner could not establish physical injury. Arlt v Mo. Dep't of Corr. (2002, ED Mo) 229 F Supp 2d 938.

9. Attorneys' fees

Limitations on attorney's fee awards under 42 USCS § 1997e applied to fees awarded to group of incarcerated juveniles who successfully challenged constitutionality of juvenile prison conditions in South Carolina, and fee provisions of § 1997e applied retroactively to fee awards for work performed but not compensated prior to its enactment. Alexander S. v Boyd (1997, CA4 SC) 113

F3d 1373, cert den (1998, US) 139 L Ed 2d 869, 118 S Ct 880 and (criticized in Glover v Johnson (1998, CA6 Mich) 138 F3d 229, 1998 FED App 72P) and (criticized in Hadix v Johnson (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P) and (criticized in Inmates of D.C. Jail v Jackson (1998, App DC) 332 US App DC 451, 158 F3d 1357) and (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413).

42 USCS § 1997e would not be applied to an award of attorney's fees for legal assistance completed prior to enactment of PLRA. Glover v Johnson (1998, CA6 Mich) 138 F3d 229, 1998 FED App 72P, remanded (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413) and (criticized in Collins v Montgomery County Bd. of Prison Inspectors (1999, CA3 Pa) 1999 US App LEXIS 9037) and reh, en banc, den (1998, CA6) 1998 US App LEXIS 13682.

Attorney's fee limitation section of PLRA, 42 USCS § 1997e(d), pertaining to civil rights actions by prisoners, does not apply to fee petitions for work performed prior to or after enactment of PLRA, in case filed before enactment date. Hadix v Johnson (1998, CA6 Mich) 143 F3d 246, 1998 FED App 117P (criticized in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413) and (criticized in Collins v Montgomery County Bd. of Prison Inspectors (1999, CA3 Pa) 1999 US App LEXIS 9037).

Attorney who has successfully represented prisoner in civil rights action is entitled to attorney's fees under Prison Litigation Reform Act for time spent on fee petition. Hernandez v Kalinowski (1998, CA3 Pa) 146 F3d 196.

PLRA limitations would not necessarily be applied to fee awards made after effective date of PLRA, for purposes of 42 USCS § 1983 action by attorneys who provided legal work for prisoner before effective date of PLRA but who were awarded fees after effective date. Blissett v Casey (1998, CA2 NY) 147 F3d 218.

Juvenile pretrial detainee was not prisoner within meaning of 42 USCS § 1997e, and thus limitation of attorney's fee award to juvenile in suit filed after he was raped and beaten as pretrial detainee would not be limited by terms of § 1997e. Doe by & Through Doe v Washington County (1998, CA8 Ark) 150 F3d 920.

Attorney's fee limitations under Prison Litigation and Reform Act apply to all post-enactment awards of fees, regardless of when case was filed, and PLRA, as it limits amount of fees paid to prisoner's counsel but not to non-prisoner's counsel, does not violate equal protection rights of prisoners, as statute is rationally related to state intent to curtail frivolous suits and to minimize costs associated with suits by prisoners. Madrid v Gomez (1998, CA9 Cal) 150 F3d 1030, 98 CDOS 5249, 98 Daily Journal DAR 7389 (criticized on other grounds in Winters v Sissel (1999, CA8 Iowa) 167 F3d 413).

Attorney's fees limitation provisions of PLRA predicated on hourly rates and the amount of judgment do not have retroactive effect where court applies them solely to limit fees awarded for services performed after effective date of PLRA based on judgment entered after that date. Collins v Montgomery County Bd. of

Prison Inspectors (1999, CA3 Pa) 176 F3d 679.

Attorney's fees limitations in PLRA would not be applied to award for services performed prior to enactment of PLRA, although fee award was ordered after effective date of PLRA. Madrid v Gomez (1999, CA9 Cal) 190 F3d 990, 99 CDOS 7090, 99 Daily Journal DAR 9049.

Limits under PLRA apply to attorney's fees that may be recovered by non-prisoner who intervened in case originally brought by prisoner. Montcalm Publ. Corp. v Virginia (1999, CA4 Va) 199 F3d 168.

Attorneys' fee cap of Prison Litigation Reform Act did not violate Equal Protection Clause of Fifth Amendment, for purposes of 42 USCS § 1983 action, by distinguishing between hourly rates for attorneys' fees for prisoners' attorneys and hourly rates for other civil rights plaintiffs free to recover "reasonable" attorneys' fees, as Congress could have rationally concluded that civil rights litigation by prisoners leads to fees which are often disproportionate, and that circumstances specific to prisoners may increase the number of trivial or frivolous allegations filed as compared with non-prisoners. Hadix v Johnson (2000, CA6) 230 F3d 840, 2000 FED App 351P.

Nominal damages are included within meaning of monetary awards under 42 USCS § 1997e(d)(2), and attorney's fee cap under PLRA was properly applied to $ 1.00 nominal damages award, resulting in maximum attorney's fee under PLRA of $ 1.50. Foulk v Charrier (2001, CA8 Mo) 262 F3d 687.

District court abused its discretion by using common lodestar method when it awarded attorney's fees and expenses not directly and reasonably incurred in successfully proving Eighth Amendment excessive force claim against prison guards, in violation of 42 USCS § 1997e(d)(1)(A) requirement that fees and expenses awarded to prisoner should be directly and reasonably incurred in proving an actual violation of plaintiff's rights. Johnson v Breeden (2002, CA11 Ga) 280 F3d 1308, 15 FLW Fed C 251.

Claim for attorney's fees for work done in securing TRO prohibiting state from executing defendant as scheduled pending a ruling on defendant's application for a preliminary injunction would be denied, as district court issued only a TRO and never finally adjudicated question of whether defendant's rights were violated, and thus defendant could not be said to have incurred fees in proving an actual violation of his rights, as required under Prison Litigation Reform Act, 42 USCS § 1997e(d)(1). Siripongs v Davis (2002, CA9 Cal) 282 F3d 755, 2002 CDOS 2174, 2002 Daily Journal DAR 2699, amd (circa 2002, CA9 Cal) 2002 CDOS 3297.

Post judgment attorney's fees requested by successful plaintiff whose attorneys had performed legal services to enforce court's orders and terms of consent decree resulting from successful § 1983 action alleging unconstitutional jail overcrowding were compensable under Prison Litigation Reform Act, as fees were directly incurred in enforcing court ordered relief instituted to correct violations of plaintiff's constitutional rights. Webb v Ada County (2002, CA9

Idaho) 285 F3d 829, 2002 CDOS 2941, 2002 Daily Journal DAR 3601.

Where inmates, after prevailing on their civil rights claims, sought attorney 's fees under Prison Litigation Reform Act of 1995, 42 USCS § 1997e, the provisions of Act applied both to work done on the merits of the case and for postjudgment enforcement of the court's order where the enforcement work was necessary to correct violations of the inmates' constitutional rights. Webb v Ada County (2002, CA9 Idaho) 285 F3d 829, 2002 CDOS 2941, 2002 Daily Journal DAR 3601.

Where inmates, after prevailing on their civil rights claims, sought attorney 's fees under Prison Litigation Reform Act of 1995, 42 USCS § 1997e, the correct baseline hourly rate was the rate established under 18 USCS § 3006A. Webb v Ada County (2002, CA9 Idaho) 285 F3d 829, 2002 CDOS 2941, 2002 Daily Journal DAR 3601.

Prison Litigation Reform Act, 18 USCS § 1997e(d)(1), did not bar attorneys' fee award in prisoners' civil rights action against prison officials because class's efforts to prolong efficacy of consent decree and negotiating settlement agreement concerning termination of decree was time spent enforcing decree and were fully compensable. Cody v Hillard (2002, CA8 SD) 304 F3d 767.

Where juvenile inmates and prison officials settled inmates' class action suit regarding conditions of confinement, 42 USCS § 1997e(d), part of Prison Litigation Reform Act of 1995 (PLRA), applied to limit award of attorney's fees to those incurred in proving actual violation of inmates's statutory rights, which was not case where case was settled by parties; further, PLRA's use of word "prison" in limiting provision included juvenile facilities such as one where inmates were confined. Christina A. v Bloomberg (2003, CA8 SD) 315 F3d 990.

Plaintiffs, class of present and future California state prisoners and parolees with disabilities, were entitled to attorney's fees for prevailing in their action brought pursuant to Americans with Disabilities Act of 1990 (ADA), 42 USCS § 12101 et seq., § 504 (29 USCS § 794) of Rehabilitation Act of 1973 (RA), 29 USCS § 701 et seq., and Fourteenth Amendment; district court did not abuse its discretion by not applying Prison Litigation Reform Act's cap on attorney's fees. Armstrong v Davis (2003, CA9 Cal) 318 F3d 965, 2003 CDOS 1229, 2003 Daily Journal DAR 1560, subsequent app (2003, CA9 Cal) 2003 US App LEXIS 2423.

It was well-settled that fees-on-fees were permitted under 42 USCS § 1988 even though Congress did not explicitly provide for fees-on-fees therein; therefore, because 42 USCS § 1988(b)'s language permitting fees-on-fees did not differ significantly from 42 USCS § 1997e(d)(1)(A)'s language, fees-on-fees were recoverable under 42 USCS § 1997e(d). Jackson v State Bd. of Pardons & Paroles (2003, CA11 Ga) 331 F3d 790, 16 FLW Fed C 608.

Prison officials are not immune from attorney's fees award based on 42 USCS § 1997e(d)(1)(A), where prisoner proved that failure to remedy smoking situation

at prison would result in Eighth Amendment violation and officials then changed policy and banned smoking, because that provision should not be applied retroactively and would not be applicable here, since fees were directly and reasonably incurred in proving actual violation of prisoner's rights at preliminary injunction hearing. Weaver v Clarke (1996, DC Neb) 933 F Supp 831, affd (1997, CA8 Neb) 120 F3d 852, cert den (1998) 522 US 1098, 139 L Ed 2d 884, 118 S Ct 898.

Request cannot be granted as submitted, because cap on attorney's fees established by 42 USCS § 1997e applied to work performed by attorneys in prison litigation after statute's effective date. Hadix v Johnson (1996, ED Mich) 947 F Supp 1113.

Inmate's attorney is entitled to award of fees and costs totaling $ 7,921.96, where jury found that defendants violated inmate's Eighth Amendment right to be free from cruel and unusual punishment and awarded him $ 10,000 in damages, because fee was directly and reasonably incurred in proving actual violation of inmate's rights and amount of fee is proportionately related to court-ordered relief for violation in accordance with 42 USCS § 1997e(d)(1)(A) and (B). Clark v Phillips (1997, ND NY) 965 F Supp 331.

Prevailing prison inmate is granted request for hourly rates of $ 30 for legal assistant and $ 45 for law clerk, even though he does not provide evidence of prevailing market rates, where 1998 award in this district approved hourly rates of $ 55 for law clerk and $ 65 for paralegal, because requested rates are not only reasonable, but also reflect reduction that is appropriate in light of restrictions in 42 USCS § 1997e(d)(3). Searles v Van Bebber (1999, DC Kan) 64 F Supp 2d 1033.

Pretrial detainee is awarded attorney's fee of $ 3,892.50, even though correctional officer argues that his liability for attorney's fee is limited by 42 USCS § 1997e(d)(2) to $ 1.50 or 150 percent of $ 1 nominal damages awarded detainee for improper placement in restraint chair, where award sought here is eminently reasonable for vindication of important constitutional principle, because nominal damage award does not constitute "monetary judgment" within meaning of § 1997e(d)(2). Boivin v Merrill (1999, DC Me) 66 F Supp 2d 50.

Inmate bringing successful claim against prison guard for use of excessive force could make supplementary claim for attorney's fees reflecting time incurred by counsel in preparing and litigating motion requesting fees and costs recoverable under 42 USCS § 1997e(d)(1)(B). McLindon v Russell (1999, SD Ohio) 108 F Supp 2d 842.

Only $ 1 of civil rights attorney's fee award is assessed against $ 15,000 judgment of prisoner beaten by corrections officer, where $ 3,000 of judgment was in punitive damages, and court interprets 42 USCS § 1997e(d)(2) to allow it to apply any portion of judgment between 0 and 25 percent, because assessment of mere .0000666 percent of judgment is warranted in light of facts of case, constitutional rights implicated, and jury's clear signal that defendants should

be punished. Morrison v Davis (2000, SD Ohio) 88 F Supp 2d 799 (criticized in Wolff v Moore (2000, SD Ohio) 104 F Supp 2d 892).

Under equal protection principles, government's goal of protecting public fisc could not be achieved through provision of 42 USCS § 1997e(d) limiting attorney's fees recoverable by prevailing prisoners in civil rights actions, given government's failure to explain relevance of distinction drawn between prisoners and nonprisoners. Johnson v Daley (2000, WD Wis) 117 F Supp 2d 889.

Successful prisoner litigant's counsel's fees are capped at $ 22,500, even though court agrees that 42 USCS § 1997e(d)(2)'s 150 percent of judgment fee cap would not necessarily restrict total fee amount in cases in which both monetary and injunctive relief are sought in complaint and obtained, because prisoner's complaint sought only monetary relief, action was litigated through trial seeking only monetary relief, prisoner obtained $ 15,000 in settlement, and counsel's billing records do not separate out time spent obtaining Hepatitis B immunization for prisoner in settlement agreement. Carbonell v Acrish (2001, SD NY) 154 F Supp 2d 552.

In context of consent decree, attorney fees cannot be considered prospective relief under Prison Litigation Reform Act since 42 USCS § 1997e(d) distinguishes attorney fees from relief. Carruthers v Jenne (2002, SD Fla) 209 F Supp 2d 1294, 15 FLW Fed D 358.

Because plaintiffs' attorney was performing monitoring of county jail conditions pursuant to consent decree, monitoring fees were not prospective relief because they were essentially attorney fees and were therefore distinguished from relief under Prison Litigation Reform Act, 42 USCS § 1997e (d). Carruthers v Jenne (2002, SD Fla) 209 F Supp 2d 1294, 15 FLW Fed D 358.

$ 40,374 was reasonable fee and $ 1,509 was reasonable award for plaintiff inmate's expenses; in addition, said fees and expenses were directly and reasonably incurred in proving actual violation of his rights; fee award was sufficiently proportional to inmate's relief. Jackson v Austin (2003, DC Kan) 267 F Supp 2d 1059.

10. Appeal and review

Appeals from dismissal for failure to state civil rights claim under 42 USCS § 1997e should be reviewed de novo on appeal. Bazrowx v Scott (1998, CA5 Tex) 136 F3d 1053, cert den (1998, US) 142 L Ed 2d 128, 119 S Ct 156.

Appeal of district court's denial of defendant's motion to dismiss in action challenging prison conditions and seeking to avoid PLRA's exhaustion requirement was interlocutory order, and plaintiffs were not entitled to immediate appellate review. Davis v Streekstra (2000, CA7 Wis) 227 F3d 759.

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