

# The Prison Litigation Reform Act of 1996

## Selected Sources

By Janice Selberg

The 1996 Prison Litigation Reform Act, 42 USC section 1997e, was passed to address a perceived need to curtail frivolous prisoner lawsuits. Stories, perhaps apocryphal,<sup>1</sup> were widely publicized and cited by members of Congress as grounds for ending the “inmate litigation fun-and-games.”<sup>2</sup> As the sources included in this resource guide reveal, in regard to the curtailment of prisoner suits—meritorious and otherwise—the Prison Litigation Reform Act has been an enormous success. It has also presented fundamental issues of civil rights, separation of powers, and primary constitutional protections.<sup>3</sup>

Considering the political climate in which the act was approved, the legislative history might be instructive. A compiled legislative history is on Margo Schlanger’s University of Michigan Law School faculty page.<sup>4</sup> Prof. Schlanger, an authority on civil rights issues and civil and criminal detention and director of the Civil Rights Litigation Clearinghouse, is the author and coauthor of numerous studies and law-review articles on the Prison Litigation Reform Act. Some of these are listed in the following sources.

Michigan’s Prison Litigation Reform Act, MCL 5501–5531, was held in 2015 to require dismissal of a prisoner lawsuit when the plaintiff does not disclose all civil actions and appeals the prisoner has filed.

The following is a list of resources meant to acquaint the researcher with the significant issues and status of the Prison Litigation Reform Act.

- Alexander, *Getting to Yes in a PLRA World*, 30 Pace L Rev 1672 (2010)
- Alexander & Streeter, *Isolated Confinement in Michigan: Mapping the Circles of Hell*, 18 Mich J Race & L 251 (2013)
- Bella, *Shining a Light: The Need for Independent Oversight in Juvenile Justice*

*Facilities and Reform of the Prison Litigation Reform Act*, 27 J Civil R and Econ Dev 655 (2015)

- Benedetti, *What’s Past is Prologue: Why the Prison Litigation Reform Act Does Not—and Should Not—Classify Punitive Damages as Prospective Relief*, 85 Wash L Rev 131 (2010)
- Borchardt, *The Iron Curtain Redrawn Between Prisoners and the Constitution*, 43 Col Hum R L Rev 469 (2012)
- Brocco, *Facing the Facts: The Guarantee Against Cruel and Unusual Punishment in Light of PLRA, Iqbal, and PREA*, 16 J Gender, Race, and Just 917 (2013)
- Detmold, *’Tis Enough, ’Twill Serve: Defining Physical Injury Under the Prison Litigation Reform Act*, 46 Suff Univ L Rev 1111 (2013)
- Doran, *Lawsuits as Information: Prisons, Courts, and a Troika Model of Petition Harms*, 122 Yale L J 1065 (2013)
- Dull, *Understanding Proper Exhaustion: Using the Special Circumstances Test to Fill the Gaps Under Woodford v. Ngo and Provide Incentives for Effective Prison Grievance Procedures*, 92 Iowa L Rev 1929 (2007)
- Etchells, *Please Pass the Dictionary: Defining De Minimus Physical Injury Under the Prison Litigation Reform Act 1997e(e)*, 100 Iowa L Rev 803 (2015)
- Fathi, *The Challenge of Prison Oversight*, 47 Am Crim L Rev 1453 (2010)
- Finkenstadt, *Representing Prisoner Clients: Prison Litigation Reform Act*, 44 Maryland Bar J 58 (2011)
- Frisch, *Not Behind Bars, Not a Prisoner: An Analysis of Guardians, Conservators, and Protection & Advocacy Organizations Under the Prison Litigation Reform Act*, 36 Card L Rev 731 (2014)
- Golden, *The Federal Bureau of Prisons: Willfully Ignorant or Maliciously Unlawful?*, 18 Mich J Race & L 275 (2013)
- Gullett, *Eliminating Standard Pleading Forms That Require Prisoners to Allege Their Exhaustion of Administrative Remedies*, 2015 Mich St L Rev 1179 (2015)
- Hill, *Inmates’ Need for Federally Funded Lawyers: How the Prison Litigation Reform Act, Casey, and Iqbal Combine with Implicit Bias to Eviscerate Inmate Civil Rights*, 62 UCLA L Rev 176 (2015)
- Honick, *It’s “Exhausting”: Reconciling a Prisoner’s Right to Meaningful Remedies for Constitutional Violations With the Need for Agency Autonomy*, 45 Univ Balt L Rev 155 (2015)

Stories, perhaps apocryphal, were widely publicized and cited by members of Congress as grounds for ending the “inmate litigation fun-and-games.”

- James, *Reforming Prison Litigation Reform: Reclaiming Equal Access to Justice for Incarcerated Persons in America*, 12 *Loyola J Pub Int L* 465 (2011)
- Johal, *Judges Behind Bars: The Intrusiveness Requirement's Restriction on the Implementation of Relief Under the Prison Litigation Reform Act*, 114 *Colum L Rev* 715 (2014)
- Landsberg, *Does Prison Reform Bring Sentencing Reform? The Congress, the Courts, and Structural Injunction*, 46 *McGeorge L Rev* 749 (2015)
- McCollum, *Prison Litigation Reform Act: Should Prisoners be Required to Exhaust Administrative Remedies When They Seek a Form of Relief Not Available Under Prison Procedures?*, 31 *Cumber L Rev* 369 (2001)
- McCrary, *Taking a Toll on the Equities: Governing the Effect of the PLRA's Exhaustion Requirement on State Statutes of Limitations*, 47 *Georgia L Rev* 1321 (2013)
- McKirgan, *Under-Regulation in the State Prison Food System: Consequences and a Proposal for Change*, 9 *J Food L & Pol* 275 (2013)
- Mikkor, *Correcting for Bias and Blind Spots in PLRA Exhaustion Law*, 21 *Geo Mason L Rev* 573 (2014)
- Moskovitz, *The Usual Practice: Raising and Deciding Failure to Exhaust Administrative Remedies as an Affirmative Defense Under the Prison Litigation Reform Act*, 31 *Cardozo L Rev* 1859 (2010)
- Murtaugh, *The PLRA's Dividing Language: Statutory Interpretation and Applying Attorney's Fees Cap at the Appellate Level*, 59 *St Louis Univ L J* 219 (2014)
- Mushlin, *Unlocking the Courthouse Door: Removing the Barrier of the PLRA's Physical Injury Requirement to Permit Meaningful Judicial Oversight of Abuses in Supermax Prisons and Isolation Units*, 24 *Fed Sent Rep* 268 (2012)
- Newell, *An Irrational Oversight: Applying the PLRA's Fee Restrictions to Collateral Prisoner Litigation*, 15 *CUNY L Rev* 53 (2011)
- Nguyen, *The Fight for Creamy Peanut Butter: Why Examining Congressional Intent May Rectify the Problems of the Prison Litigation Reform Act*, 36 *SW Univ L Rev* 145 (2007)
- O'Hear, *Not So Sweet: Questions Raised by Sixteen Years of the PLRA and AEDPA*, 24 *Fed Sent Rep* 223 (2012)
- Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 *V and L Rev* 167 (2017)
- Ribet, *Naming Prison Rape as Disability: A Critical Analysis of the Prison Litigation Reform Act, the Americans with Disabilities Act, and the Imperatives of Survivor-Oriented Advocacy*, 17 *Vir J Soc Pol & L* 281 (2010)
- Robertson, *The Jurisdiction of the PLRA: Inmates as "Outsiders" and the Counter-majoritarian Difficulty*, 92 *J Crim L & Crim* 187 (2001)
- Shay, *More Stories of Jurisdiction-Stripping and Executive Power: Interpreting the Prison Litigation Reform Act (PLRA)*, 29 *Card L Rev* 291 (2007)
- Schlanger, *ABA Criminal Justice Standards on the Treatment of Prisoners*, 25 *Crim J* 14 (2010)
- Schlanger, *Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*, 81 *NY Univ L Rev* 550 (2006)
- Schlanger, *Inmate Litigation*, 116 *Harv L Rev* 1555 (2003)
- Schlanger, *Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*, 48 *Harv Civ R Civ Lib L Rev* 165 (2013)
- Schlanger, *Prisoners' Rights Lawyers' Strategies for Preserving the Role of the Courts*, 69 *Univ Miami L Rev* 519 (2015)
- Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 *UC Irvine L Rev* 153 (2015)
- Temko, *Prisoners and the Press: The First Amendment Antidote to Civil Death After PLRA*, 49 *Cal West L Rev* 195 (2013)
- Williams, *Evisceration of the First Amendment: The Prison Litigation Reform Act and Interpretation of 42 USC 1997e(e) in Prisoner First Amendment Claims*, 39 *Loy Los Ang L Rev* 859 (2006)
- Yontz, *Amending the Prison Litigation Reform Act: Imposing Financial Burdens on Prisoners Over Tax Payers*, 44 *J Marsh L Rev* 1061 (2011) ■

Janice Selberg is a law reference librarian with the State Law Library in Lansing. She has been a member of the State Bar of Michigan since 1985 and is a former member and former chair of the SBM Libraries, Legal Research, and Legal Publications Committee. Her past professional work includes positions in academic, corporate, and foreign law libraries.

## ENDNOTES

1. Newman, *Pro Se Prisoner Litigation: Looking for Needles in Haystacks*, 62 *Brooklyn L Rev* 519 (1996).
2. Senator Robert Dole, quoted in *Human Rights Watch, No Equal Justice: The Prison Litigation Reform Act in the United States* (June 16, 2009).
3. Fathi, *The Prison Litigation Reform Act: A Threat to Civil Rights*, 24 *Fed Sentencing Rptr* 260 (April 2012).
4. Michigan Law, *Prison Litigation Reform Act: Legislative History* <<http://www.law.umich.edu/facultyhome/margoschlanger/Pages/PrisonLitigationReformActLegislativeHistory.aspx>> (accessed August 12, 2017).



Member  
Suspensions

## FOR NONPAYMENT OF DUES

The list of active attorneys who are suspended for nonpayment of their State Bar of Michigan 2016–2017 dues is published on the State Bar's website at <http://www.michbar.org/generalinfo/pdfs/suspension.pdf>. This list is updated weekly. In accordance with Rule 4 of the Supreme Court Rules Concerning the State Bar of Michigan, these attorneys are suspended from active membership effective February 22, 2017, and are ineligible to practice law in this state. For the most current status of each attorney, see our member directory at <http://directory.michbar.org>.