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**Recovery of Mental/Emotional Distress Damages
Under the Prison Litigation Reform Act**

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❖ **Introduction**

The Prison Litigation Reform Act of 1996 changed a variety of aspects of prisoner litigation. One of the Act’s provisions states that there are to be no compensatory damages awards for mental/emotional distress in the absence of prior physical injury. While on the surface, that seems very direct and simple, in practice courts have grappled with a wide variety of legal issues in attempting to apply it to concrete cases. This article attempts to provide an introduction to this provision of the statute

and how the federal courts have interpreted it. At the end of the article, there is a list of useful and relevant resources and references.

❖ **Text of the Statute**

“LIMITATION ON RECOVERY. -- No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).” 42 U.S.C. § 1997e(e), as amended in 2013.

❖ **Constitutionality**

No constitutional challenge to this provision of the statute has been upheld. In [Harris v. Garner](#), #98-8899, 190 F.3d 1279 (11th Cir. 1999), the provision of the PLRA limiting the ability to sue for damages for mental injury in the absence of a physical injury does not offend due process, and does not impair prisoner’s right to seek declaratory and injunctive relief. [In a subsequent decision, however, the court ruled that it might be possible for some of the prisoners who had been released to later refile their claims. [Harris v. Garner](#), #98-8899, 216 F.3d 970 (11th Cir. 2000), cert. denied, [Harris v. Garner](#), #00-484, 532 U.S. 1065 (2001)].

❖ **Who Does It Apply to?**

The statute defines prisoner as “any person subject to incarceration, detention, or admission to 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.” ***The restrictions of the PLRA do not apply to former prisoners.***

In [Doan v. Watson](#), #99-4, 168 F. Supp. 2d 932 (S.D. Ind. 2001), the court found that a county jail policy which subjected all incoming prisoners to strip searches and delousing procedure without any suspicion of possession of contraband or weapons was unreasonable and county jail officials were not entitled to qualified immunity. The court further ruled that the provision of the Prison Litigation Reform Act

prohibiting awards for mental distress without evidence of physical injury did not apply when the plaintiffs were former, as opposed to current, prisoners.

Similarly, in [Kerr v. Puckett](#), #97-2466, 138 F.3d 321 (7th Cir. 1998), the court held that the provision of the PLRA barring prisoners from seeking damages for mental or emotional injury without a showing of physical injury did not apply to a lawsuit a paroled prisoner brought against prison officials after he was released.

❖ What Damages Are Barred?

Absent a prior physical injury, prisoner plaintiffs to whom the PLRA applies may not receive compensatory damages for mental or emotional damages, but may still be awarded nominal or punitive damages in appropriate cases, as well as obtain injunctive or declaratory relief.

In [Bertrand v. Department of Corrections](#), #4:CV-07-859, 2008 U.S. Dist. Lexis 28599 (M.D. Pa.), the court ruled that a prisoner could pursue his privacy claim based on a medical provider's alleged policy or custom of making him receive his insulin shots in the waiting room of the prison medical department.

The prisoner claimed that this damaged his reputation and that other inmates shunned him on the assumption that he had either Hepatitis C or was HIV-positive. The prisoner could not, however, seek compensatory damages for his emotional distress when he did not suffer any physical injuries, on the basis of the provisions of the Prison Litigation Reform Act, 42 U.S.C. Sec. 1997e(c).

Similarly, in [Geiger v. Jowers](#), #04-10299, 404 F.3d 371 (5th Cir. 2005), a prisoner's claim for alleged mental anguish and emotional distress arising out of a dispute with correctional officials over the alleged retaliatory withholding of two pornographic magazines by the prison mail personnel could not be pursued, in the absence of physical injury under the Prison Litigation Reform Act, 42 U.S.C. Sec. 1997e(e). He claimed that the retaliation occurred because he filed a previous lawsuit against prison employees.

In accord is [Taylor v. Milton](#), #04-60569, 124 Fed. Appx. 248 2005 U.S. App. Lexis 2525 (5th Cir. 2005), which ruled that a prisoner who claimed that prison guards violated his constitutional rights by confiscating his legal work at gunpoint could not pursue a federal civil rights lawsuit seeking compensatory damages for any mental

or emotional injuries resulting from the alleged seizure in the absence of any claimed physical injury.

In [*Hutchins v. McDaniels*](#), #06-41733, 512 F.3d 193 (5th Cir. 2007), an appeals court ruled that the trial court acted erroneously in dismissing the entirety of a Texas prisoner's lawsuit alleging that his rights were violated during a strip and cavity search conducted by an officer. The male prisoner claimed that the search took place within the view of a female prison guard and other prisoners, and that, during the search, the officer never accused him of possession of contraband.

If these allegations were true, his Fourth Amendment rights would have been violated. The prisoner was barred from recovering compensatory damages for emotional or mental injuries under 42 U.S.C. Sec. 1997e(e) because he did not claim he had suffered any physical injury, but this would not bar him from recovering punitive or nominal damages.

See also, [*Calhoun v. Detella*](#), #98-2894, 319 F.3d 936 (7th Cir. 2003), holding that a strip search of a male prisoner in the presence of female correctional officers could constitute cruel and unusual punishment in violation of the Eighth Amendment if female officers were, as prisoner alleged, "invited spectators" and the search was carried out in a manner designed to humiliate and demean him.

A federal appeals court ruled that the provision of the Prison Litigation Reform Act barring claims for mental or emotional injuries without a showing of physical injury did not apply, in this case, to bar claims for nominal or punitive damages.

When compensatory damages are barred, the satisfaction of receiving an award of nominal damages may be tempered by a limitation on the award of accompanying attorneys' fees. In [*Royal v. Kautzky*](#), #02-3446, 375 F.3d 720 (8th Cir. 2004), for instance, while a prisoner successfully proved that a prison security director improperly put him in segregation in retaliation for filing "too many" complaints and grievances, in violation of his First Amendment rights, under the Prison Litigation Reform Act, he was not entitled to an award of compensatory damages in the absence of physical injury, but only \$1 in nominal damages.

The appeals court then also upheld the decision not to award punitive damages, since the defendant acted out of "frustration," rather than with an "evil motive," and upheld the application of another PLRA section to limit attorneys' fee award in the case to \$1.50. (For details on how the PLRA operates in prisoner lawsuits to limit the

awards of attorneys' fees, see [Attorneys' Fees in Prisoners' Civil Rights Lawsuits](#), 2016 (1) AELE Mo. L. J. 301.

❖ What Is A Physical “Injury”?

What is a physical “injury” for purposes of this provision of the PLRA? *Courts have interpreted it in a broader manner than merely limited to broken bones and bleeding bodies.* In [Pratt v. Corrections Corporation of America](#), #04-2413, 124 Fed. Appx. 465, 2005 U.S. App. Lexis 2374 (8th Cir. 2005), for instance, an undesired and potentially unhealthy weight loss was deemed sufficient. The court in this case ruled that a Muslim inmate could proceed with his claim that he suffered severe emotional and psychological injuries from the alleged denial of “Halal” meals required by his religion.

His claims were not barred by the provisions of the Prison Litigation Reform Act (PLRA), 42 U.S.C. Sec. 1997e(e) requiring that he show a physical injury before being able to recover damages for mental and emotional injuries because his alleged loss of 30 pounds of weight while eating vegetarian meals which he asserted lacked adequate nutrition was sufficient to show a physical injury.

In [Liner v. Goord](#), #98-2925, 196 F.3d 132 (2nd Cir. 1999), the court held that a prisoner’s assertion that correctional officers sexually assaulted him on three occasions satisfied the requirement of a physical injury for recovery for emotional damages stated in the Prison Litigation Reform Act. Congress, in 2013, underscored and made it crystal clear that sexual assaults constitute physical injuries for purposes of this provision of the PLRA by amending the statute to read

“No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury *or the commission of a sexual act (as defined in section 2246 of title 18.*” (Emphasis added on new text).

- A detailed discussion of this may be found in [Compensatory Damages Are Not For Everyone: Section 1997\(e\)\(e\) of the Prison Litigation Reform Act and the Overlooked Amendment](#), by Elanore Levine, 92 Notre Dame Law Review Issue 5, 2203 (2017).

In [*Robinson v. Page*](#), #96-4239, 170 F.3d 747 (7th Cir. 1999), a prisoner's lawsuit complaining about the alleged presence of lead in prison's drinking water was not barred by the PLRA section barring the recovery of mental or emotional injury without a showing of prior physical injury. The court reasoned that the prisoner could possibly recover damages for present or future physical injury resulting from the alleged exposure to lead.

But see [*Herman v. Holiday*](#), #99-30863, 238 F.3d 660 (5th Cir. 2001), holding that a prisoner could not assert a claim for damages for mental and emotional injuries from his alleged exposure to asbestos, in the absence of a showing of actual physical injury.

Vague claims of injury will not suffice. In [*Samford v. Staples*](#), #06-20717, 2007 U.S. App. Lexis 14397 (5th Cir.), a prisoner who claimed that he was subjected to an order to strip in a public hallway, a strip search, and a disciplinary proceeding, all as part of a campaign of harassment in retaliation for his exercise of his right of access to the courts could not recover compensatory damages when he failed to allege a physical injury as required under 42 U.S.C. Sec. 1997e(e). His vague claim on appeal that he suffered a wrist injury through unspecified events at some unspecified time was inadequate to alter the result.

❖ Threat of Injury Is Not Enough

A variety of actions may subject an incarcerated person to threats and danger of physical injury, but to be awarded compensatory damage for mental or emotional injury under the PLRA, there must be an actual injury, not just the threat or danger of receiving one.

In [*Shorter v. Lawson*](#), #3:05-CV-0458, 403 F. Supp. 2d 703 (N.D. Ind. 2005). For instance, a court ruled that a prisoner was barred, under 42 U.S.C. Sec. 1997e(e), from pursuing claims for mental injuries or stress when he failed to assert that he had suffered any physical injury.

His assertion that an officer "yelled" at him, and that officers came to his cell with stun guns and pepper mace, asking him to come out of his cell, as well as writing conduct reports against him when he was facing criminal charges and hernia surgery

was insufficient, since verbal abuse and harassment does not establish a civil rights violation.

In [Wolff v. Hood](#), 242 F. Supp. 2d 811 (D. Ore. 2002), the court concluded that a prisoner could not pursue a federal civil rights claim against correctional officials for failure to protect him against other inmates who allegedly threatened him with harm because his crime involved a child when he could not show that he suffered physical harm as a result of the alleged failure to protect. A provision of the Prison Litigation Reform Act, 42 U.S.C. Sec. 1997e(e) prohibits recovery for mental or emotional injury suffered in custody without a prior showing of physical injury.

Similarly, without an allegation of physical injury, the Prison Litigation Reform Act barred an inmate from recovering damages from severe stress and depression due to officers' alleged spreading of rumors that he was gay, a child molester, and a "rapist," or from the psychological pain from officers' attempt to provoke a physical confrontation between other prisoners and him. Prisoner's claim that officer "squeezed" his genitals during a pat down also did not state an Eighth Amendment claim. [Montero v. Crusie](#), 153 F. Supp. 2d 368 (S.D.N.Y. 2001).

However, see [Harris v. Matthews](#), #10-1405, 417 Fed. Appx. 758, 2011 U.S. App. Lexis 6386 (10th Cir.), in which a pretrial detainee failed to show that a police detective, by disclosing to other prisoners his role as a state witness in a murder prosecution, caused him to suffer an assault.

At the same time, the appeals court ordered further proceedings on the prisoner's claim for emotional and mental damages from the fear he suffered because of the detective's disclosure to the other prisoners, which was allegedly done when he declined to be interviewed about an unrelated matter. This claim was not barred by 42 U.S.C. § 1997e(e), which prohibits the awarding of damages for mental or emotional distress without a showing of prior physical injury, the court ruled, as the prisoner could still be awarded nominal or punitive damages for the violation of his constitutional rights.

❖ Unpleasant Conditions Are Not Enough

Injury is not the same as uncomfortable or unpleasant surroundings. In [Alexander v. Tippah County, Mississippi](#), #02-61033, 351 F.3d 626 (5th Cir. 2003), two

prisoners, confined for 24 hours in an “unsanitary” isolation cell designed for one prisoner in which a clogged floor drain resulted in feces and urine remaining on the cell floor, could not recover damages for mental or emotional injuries in the absence of a prior physical injury.

❖ **Who Must Be Injured?**

In an interesting decision, [*Clifton v. Eubank*](#), #00-CV-2555, 418 F. Supp. 2d 1243 (D. Colo. 2006), a female prisoner’s claim that delayed labor, caused by improper medical care, caused the stillbirth of her viable fetus was sufficient to constitute a “physical injury” to her satisfying the physical injury requirement of the Prison Litigation Reform Act (PLRA), 42 U.S.C. Sec. 1997e(e). That statutory provision, barring the pursuit of a federal civil rights claim for mental distress unaccompanied by physical injury, did not bar the prisoner’s Eighth and Fourteenth Amendment claims in these circumstances.

❖ **Resources**

- [Prison Litigation Reform Act: Mental Injury](#). AELE Civil Case Summaries.

❖ **Prior Relevant Monthly Law Journal Articles**

- [Prison Litigation Reform Act: Exhaustion of Remedies - Part One](#), 2011 (4) AELE Mo. L. J. 301.
- [Prison Litigation Reform Act: Exhaustion of Remedies - Part Two](#), 2011 (5) AELE Mo. L. J. 301.
- [Attorneys’ Fees in Prisoners’ Civil Rights Lawsuits](#), 2016 (1) AELE Mo. L. J. 301.
- [The “Three Strikes” Rule In Prisoner Civil Rights Litigation, Part 1](#), 2016 (6) AELE Mo. L. J. 301.
- [The “Three Strikes” Rule In Prisoner Civil Rights Litigation, Part 2](#), 2016 (7) AELE Mo. L. J. 301.

❖ **References:** (*Chronological*)

1. [Compensatory Damages Are Not For Everyone: Section 1997\(e\)\(e\) of the Prison Litigation Reform Act and the Overlooked Amendment](#), by Elanore Levine, 92 Notre Dame Law Review Issue 5, 2203 (2017).
2. Note: [Tis Enough, 'Twill Serve: Defining Physical Injury Under the Prison Litigation Reform Act](#), Suffolk University Law Review, Vol. XLVI:1111 (2013).
3. "[Civil Right of Prisoners: The Seventh Circuit and Exhaustion of Remedies Under the Prison Litigation Reform Act](#)," by Devin McComb 1 Seventh Circuit Rev. 46 (2006).
4. [The Prison Litigation Reform Act: The New Face of Court Stripping](#) by John Boston, 67 Brooklyn Law Review Issue 3, 429 (2001).

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