



The Prison Litigation Reform Act Obstructs Justice for Survivors of Sexual Abuse in Dentention

THE COURTHOUSE door should not be barred to anyone that a corrections system failed to protect from sexual assault.

— *The Commission on
Safety and Abuse
in America's Prisons*¹

Many prisoners who have endured sexual abuse cannot hold corrections officials accountable because of the Prison Litigation Reform Act (PLRA), a federal law passed in 1996. Intended to limit the number of frivolous lawsuits filed by inmates, the PLRA has instead greatly undermined the crucial oversight role played by courts in addressing sexual assault and other constitutional violations in corrections facilities. JDI believes that Congress must amend the PLRA as a matter of urgency.

The PLRA's most problematic provisions include:²

Exhaustion Requirement: Before filing suit, the PLRA requires an inmate to complete the facility's internal administrative grievance process; failure to do so is grounds for dismissal.³ While intended to provide corrections officials with the opportunity to resolve complaints without court intervention, this provision has prevented scores of prisoner rape survivors from seeking redress. Grievance procedures often impose filing deadlines as short as a few days, are inconsistently administered, and involve numerous confusing and unclear steps.⁴ An inmate must fully and properly navigate this system, even when it is clearly futile to do so,⁵ when there is a risk of retaliation by staff, or when there is an immediate threat to the inmate's health or safety.⁶

Allowing prison officials an initial opportunity to resolve a prisoner's complaint, before it is brought before the courts, eases

the burden on the country's judicial system. However, the PLRA's exhaustion requirement provides an incentive for officials to maintain incoherent, unrealistic, and inconsistent grievance procedures, thereby ensuring that inmates will not be able to meet the requirements to get into court. Moreover, some facilities' procedures require that grievances be submitted directly to a specific officer – without regard to whether that officer is implicated in the complaint.

JDI recommends amending the PLRA's exhaustion requirement so that complaints made outside of the chain of command for grievances (such as directly to a supervising officer, the warden, or an ombudsperson) are recognized. JDI also argues that, if an inmate did not submit a grievance before filing suit, the inmate and prison officials should have 90 days to resolve the matter or the case will continue in court.

Physical Injury Requirement: While courts sometimes require that state officials take specific actions, or stop acting in a certain way, successful civil rights lawsuits often result in monetary damages as a way to compensate the victim and punish the wrongdoer. Under the PLRA, however, an inmate cannot receive monetary damages unless she or he proves a "physical harm."⁷ While it may seem obvious that sexual assault by default involves physical harm, some courts have held otherwise.⁸ JDI urges legislators to remove the physical injury requirement from the PLRA.

Fees for Indigent Prisoners: In most civil rights cases, a plaintiff who establishes poverty

does not have to pay the filing fee that is generally required to initiate a lawsuit. The PLRA, however, requires even indigent prisoners to pay the full filing fee, which is collected over time from the inmates' accounts.⁹

A prisoner who has had three lawsuits dismissed as “frivolous, malicious, or failing to state a claim on which relief can be granted” must pay the full filing fee as soon as a new complaint is filed in court, regardless of how much time has passed since the prior lawsuits and how meritorious the current claims are.¹⁰ The filing fee ranges from \$350 to \$450, imposing significant hardship on many inmates. JDI recommends that incarcerated litigants be treated the same as other litigants, and that

filing fees not be used to prevent prisoners from seeking justice.

Application to Juvenile Detainees: The PLRA applies to all detainees in any type of corrections facility, including jails, private and publicly operated prisons, and juvenile detention facilities.¹¹ The PLRA's application to juvenile detainees is particularly troubling. Incarcerated youth, particularly those in adult prisons, are at heightened risk for sexual abuse, are less prone than adults to file lawsuits, and generally lack the sophistication to understand the processes associated with litigation. JDI believes that the PLRA should be limited to the inmates it was intended to target – adults in adult facilities who file frivolous lawsuits.

Endnotes

1 CONFRONTING CONFINEMENT, A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 86 (2006).

2 In addition to the provisions discussed below, the PLRA also requires judges to screen all complaints filed by prisoners requiring the state to respond, limits the ability of courts to monitor corrections systems with consent decrees, and restricts the amount of attorneys' fees that a successful prisoner litigant can recover. More information about the PLRA, and current efforts to amend it, is available at <http://www.savecoalition.org> (last visited Jan. 16, 2009).

3 42 U.S.C. § 1997e(a); see also *Woodford v. Ngo*, 548 U.S. 81, 89-90 (2006).

4 See, e.g., *Minix v. Pazera*, 2005 WL 1799538 at *4 (N.D. Ind. July 25, 2005) (involving grievance deadline of 48 hours).

5 See *Mendez v. Herring*, 2005 WL 3273555, at *2 (D. Ariz. Nov. 29, 2005) (holding that “futility” was no excuse for failing to exhaust, even though prison staff told the inmate that his rape could not be grieved through the prison's process).

6 *Jones v. Oaks Correctional Facility Health Services*, 2005 WL 3312562 at *2 (W.D. Mich. Dec. 7, 2005) (stating that even a case that presents imminent danger of serious physical harm must be exhausted).

7 42 U.S.C. § 1997e(e).

8 See *Hancock v. Payne*, 2006 WL 21751 at *1, 3 (S.D. Miss. January 4, 2006) (holding that prisoners' allegations that a staff member “sexually abused them by sodomy” did not qualify as a physical injury); *Moya v. City of Albuquerque*, No. 96-1257 DJS/RLP, Mem. Op. and Order (D.N.M. Nov. 17, 1997) (holding that male officers' strip-searches of women prisoners did not result in physical injuries, even where one woman allegedly attempted suicide due to the trauma of the search).

9 28 U.S.C. § 1915(a), (b).

10 28 U.S.C. § 1915(g).

11 42 U.S.C. § 1997e(h).

About Just Detention International (JDI)

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI's work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its work: to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone's freedom, it incurs a responsibility to protect that person's safety. All inmates have the right to be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

JUST DETENTION INTERNATIONAL

3325 Wilshire Blvd., Suite 340
Los Angeles, CA 90010
Tel: (213) 384-1400
Fax: (213) 384-1411

East Coast Office
1025 Vermont Ave., NW, Third Floor
Washington, DC 20005
Tel: (202) 580-6971
Fax: (202) 638-6056

info@justdetention.org
www.justdetention.org