

**Testimony of Juvenile Law Center, Youth Law Center,
National Center for Youth Law, and Center for Children’s Law and Policy
for the House Judiciary Subcommittees on Crime, Terrorism and Homeland
Security and Constitution, Civil Rights and Civil Liberties
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Juvenile Law Center, Youth Law Center, National Center for Youth Law and Center for Children’s Law and Policy work to ensure that the child welfare, juvenile justice and other public systems provide vulnerable children with the protection and services they need to become happy, healthy and productive adults. We are particularly concerned that the juvenile justice system be used only when necessary, that it fulfill its promise of rehabilitation, and that children who are served by it receive adequate education as well as physical and mental health care. Juvenile Law Center, et. al. would like to thank the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties for holding a hearing on the Prison Litigation Reform Act (PLRA). We urge you to exempt juveniles from the Act.

Applying the PLRA to juveniles serves neither the goals of the Act nor the welfare of our country’s children for a number of reasons: (1) children’s conditions cases are extremely rare, regardless of the PLRA; (2) federal law already protects the courts from frivolous litigation by incarcerated youth; (3) the unique characteristics of incarcerated youth mean that many of the PLRA’s provisions serve as a complete bar to court; (4) the PLRA undermines the rehabilitation at the core of the juvenile justice system; and (5) applying the PLRA to children reduces public safety.

The PLRA was designed to reduce the number of frivolous prisoner lawsuits reaching the courts. Juveniles do not file frivolous lawsuits. Indeed, there was no legislative history when the Act was passed to suggest that children file frivolous lawsuits. Even before the PLRA was enacted, juveniles engaged in very little inmate

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litigation.² A few key characteristics of incarcerated children explain this reality. First, children lack exposure to the legal system. Incarcerated youth generally do not have access to law libraries, legal materials, or jailhouse lawyers. Even when faced with a legitimate legal problem such as physical or sexual abuse by correctional officers, many children do not recognize litigation as an option. This problem is exacerbated by the low literacy levels of incarcerated youth, with many reading years behind grade level.³

More importantly, a pre-existing mechanism protects the courts from a flood of frivolous litigation by incarcerated youth: persons under age 18 cannot file civil lawsuits on their own. Federal Rule 17(c) requires that a guardian, “next friend” or guardian ad litem represent a minor in any civil lawsuit.⁴ The Rule is constructed to ensure that an adult with the minor’s best interest in mind participate in any legal action on the child’s behalf. Such an adult will not proceed with a frivolous lawsuit—the Federal Rules of Civil Procedure provide for sanctions against lawyers who file frivolous suits, and our experience is clear that parents do not bring suits on their children’s behalf without going to lawyers first. Thus, the Federal Rules already provide a system for filtering out frivolous lawsuits in those rare cases where a child wants to initiate a lawsuit on his or her own behalf.

While the PLRA as a whole is inappropriate for children, certain provisions of the Act are particularly inapt as applied to youth. For example, the requirement that prisoners exhaust administrative remedies before filing suit in federal court, **28 U.S.C. § 1997e(a)**, fails to recognize the unique status of incarcerated juveniles. Again, Federal Rule 17(c) is instructive. While the Rule recognizes that children *cannot* proceed to civil court on their own because the law deems them incapable of the requisite legal knowledge and decision-making capacity, the PLRA exhaustion provision *requires* children to initiate litigation on their own by exhausting administrative remedies. Indeed,

² Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers*, 32 U.S.F.L. Rev. 675, 681 (1998).

³ For example, in *Alexander v. Boyd*, 876 F. supp. 773, 790 (D.S.C. 1995), the court acknowledged that it would make no sense to provide children, on average three years behind their expected grade level, with a law library.

⁴ Fed. R. Civ. P. 17(c)

courts have explicitly held that a parent's attempt to resolve a child's problem within a correctional system does not satisfy the PLRA's exhaustion requirement.⁵

The exhaustion provision of the PLRA also particularly burdens youth because of their lower literacy levels, lack of legal information, and lack of assistance from other inmates. In most facilities, prisoners must exhaust administrative remedies by filing written complaints in the prison grievance system. Grievance systems often require prisoners to follow complicated procedures and complete all complaints and appeals within short timeframes. Such systems are often completely inaccessible to children. In *Brock v. Kenton County, KY*, 93 Fed. Appx. 793 (6th Cir. 2004), for example, a child filed suit alleging that staff physically abused him. The child explained that he had not known that there was a grievance system, that other children in the facility did not know of the system, and that the grievance system had *never* been used by a child incarcerated in that facility. Nonetheless, the court dismissed his suit for failure to exhaust administrative remedies. The exhaustion provision creates a significant barrier to court for children, particularly the large numbers of functionally illiterate youth in the juvenile justice system.

In addition, youth are more deferential than adults to authority figures.⁶ They are less likely to pursue internal grievance procedures that require them to question authority. This is particularly so when it is the authority figures themselves who are abusing them. The scandal in the Texas Youth Commission is a recent case in point—youth were abused by corrections officers and administrators over a period of several years.⁷ When youth are abused by their caregivers, they are unlikely to file grievances against them.

PLRA provisions limiting attorney's fees, **28 U.S.C. 1997e(d)**, have a particularly chilling effect on access to the courts for young people. Even more than adults, children need the assistance of an attorney. Indeed, they *cannot* represent themselves in court.⁸

⁵In *Minix v. Pazera*, 2005 WL 1799538 (N.D. Ind. 2005), the district court dismissed for failure to exhaust administrative remedies the claim of a boy who had suffered severe physical and sexual abuse even though his mother had attempted to resolve the problem with staff members at the juvenile facility and with the juvenile judge.

⁶“Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants,” Grisso, et al. (Law and Human Behavior, Vol. 27, No. 4, August 2003).

⁷ See, e.g., Moreno, “In Texas, Scandals Rock Juvenile Justice System: Hundreds to Be Released as State Looks at Abuse Allegations and Sentencing Policies,” (Washington Post, April 5, 2007, A03).

⁸ Federal Rule Civ. Pro. 17(c).

When attorneys are discouraged from helping incarcerated children, meritorious claims simply don't reach the courts.

The core principle of the juvenile justice system is that youth, to be held accountable in developmentally appropriate ways, deserve not blame, but rehabilitation, and high quality care that increases the chances that they will become productive, law-abiding adults.⁹ The PLRA requirement that plaintiffs may not recover damages for “mental or emotional injury suffered while in custody without a prior showing of physical injury,” **42 U.S.C. § 1997e(e)**, works against this very notion. As with adults, the provision undermines the rights of incarcerated youth to protect their religious rights, free speech rights and due process rights. For children, the provision also jeopardizes the right to education, counseling and other rehabilitative programming that form the core of the juvenile justice system.

The PLRA provision requiring even prisoners with no savings or income to repay the court for their filing fees through monthly payments **28 U.S.C. 1915(a), (b)**, also particularly burdens youth. While adult prisoners often have no income while incarcerated, youth suffer the additional obstacle of not having worked before placement, and generally returning to school but not work after their release. Indeed, by burdening children who engage in litigation with financial debt, these provisions may deter youth from continuing their education and rehabilitation after their release. Thus, incurring debt to redress legitimate grievances will be counterproductive.

Indeed, applying the PLRA to youth is likely to reduce public safety for several reasons. First, the literature is clear that there is a strong relationship between child maltreatment and anti-social conduct. It is in the public's interest that institutions for youth be safe, or society will be undermining its own goals when it places youth in institutions designed to help them.¹⁰ When youth institutions are not safe, they increase crime, rather than reduce it.

In addition, youth have a profound sense of fairness. Recent research shows that “legal socialization” increases pro-social behavior. That is, youth who believe that legal

⁹ *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1971). Justice White's concurrence, *id.* at 552, further explains the goals of the juvenile system.

¹⁰ See, e.g., *Child Maltreatment and Juvenile Delinquency: Raising the Level of Awareness*, Child Welfare League of America (Tuell, ed.).

institutions are fair are more likely to obey the law than those who don't.¹¹ The PLRA is an obstacle to legal socialization. When youth believe that their adult caretakers can harm them with impunity, they are more likely to become lawless themselves.

The PLRA was not designed to address the particular characteristics of incarcerated youth. Applying the PLRA to children does not reduce the burden on the courts. It does not benefit the welfare of children. We urge you to exempt children from the Prison Litigation Reform Act by amending **18 U.S.C. § 3626(g)**, **42 U.S.C. 1997e(h)**, **28 U.S.C. 1915(h)**, and **28 U.S.C. 1915A(c)**.

¹¹ See, e.g., Fagan and Tyler, "Legal Socialization of Children and Adolescents," Columbia Public Law Research Paper No. 05-94 (Social Justice Research, Vol. 18, No. 3, September 2005).