

TESTIMONY OF MARK SOLER, EXECUTIVE DIRECTOR,
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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I am the Executive Director of the Center for Children's Law and Policy (CCLP), a nonprofit public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. I urge the Committees to amend the Prison Litigation Reform Act to remove "juveniles" and facilities that incarcerate or detain juveniles from its coverage.

By way of background, my organization works throughout the country to promote juvenile justice and other reforms through a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. Based in Washington, DC, CCLP works in DC, Maryland, and Virginia, as well as in other states and on national juvenile justice improvement efforts such as the John D. and Catherine T. MacArthur Foundation's Models for Change and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative. From 1978 until February, 2006, I was Senior Staff Attorney, Executive Director, then President of the Youth Law Center, a national public interest law firm. At the Youth Law Center, my colleagues and I worked in more than 40 states to improve juvenile justice, child welfare, health, mental health, and education, and litigated

successfully in 16 states on behalf of children whose rights had been violated in juvenile justice and child welfare systems. I was lead counsel in many of those cases.¹ I have written more than 20 articles and book chapters on civil rights issues, the rights of children, and juvenile justice issues, and I have taught at Boston College Law School, the Washington College of Law at American University, Boston University School of Law, the University of Nebraska Law School, and San Francisco State University. I have received awards for my work from the American Psychological Association, American Bar Association, Alliance for Juvenile Justice, and Office of Juvenile Justice and Delinquency Prevention. I have been cited as a juvenile justice expert in federal court² and I have testified several times on juvenile justice and conditions for children in adult jails and juvenile facilities before Congressional committees³, including on the Prison Litigation Reform Act. I received my B.A. degree from Yale University in 1968 and my law degree from Yale Law School in 1973.

The following testimony is based on my 30 years experience representing children in civil rights class action litigation throughout the country.

The PLRA as currently written covers “any Federal, State, or local facility that incarcerates or detains juveniles [or adults] accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law” (18 U.S.C. §3626(g)). The term “prisoner” includes “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.” (18 U.S.C. §3626(g), 42 U.S.C. §1997e(h), 28 U.S.C. §1915A(c)).

Congress should amend these statutory provisions to remove references to juveniles and to delinquency. There are several reasons for this needed change. First, a

major concern that prompted enactment of the PLRA is not relevant to children. Second, experience over the last ten years provides some idea of the extraordinary extent of abuse inside juvenile facilities, and the problems in bringing such abuse to light. Third, the provisions of the PLRA that make it difficult for prison inmates to file civil rights litigation over conditions of their confinement work special hardships for incarcerated children.

Children Don't File "Frivolous Lawsuits." When Congress enacted the PLRA, among its main concerns were allegations that prison inmates filed numerous "frivolous lawsuits" over conditions of their confinement. Supporters of the legislation cited a "Top Ten List of Frivolous Prisoner Lawsuits." The factual basis for some of these allegations was doubtful. For example, Chief Judge Jon O. Newman of the United States Court of Appeals for the Second Circuit found that the some of the allegations of frivolous lawsuits were misleading and in some cases simply false.⁴

However, even if some adult prisoners filed some frivolous lawsuits, supporters of the legislation did not claim that incarcerated children had filed such litigation. That is hardly surprising. Most prisoner lawsuits are filed pro se,⁵ but children rarely file lawsuits over the conditions of their confinement. They do not understand that they have rights when they are incarcerated, and they certainly do not understand that they can seek remedies for mistreatment through the courts. Even when conditions, policies, and practices are abusive, incarcerated children are more likely to believe that such conditions are part of their punishment, or that they are getting what they "deserve" for breaking the law, and in any event that there is nothing they can do to bring about change. Moreover, in contrast to the many adult inmates in prisons and jails who bring litigation and assist others in doing so, there are no adolescent "jailhouse lawyers" in juvenile facilities in this

country. Many youth who find themselves involved in the juvenile justice system are unable to read and write, and few if any have sufficient understanding of the court system to file pro se litigation.

There is Extensive Abuse of Children in Juvenile Facilities. The amount of abuse that young people suffer in state and local facilities is extensive and deeply troubling. In Texas, there were more than 2,000 allegations of staff abuse of children incarcerated in Texas Youth Commission facilities between January 2003, and December 2006.⁶ At the South Dakota State Training School in 2000, staff regularly chained children to the four corners of their beds by their wrists and ankles, sprayed them with pepper spray (*Oleoresin Capiscum*), and locked them in their rooms for days and weeks at a time.⁷ At the Scioto Juvenile Correctional Facility in Ohio in 2004, several staff members were indicted after investigations revealed that male staff sexually abused incarcerated girls.⁸ At the Marion Juvenile Correctional Facility in Ohio, staff were found to have encouraged fights between boys, toothaches went untreated, and youth with severe mental illnesses faced “extreme behavior management options” such as restraints and forced medication.⁹

Abusive conditions for children exist all over the country. The Swan Valley Youth Academy in Montana was closed in 2006 after a state Department of Public Health and Human Services investigation found numerous violations, including neglect and failure to report child abuse and an attempted suicide.¹⁰ In Florida, state audits found that juvenile facilities in the northeast part of the state had “deplorable” conditions and provided inadequate treatment, including no prenatal care for pregnant girls.¹¹ In Maryland, a 17-year-old youth died in the Bowling Brook facility earlier this year after being held in restraint for three hours by staff. An investigation by the Maryland

Department of Juvenile Services, which contracted with the program to house delinquent youth, found a pattern of abusive restraints.¹² In Tennessee, a boy died this year at the Chad Youth Development Center after staff restrained him. An investigation found another death of an adolescent, in 2005, and complaints of excessive use of force by staff.¹³ In New York City, children in the juvenile justice system have gotten inadequate medical care.¹⁴ In Chicago, according to the *Chicago Tribune*, the Cook County Juvenile Temporary Detention Center is “out of control. Children languish there like warehoused animals...Kids live in filthy surroundings...Children face ‘an alarming risk of suicide and inadequate mental health services’ and ‘a climate of fear and violence.’”¹⁵

Some systemic abuses have been documented by the U.S. Department of Justice. In Louisiana’s notorious Tallulah Youth Facility, the Justice Department found horrendous restraint, isolation, and use of force practices.¹⁶ In Mississippi, according to the Department of Justice, staff “hog-tied” youth, shackled girls to a pole, kept girls in the “Dark Room” for days, and forced youth to eat their own vomit.¹⁷

Many of these abuses only came to light after extensive complaints or after tragedies occurred. The scope of these abuses demonstrates the need for readily available legal remedies for victimized children.

Restrictions on Legal Remedies Work Special Hardships for Incarcerated Children. The exhaustion requirements of the PLRA are especially difficult for children to meet. To exhaust their administrative remedies, children must utilize the facility grievance system. But for many incarcerated children, the grievance process is difficult to access or totally unavailable. In one of the Texas facilities, a supervisor who coerced children into performing sex acts on him also held the key to the complaint box – leaving the children no way to file grievances or to seek legal redress. In the Scioto and Marion

juvenile facilities in Ohio, an investigation specifically found that grievance procedures made it difficult for youth to report illegal abuse.¹⁸ In addition, security measures in juvenile facilities frequently make access to grievance forms and writing implements very difficult.

Many children in juvenile facilities fear retaliation if they file a complaint against a staff member. Combined with their lack of knowledge of their legal rights, this leaves children vulnerable to predatory staff or other incarcerated youth, with no means for bringing the abuse to the attention of authorities.

Yet if children fail to follow official grievance procedures, they get kicked out of court. For example, in one case in Indiana, a boy named Steven was incarcerated in the South Bend juvenile facility for theft. He was repeatedly beaten by other youth in the facility, but staff did not protect him. For a period of time he was placed on suicide watch. He was assaulted in one room with four camera monitors. He was raped, and beaten with “padlock-laden socks.” Staff photographed his injuries but did not stop the abuse. He did not report the incidents to staff for fear of being labeled a “snitch.” Some staff encouraged the beatings and arranged for juveniles to fight. Some handcuffed one juvenile so that others could beat him, a practice called “jumping.” He was transferred to two other Indiana juvenile facilities, and suffered physical abuse at both of them. Steven’s mother did report the beatings to the staff at the South Bend facility, and they told her that they were doing everything possible to ensure his safety. Steven’s mother also wrote to two juvenile court judges, one of whom advised Indiana Governor Frank O’Bannon about concerns for Steven’s safety.

Steven’s mother filed suit against the Indiana Department of Corrections on his behalf. The federal court held that, despite the “heroic efforts” of his mother to protect

her son, under the Prison Litigation Reform Act the suit must be dismissed for failure to exhaust administrative remedies.¹⁹

As this information has come to light about abuses of incarcerated children in the years since the passage of the PLRA, now is the time for Congress to take action to amend the statute to protect children from abuse and make full legal remedies available. I thank the Chairmen and members of the Committees for the opportunity to present this information to you.

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- ¹ Doe v Burwell, 537 F. Supp. 186 (S.D.Ohio 1982) (sexual assault on 15-year-old girl in county jail); Milonas v. Williams, 691 F. 2d 931 (10th Cir. 1082), *cert. denied*, 460 U.S. 1069 (1083); Christina A. ex rel. Jennifer A. v. Bloomberg, 197 F.R.D. 664 (D.S.D. 2000).
- ² Hendrickson v. Branstad, 740 F. Supp. 636, 644 (N.D. Iowa 1990), *aff'd in part and rev'd in part on other grounds and remanded*, 934 F.2d 158 (8th Cir. 1991).
- ³ E.g., Hearing before the Subcommittee on Juvenile Justice of the Committee of the Judiciary, U.S. Senate, 98th Cong., 1st Sess. , Serial No. J-98-9 (Feb. 24, 1983), pp. 6-25.
- ⁴ Newman, *Pro Se Prisoner Litigation: Looking for Needles in Haystacks*, 62 BROOKLYN L. REV. 519, 520-521 (Summer 1996).
- ⁵ *Id.*
- ⁶ "Feds knew about TYC abuse cases," The Dallas Morning News (August 7, 2007).
- ⁷ See Christina A. v. Bloomberg, 167 F.Supp. 2d 1094 (D.S.D. 2001).
- ⁸ U.S. Department of Justice Findings Letter, http://www.usdoj.gov/crt/split/documents/scioto_findlet_5-9-07.pdf.
- ⁹ "Abuse remains to youth prisons," The Cincinnati Enquirer (June 21, 2007).
- ¹⁰ "Firm's leaders linked to problems," The Dallas Morning News (July 29, 2007).
- ¹¹ "Juvenile facilities rated among state's worst," The Florida Times-Union (June 9, 2007).
- ¹² "Bowling Brook's growing pains," The Baltimore Sun (March 18, 2007). The agency subsequently pulled all of its youth out of the program, and Bowling Brook eventually closed.
- ¹³ "Teen dies at Tenn. youth facility," <http://www.wsmv.com/print/13564384/detail.html>.
- ¹⁴ "City to take over health care for youths in detention," The New York Times (May 1, 2006).
- ¹⁵ "Cook County chaos," The Chicago Tribune (June 6, 2007).
- ¹⁶ Department of Justice Findings Letter, <http://www.usdoj.gov/crt/split/documents/lajuvfind1.html>.
- ¹⁷ Department of Justice Findings Letter, http://www.usdoj.gov/crt/split/documents/oak_colu_miss_findinglet.pdf; "Training schools flunk," The Jackson Free Press (April 5, 2006); "Horror stories at training school," The Sun Herald (June 13, 2007).
- ¹⁸ "Abuse remains at youth prisons," Cincinnati Enquirer (June 21, 2007).
- ¹⁹ Minix v. Pazera, 2005 WL 1799538 (N.D. Ind. July 27, 2005)(not reported in F.Supp. 2d)