

At Issue:

Should Congress amend the Prison Litigation Reform Act?



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k eith was a securities dealer, Marilyn owned a car-repair shop with her husband, TJ was in high school and Hope was a college student. Each was the victim of a violent rape. And federal law prevents them from filing suit to be compensated for the trauma they endured. Why? Because they were in prison when they were raped.

It is easy to scoff at the ridiculous claims of some prisoners, like receiving chunky rather than creamy peanut butter or being served cold food. However, when Congress passed the Prison Litigation Reform Act (PLRA) it not only cut off such absurd claims but also eliminated many legitimate ones.

As a member of the National Prison Rape Elimination Commission, I have heard heart-rending testimony from inmates who have been savagely raped and beaten. Most were too traumatized and terrified to report it while they were in prison. If their assailant were a correctional officer, they were at risk of retaliation. If they were attacked by another inmate, their life would be at risk for being a “snitch.”

Yet, the PLRA requires that inmate lawsuits be dismissed unless they have exhausted their administrative remedies. In most prisons, that means reporting the rape within 15 days; in some, it’s as few as two days. Despite the physical and mental trauma of being raped, the inmate must file a report in a very narrow window of time.

The commission recently heard testimony that children in the custody of the Texas Youth Commission (TYC) were repeatedly raped and molested by high TYC officials. How did they get away with it?

One of the officials had a key to the complaint box and simply threw away complaints that incriminated him and his friends. The children had no chance to “exhaust” their administrative remedies because their rapist *was* the administrative remedy. Under the PLRA, these children have no recourse in federal court.

The PLRA can easily be amended to allow such legitimate claims, while eliminating frivolous complaints. When the opponents offer up the old chestnuts about peanut butter and cold food, please remember the children in Texas, plus Marilyn, Keith, TJ, Hope and thousands of others raped in prison. While Congress can never undo the horrors they endured, it can give them access to the justice.



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t he American Bar Association (ABA) has passed a resolution urging repeal of substantial portions of the Prison Litigation Reform Act (PLRA). Congress should not adopt these misguided proposals. The ABA now proposes to:

Eliminate limits on prisoner releases — Under the PLRA, a federal court cannot order prisoner releases if there is a safer solution that makes the conditions constitutional. The ABA wants to return to the pre-PLRA standards, making large-scale prisoner releases easier. Under this old regime, Philadelphia suffered an unprecedented crime wave. In one 18-month period, the city rearrested 9,732 defendants released by a federal judge, for new crimes including 79 murders, 959 robberies, 90 rapes and 1,113 assaults.

Discourage early resolution of prison problems — The PLRA encourages prisoners to try to resolve disputes before filing lawsuits. If prisoners first use the prison grievance process, they may later sue in federal court. If they don’t, they may sue only in state court. This requirement (known as exhaustion of administrative remedies) serves important policy goals — it promptly alerts prison managers to problems so harms can be mitigated and future problems prevented. It is also an effective form of alternative dispute resolution that saves taxpayers’ dollars and limited federal court resources.

Tie up federal courts with insubstantial claims — The PLRA also prevents prisoners from tying up federal courts with insubstantial claims. Instead, they must file these suits in state courts. Limiting the availability of federal court suits is not new. For example, a rape survivor cannot sue her attacker in federal court unless he lives in another state and the value of her claims exceeds \$75,000. Our overburdened federal system already lacks the ability to handle many serious criminal cases. Why should Congress make matters worse by turning federal courts into small-claims courts for prisoners? And it’s also hard to explain to crime victims why criminals should get such preferential access to the federal courts.

Make taxpayers pay prisoners’ lawyers exorbitant fees — In the United States, most litigants must pay their own attorney fees. In prisoner civil rights cases, however, taxpayers pay these fees. In such cases, the PLRA caps fees at \$138/hour. The ABA now wants taxpayers to pay these lawyers at a stunning rate — up to \$450/hour.