



January 24, 2008

The Honorable Bobby Scott
Chairman, Subcommittee on Crime,
Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
1201 Longworth House Office Building
Washington, DC 20515

The Honorable Randy Forbes
Ranking Member, Subcommittee on Crime,
Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
307 Cannon House Office Building
Washington, DC 20515

Dear Chairman Scott and Representative Forbes:

On behalf of the National Prison Rape Elimination Commission (“the Commission”), I write in regard to your recent examination of the Prison Litigation Reform Act (PLRA). The Commission’s research and public hearings have convinced us that certain PLRA provisions frustrate Congress’s goal of eliminating sexual abuse in U.S. prisons, jails, and detention centers, a goal that led to the enactment of the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601, et seq.

Congress established this Commission pursuant to PREA. We have undertaken a comprehensive legal and factual study of prison sexual assaults and their penological, physical, mental, medical, social, and economic impacts on federal, state, and local governments in the United States and on communities and social institutions generally. Upon completion of its study, the Commission will report its findings, conclusions, and recommendations to the President, Congress, the United States Attorney General, and other federal and state officials.

The Commission is aware of the recent hearing before the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on the PLRA, entitled “Review of the Prison Litigation Reform Act: A Decade of Reform, or an Increase in Prison Abuses?” In the course of our public hearings and research, we have become convinced of the importance of the judiciary’s role in ensuring accountability for wrongdoing by public officials, enjoining unlawful conduct, and providing redress to prisoners whose constitutionally protected rights have been violated. We have also become convinced that at times the PLRA impedes the judiciary’s ability to perform this role.

The PLRA was passed in 1996 with a goal of reducing the level of frivolous prisoner litigation in federal courts by mandating that federal courts prescreen prisoners’ lawsuits and dismiss claims that are deemed frivolous or malicious, fail to state a claim for which relief can be sought, or seek damages from a defendant with immunity; and by establishing several new preconditions for litigation. We appreciate that the PLRA has helped to curb the amount of frivolous litigation filed by inmates. While we support the goals of ensuring a well-functioning and efficient judicial system and weeding out frivolous litigation, we have learned that certain of these preconditions, such as the administrative exhaustion and physical injury requirements, have created overwhelming obstacles to legitimate legal claims of many prisoners who have suffered sexual violence while incarcerated. Our research and the testimony of the survivors of prison sexual violence, corrections and medical professionals, and legal experts have convinced us that these provisions should be reconsidered.

Medical professionals, corrections experts, and advocates have provided us with extensive information indicating that the PLRA's requirement that a prisoner successfully exhaust all available administrative remedies before filing suit has undermined the ability of sexual assault victims to gain access to the crucial external oversight of the judicial branch – and as a result, has obstructed their ability to obtain the relief and redress to which they may be legally entitled. Because of the emotional trauma and fear of retaliation or repeated abuse that many incarcerated rape victims experience, as well as the lack of confidentiality in many administrative grievance procedures, many victims find it extremely difficult – if not impossible – to meet the short timetables of administrative procedures.

Additionally, we have learned that the physical injury requirement of the PLRA fails to take into account the emotional and psychological damage incurred by victims of sexual assault and abuse, even in the absence of actual or obvious physical injury. Indeed, we were shocked to learn that there have even been cases in which courts have ruled that actual rape does not constitute physical injury under the PLRA. Very real non-physical harms can result from a wide array of sexual abuse situations in prisons and jails, such as explicit sexual gestures and harassing language, groping of breasts and touching of genitals, or being forced to masturbate another or in front of another. Additionally, sexual assault victims often suffer from rape trauma syndrome, a type of post traumatic stress disorder; and a range of psychological distress (fear, emotional numbness, flashbacks, nightmares, obsessive thoughts, major depressive episodes, and anger) can occur months or years after an incident. We have become distressingly confident that victims of sexual assault are losing vital protections and avenues for relief as a result of the legislative provision requiring an actual physical injury.

While the Commission appreciates concerns about the burdens that frivolous lawsuits place upon both the court system and corrections facilities, our work has highlighted the need for access to a transparent and reliable judicial system – one that serves people with legitimate constitutional claims and plays an appropriate oversight role in ensuring the safety of adults and children incarcerated in this country. Prisoners who have been the victim of rape and other forms of sexual abuse while incarcerated must have access to the court venues as they seek redress for the physical, emotional, and psychological injuries they suffer. Moreover, corrections officials have testified in hearings that litigation can and has drawn attention to problems of sexual violence and a lack of health and mental health services available to victims, resulting in systemic improvements that would not have happened without the attention drawn by the lawsuit.

I hope that this information is helpful to you and your fellow Subcommittee Members as you continue your review of the PLRA and its unintended ramifications. Please do not hesitate to contact the Commission staff if you would like more information or if we can be of service in any way.

Again, thank you for your attention to these important issues. We look forward to working with you to end sexual assault in America's correctional and detention facilities.

Sincerely,



Reggie B. Walton
Chairman, National Prison Rape Elimination Commission

Cc: The Honorable John Conyers, Chair, House Judiciary Committee
The Honorable Lamar Smith, Ranking Member, House Judiciary Committee