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Dear Ms. Bellows:

On behalf of Stop Prisoner Rape (SPR), I am writing to strongly urge the ABA House of Delegates to adopt the resolution of the Criminal Justice Section which proposes to amend the Prison Litigation Reform Act (PLRA). SPR is a Los Angeles-based human rights organization whose mission is to combat sexual violence in all forms of detention. Through our policy efforts and direct interaction with prisoner rape survivors, we have seen how the PLRA has shielded government officials from accountability for the sexual violence in their facilities and has denied victims of this form of abuse the ability to seek outside protection and legal recourse.

When the PLRA was enacted, frivolous lawsuits were unquestionably a serious problem for the judiciary and a significant factor in the courts' massive backlog. The preliminary screening provisions in 28 U.S.C. §§ 1915(e)(2), 1915A and 1997e (c)(1), which require judges to summarily dismiss prisoner cases that are frivolous, malicious, or fail to state a claim, directly address the problem of frivolous litigation and have substantially reduced the burden to courts and prison officials. The Criminal Justice Section's resolution appropriately preserves the preliminary screening provision as the cornerstone of the PLRA, while responding to the serious concerns of the other provisions.

Many of the other provisions have created insurmountable legal barriers to inmates seeking legal redress for serious civil and human rights abuses, such as prisoner rape. The proposed resolution would ensure that these constitutional violations can be considered by the court while frivolous actions remain limited.

In the exhaustion provision, for example, the PLRA currently precludes any judicial consideration of even the most meritorious claim if a prisoner makes the slightest misstep in the facility's informal grievance process. In most facilities, this requires submitting a complaint within days of the incident and navigating a Byzantine maze of procedural rules. Prisoners – who typically lack access to legal assistance and are often barely literate – are poorly equipped to comply with technical rules under short deadlines and without the assistance of legal counsel. As a result, many hundreds of claims of serious and unconstitutional abuse of prisoners have been dismissed for lack of proper exhaustion, with no inquiry into the truth of the allegations.

The experience of "Kevin," a Texas prisoner, illustrates how the current rule ignores the spirit of the exhaustion requirement to preclude the court from addressing serious violations. Kevin was sexually harassed and raped by the officer who supervised his work in the prison laundry facility. He reported the abuse to a prison psychologist and to the facility's internal affairs unit but, because the officer threatened retaliation, Kevin did not file a formal grievance. Despite his efforts to resolve the matter at the prison level, Kevin had not met the exhaustion requirement and consequently had no legal recourse.

The proposed resolution gives prison officials the "first bite of the apple" to resolve prisoner civil rights violations while removing the incentive for prisons to maintain incoherent, unrealistic and inconsistent procedures. By authorizing judges to provide a 90-day stay for administrative consideration, the resolution also relieves the court of the extensive litigation that is currently needed to determine whether a claim is barred for failure to exhaust.

The proposed resolution also identifies the provisions that have been consistently harmful with no positive effect. The physical injury requirement in particular has precluded redress for a wide range of constitutional violations, including some victims of sexual abuse. For example, last year, in *Hancock v. Payne*, 2006 U.S. Dist. LEXIS 1648 (Jan. 4, 2006), a Mississippi district judge found that the plaintiffs' allegations that the defendant-officer made sexual suggestions, fondled their genitalia, and sexually battered them by sodomy did not establish a physical injury. By seeking repeal of the physical injury requirement, the resolution places all serious constitutional violations on equal footing.

In the ten years since the PLRA was enacted, some provisions of the statute have become instruments of injustice whose consequences far overreach their ostensible purpose. Prisoners who have endured sexual abuse or other egregious human rights violations have been barred from seeking judicial relief. The proposed resolution offers the necessary balance of limiting frivolous lawsuits while allowing serious constitutional violations to be addressed.

Thank you for your consideration.

Sincerely,

Katherine Hall Martinez, J.D.  
Co-Executive Director

Cc: Karen J. Mathis  
James Dimos  
Jimmy Goodman  
Peter Langrock  
Tracy Giles  
Timothy Kirven