



Children's Defense Fund

**Written Testimony of
Marian Wright Edelman
President, Children's Defense Fund**

Hearing on H.R. 4109, the "Prison Abuse Remedies Act of 2007"

**House Judiciary Subcommittee on Crime, Terrorism
and Homeland Security**

April 22, 2008

25 E Street, NW
Washington, DC 20001
Tel: (202) 628-8787
Fax: (202) 662-3510

Chairman Scott and members of the Subcommittee on Crime, Terrorism, and Homeland Security:

I am Marian Wright Edelman, President of the Children's Defense Fund (CDF). I appreciate the opportunity to submit a written statement on children and youth and the Prison Litigation Reform Act (PLRA). I respectfully request that the Subcommittee take the necessary action to exclude children and youth from the requirements of the PLRA in order to eliminate the barriers it creates to their accessing a federal court when they allege their constitutional or statutory rights have been violated.

The mission of CDF, a nonprofit organization, is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. We pursue our mission through policy research, analysis and advocacy that promotes reforms on behalf of and increased investments in children that hold the promise of achieving these goals. In furtherance of our mission, CDF recently embarked on a comprehensive analysis of the many problems, policies and systems that funnel tens of thousands of children and youth down life paths that can and often do lead to arrest, conviction, incarceration and, in some cases, death. That research culminated in the publication of our report, "America's *Cradle to Prison Pipeline*SM." That report, coupled with the conduct of a National Summit, marked the formal launch of our Cradle to Prison Pipeline[®] Campaign, a multi-pronged strategy that utilizes community education, social mobilization and policy advocacy to promote greater equity of opportunities for all children. Concurrently, we continue to fight for policies that ensure access to timely, quality health care,

early childhood development, and education programs, and improvements to the child welfare system.

A critical component of our *Cradle to Prison Pipeline* Campaign is to accelerate reforms of juvenile justice policy at the federal, state and local levels to ensure that children and youth get the integrated services necessary to put them on a sustained path to a successful adulthood. We work closely with the National Juvenile Justice and Delinquency Prevention Coalition to advocate for the federal policy and investment needed to support improvements to state and local juvenile justice systems and promote evidence-based prevention and intervention strategies as a means to address juvenile crime. We also work with advocacy groups in states that are advancing systemic reform to state juvenile justice systems with special attention to improving the conditions, education and rehabilitation of youth offenders. Excluding children and youth from the PLRA is a critical step in such collective efforts to improve the conditions of their confinement.

In 1996, Congress enacted the PLRA in order to “bring relief to a civil justice system overburdened by frivolous prisoner lawsuits. . . .[and] help restore balance to prison conditions litigation and [] ensure that Federal Court Orders are limited to remedying actual violations of prisoners' rights.”¹ In order to accomplish this, the PLRA sets a number of limitations to prisoners filing suit in federal court. Relevant provisions include: a prohibition against prisoners filing lawsuits for mental or emotional injury without demonstrating a “physical injury;”² requiring prisoners to exhaust all administrative remedies prior to filing suit in federal court;³

¹ 141 CONG. REC. S14,418 (daily ed. Sept. 27, 1995)(statement of Sen. Hatch).

² 42 U.S.C. § 1997e(e).

³ 42 U.S.C. § 1997e(a).

and restrictions on attorneys' fees in prisoner cases.⁴ These provisions currently apply to both incarcerated adults and youth.⁵

While certain provisions of the PLRA have successfully limited frivolous suits, many advocates argue that some of the PLRA's requirements pose a significant barrier for incarcerated adults and youth to filing meritorious claims in court. The number of federal cases filed by prison inmates has declined since the passage of the PLRA. However, recent research and analysis indicates that it is unclear whether the PLRA is effectively limiting only frivolous claims.⁶ Rather, inmate cases that are filed in federal court are actually "less successful than before the PLRA's enactment."⁷ Many feel that, as a result of the PLRA, constitutionally meritorious claims are facing "insurmountable obstacles" before they can move forward in federal court.⁸

The extent of abuse against incarcerated youth nationwide is morally reprehensible. One need only look to the recent scandals plaguing the Texas Youth Commission and Mississippi's Columbia Training School for evidence of how vulnerable incarcerated youth are to abuse.⁹ A recent Associated Press survey found more than 13,000 claims of abuse were identified in juvenile correction centers around the country from 2004 through 2007.¹⁰ Many experts feel that this number represents a significant underreporting of the extent of abuse, with thousands of

⁴ 42 U.S.C. § 1997e(d).

⁵ 42 U.S.C. § 1997e(h).

⁶ MARGO SCHLANGER & GIOVANA SHAY, AM. CONSTITUTION SOC'Y, PRESERVING THE RULE OF LAW IN AMERICA'S PRISONS: THE CASE FOR AMENDING THE PRISON LITIGATION REFORM ACT" 2 (2007), available at <http://www.acslaw.org/files/Schlanger%20Shay%20PLRA%20Paper%203-28-07.pdf>.

⁷ *Id.*

⁸ *Id.*

⁹ Adam Nossiter, *Lawsuit Filed Over Treatment of Girls at State Reform School in Mississippi*, N.Y. TIMES, July 12, 2007, available at <http://www.nytimes.com/2007/07/12/us/12prison.html>; Ralph Blumenthal, *One Account of Abuse and Fear in Texas Youth Detention*, N.Y. TIMES, March 8, 2007, available at <http://www.nytimes.com/2007/03/08/us/08youth.html>.

¹⁰ Holbrook Mohr, *AP: 13,000 Abuse Claims in Juvie Centers*, USA TODAY, March 2, 2008, available at http://www.usatoday.com/news/topstories/2008-03-02-1668706373_x.htm.

incidents believed to go unreported. In July 2005, the U.S Department of Justice released a report stating that state-operated juvenile facilities had the highest rates of alleged staff sexual misconduct compared to state and federal prisons.¹¹ Youth detained in adult jails are also at high risk of becoming victims of physical and sexual assault.¹²

Children and youth should be excluded from the requirements of the PLRA. First and foremost, children do not file frivolous lawsuits. While the United States Supreme Court acknowledged the right to counsel for juveniles in delinquency proceedings,¹³ no such right to counsel exists when they challenge the conditions of their confinement. Many incarcerated children and youth lack adequate legal representation to assist them if they allege abuse or violation of other rights. They certainly do not file frivolous claims in court without counsel.

The PLRA also places an unreasonable burden on the thousands of incarcerated children and youth that face abusive conditions of confinement. The exhaustion requirement alone is a significant enough reason to exclude juveniles from the requirements of the PLRA. Children and youth who face abusive conditions of confinement are far less capable than adults of following the difficult and often convoluted administrative processes to which they must adhere in order to exhaust all of their administrative remedies as outlined by the PLRA. Moreover, administrative processes often require youth to report abuse to their abusers or subordinates of their abusers. Many youth fear or risk retaliation if they file an administrative complaint. The fact that most children and youth cannot overcome these hurdles effectively insulates

¹¹ A.J. BECK & T.A. HUGHES, U.S. DEPT. OF JUSTICE, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES 5 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca04.pdf>.

¹² CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 7 (2007).

¹³ *In re Gault*, 387 U.S. 1, 36 (1967).

correctional facilities from accountability for deplorable detention and correctional facility conditions.

Allowing this kind of violence against children and youth to persist contradicts the rehabilitative mandate set out for the juvenile justice system. It is extremely difficult for youth to focus on education and treatment amidst abusive conditions. This kind of violence against children and youth can also create a cycle of abuse that could perpetuate itself once they are released and increase the likelihood that they will reoffend.

We must have a system that adequately protects the rights of incarcerated children and youth. As such, I respectfully request that the Subcommittee take the necessary action to exclude children and youth from the requirements of the PLRA. Such action would eliminate the barriers to federal courts the PLRA creates for children and youth when they allege that their constitutional or statutory rights have been violated. I thank Chairman Scott and the members of the Committee for the opportunity to submit written testimony.