Access Denied: Amending the Prison Litigation Reform Act's Administrative Remedy and Physical Injury Provisions for Cases of Sexual Assault

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Table of Contents

Understandings and Acknowledgements

The goal of the Congressional Black Caucus Foundation's (CBCF) National Racial Equity Initiative (NREI) is to combat systemic injustice and advance racial inequity. With this understanding, NREI recognizes the importance of addressing the Prison Litigation Reform Act (PLRA) using a racial equity lens. However, very little research has been done to amplify the PLRA's impact on Black inmates experiencing sexual assault. While this Capstone briefly touches on the subject matter, there is a research gap to fully make a compelling case.

As a Foundation, we hope that this Capstone project will encourage further exploration into the PLRA by lawmakers and researchers and, ultimately, its adverse effects on Black inmates.

After a number of years in the prison system, Ivory Mitchell finally tells his story. Mitchell—a Black man—was an inmate and victim of rape being held in a Texas prison facility for more than 25 years. During his time, he worked closely with the staff as an administrative porter. Mitchell noticed advances from a female staff member after working in the unit for a short period. One day, when he was alone during his shift, the staff member made a physical gesture towards Mitchell by kissing him and holding him close. Mitchell pleaded for her to stop. Though she did stop, Mitchell feared retaliation and/or further advances.

Mitchell reported the incident to the unit supervisor and was met with no regard for his safety or security. Later, he was once again approached by the same female staff member who made the original advances. Noticeably angry from his incident report, she forced him to perform oral sex. Traumatized by the incident, Mitchell again attempted to report her; however, in retaliation, he was transferred to a new unit and received a major disciplinary infraction—the only infraction he received during his prison stint. The staff member was eventually charged for

improper sexual acts with "someone in custody," but it is unclear if her charge was related to Mitchell's report. After his transfer and the staff member's charge, Mitchell continued to be retaliated against by other staff members as well as suffered mental and emotional stress for the duration of his time in prison.

Mitchell recently stated in a report by Just Detention International (2014) that "I was locked up in Texas, but that does not mean I didn't have the right to be safe."

Ivory Mitchell's story serves as a reminder that prisoners who experience mental and emotion distress as a result of sexual assault deserve equal protection and the right to fair justice. In fact, Mitchell's story is not an isolated event. The Prison Policy Initiative (2017) reported that from 2011-2012, 1 in 4 inmates experienced psychological distress in prisons or jails. Without the obstacles created by the Prison Litigation Reform Act, Mitchell may have been able to bring a claim and recover damages for the injustices he endured in prison, potentially deterring further improper behavior from occurring. His story emphasizes the impact of this legislation and its need to be amended.

Introduction

The most common and frequently litigated clause under the 14th Amendment is the *Equal Protection Clause*. The clause explicitly states,

> *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States… nor deny to any person within its jurisdiction the equal protection of the laws"* (U.S. Const. amend. XIV).

The clause was established to provide protection and ensure equal treatment for all citizens. However, the Equal Protection Clause fails to protect incarcerated individuals—specifically inmates suffering from mental or emotional distress due to sexual assault, misconduct, or harassment— from bringing civil rights claims.

According to the World Prison Brief (2021), the United States has the highest incarceration rate and has the largest number of people behind bars. The Sentencing Project (2021) also reports that there are 2 million people incarcerated in the nation's prison system, an overall 500% increase in the last 40 years. In addition to incarceration and isolation from society, inmates face challenges such as neglect, environmental factors (such as isolation, excessive force, or harsh treatment), and sexual abuse. In 2018, the Bureau of Justice Statistics (2021) reported that there were approximately 27,826 allegations of sexual assault or victimizations within U.S. prisons. Today, the rate of sexual assault in prisons shows no sign of slowing as it has continued to significantly increase since 2015. This does not account for the number of incidents that go unreported every day. Inmate victims[1] are often left with little recourse from the U.S. court system due to provisions set forth in the Prison Litigation Reform Act.

The Prison Litigation Reform Act (commonly known as the "PLRA") was enacted by President Bill Clinton on April 26, 1996. It was originally designed to 1) "end perceived judicial micromanagement of correctional facilities" and 2) serve as an efficient case-management system for prisoner civil rights cases, reducing the number of frivolous claims brought by prison inmates (Branham, 2001, p. 487). It largely applies to cases brought by prisoners regarding prison treatment or conditions. However, an unintended consequence of the PLRA is that it deters and, at times, prevents prisoners from filing legitimate civil suits in federal court for cases involving mental or emotional distress, specifically those who have experienced sexual misconduct or assault during incarceration.

[1] The term inmate victims refer to prisoners who have alleged sexual assault, sexual misconduct, or sexual harassment while incarcerated. These victims are not subjected to the "sexual act" language narrowly defined by 18 U.S.C. § 2246.

Inmates are required to meet certain provisions detailed throughout the PLRA. Often, these provisions, such as an increase in filing fees, limitations on attorney's fees, and a three strikes rule[2] impose obstacles to filing a claim. The two specific provisions that affect incarcerated victims of sexual assault in bringing mental or emotional claims (or civil actions for deprivation of rights[3]) are: 1) the *Exhaustion Provision* and 2) the *Physical Injury Provision*. The PLRA states that an inmate must **exhaust all administrative remedies** (42 U.S.C. § 1997e(a)) before bringing a claim and must **demonstrate physical injury** or proof of commission of a sexual act (42 U.S.C. §. 1997e(e)) to recover compensatory damages, which consequently presents an unjust and unfair burden. These two provisions illustrate the difficulty that inmate victims have bringing, winning, and settling civil rights cases—in turn making it difficult for courts to enforce policy changes.

This report analyzes the severity of the Prison Litigation Reform Act for prisoners bringing a mental or emotion distress claim for sexual assault, misconduct, or harassment through its exhaustion and physical injury provisions. Further, it addresses the race-based policy implications of the PLRA on U.S. prisons and serves as a call to action for legislation to amend the PLRA.

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[2] 28 U.S.C § 1915(g) prevents an inmate from bringing a suit if that inmate has had three or more prior suits dismissed for being frivolous, malicious, or failed to state a claim. After three strikes you cannot bring another suit in *forma pauperis* i.e. an inmate cannot file unless they pay the whole court filing fee upfront.

[3] 42 U.S.C. § 1983 - A Civil Action for Deprivation of Rights states "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Legislative History

Between 1980 to 1995, the prison population more than tripled due, in large part, to the War on Drugs, creating what seemed to be an influx in prisoner litigation in federal courts. As a result, advocates, lobbyists, and the National Association of Attorney Generals instituted a campaign to restrict prisoners from certain rights and the ability to access the federal court system. Additionally, they lobbied to limit the federal court system from remedying constitutional violations, alleging the heavy burden of civil rights cases introduced by prison inmates (Wright, 1996).

In Congress, Republican lawmakers also acted. Former Senator Spencer Abraham, a sponsor and supporter of the PLRA, stated,

> *[C]onvicted criminals, while they must be accorded their constitutional rights, deserve to be punished. I think virtually everybody believes that while these people are in jail they should not be tortured, but they also should not have all the rights and privileges the rest of us enjoy, and that their lives should, on the whole, be describable by the old concept known as hard time* (Golden, 2006, p.97).

The belief that prisoners should maintain basic rights but be denied court access was the foundation of many lawmakers' support for the PLRA. In 1995, H.R. 3- Taking Back Our Streets Act[4] was introduced, encouraging members of Congress to amend H.R. 10- The Civil Rights of Institutionalized Persons Act[5] (Rymza, 2014). This bill also focused on preventing "abusive prisoner lawsuits" and prohibited prisoners from bringing civil action until all administrative remedies were exhausted. Additionally, H.R. 2076 - Department of Commerce and Related

[4] This bill and many of its kind were part of the Newt Gingrich "Contract with America." This contract was signed by many Republican Congressional candidates running for a seat in the 104th Congress who pledged to support an anti-crime agenda (as seen in H.R. 3 - Taking Back Our Streets Act) in the first 100 days.

[5] Federal law meant to protect the rights of those confined to state, federal, or locally operated institutions. This can include correctional facilities, nursing homes, or mental health facilities.

Agencies Appropriations Act, 1996 - was introduced in Congress in 1995, inciting harsh statements made by lawmakers sensationalizing prisoner claims with the goal of minimizing the burden on courts (Anand et. al., 2021). Although neither legislation was signed into law, these bills served as precursors to the PLRA.

The Prison Litigation Reform Act (Title VIII), attached as a "rider[6]" of H.R. 3019 - Omnibus Consolidated Rescissions and Appropriations Act of 1996[7], was successfully introduced on March 05, 1996, by Representative Bob Livingston (R-LA). It narrowly passed the Republican controlled, House of Representatives with a 209-206 vote. It passed the U.S. Senate with an overwhelming 79-21 vote. Later, H.R. 3019 was signed into law on April 26, 1996, by President Bill Clinton, with no pushback.

Complications of the PLRA

Since the PLRA's passing in 1996, the goal of reducing frivolous prisoner litigation has been met, but at the expense of decreasing the rate of successful civil rights lawsuits filed by incarcerated individuals. The Prison Policy Initiative (2021) reported that in 2018 there were 25,533 total filings for Federal District Court with a prison population of 2,107,681 compared to the 39,053 filings that occurred in 1995 with a prison population of 1,597,044 —a 1.2% drop.

[6] A rider is an additional provision added to a bill or piece of legislation often having little connection with the subject matter of the bill.

[7] Title VIII of H.R. 3019 - Omnibus Consolidated Rescissions and Appropriations Act of 1996, introduces the Prison Litigation Reform Act and its provisions. This bill made appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending in September 1996, and for other purposes.

While total filings have decreased, meritorious claims are slipping through the cracks, leaving prisoners to remain in potentially hostile and hazardous conditions. The data illustrates that all prisoners are at risk of being negatively impacted by the PLRA, however, inmate victims of sexual assault who wish to bring a claim for mental or emotional distress[8] are at a severe disadvantage.

The PLRA's provisions make it practically impossible for these prisoners to 1) file a claim and 2) recover compensatory damages. Specifically, the two following provisions significantly impact inmate victims:

1. *Exhaustion Provision:* 42 U.S.C. § 1997e(a) states, "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted" (The Prison Litigation Reform Act, 1996)
2. *Physical Injury Provision:* In addition to the exhaustion provision, 42 U.S.C. § 1997e(e) states "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody *without a prior showing of physical injury or the commission of a sexual act*" (as defined in section 2246 of Title 18) (The Prison Litigation Reform Act, 1996).

Exhaustion Provision

The requirement that victims must first exhaust administrative remedies before they can make a claim is an unfair and unconscionable barrier. Although seemingly harmless, many

[8] Some interpret mental or emotional distress as mental suffering as an emotional response to an experience that arises from the effect of a particular event, occurrence, or patterns of occurrences. This can include symptoms of anxiety, depression, inability to perform tasks, or physical illness. However, Courts are still split on what constitutes a mental or emotional injury.

prisons and correctional facilities' administrative remedy requirements are difficult to access (Schlanger & Giovanna, 2008). Because there is no federal standard or oversight on what "administrative remedies" should look like for all facilities, they are often unique to individual prisons and can widely vary. Some examples of administrative requirements include 1) short filing deadlines, 2) unavailable requisite forms, or 3) a lengthy appeals process. Exhausting these remedies are especially detrimental to inmate victims because they may: 1) fear retaliation, 2) miss the grievance deadline due to traumatization, and/or 3) receive delayed medical services (Schlanger & Giovanna, 2008). The Human Rights Watch (2009) explains that due to the often technical, time consuming, and complex reporting procedures, prisoners are often discouraged or denied from bringing a claim.

Court Interpretation. Initially some courts provided grace or exceptions to the exhaustion provision due to estoppel[9] or special circumstances. However, six years after the PLRA's passage the Supreme Court ruled that even meritorious claims cannot succeed if the inmate has failed to meet their individual facility's technical requirements for the grievance system (Schlanger & Giovanna, 2008). Consequently, if a prisoner makes a minor technical error or misses a deadline when filing a claim within the grievance system, a judge cannot, and will not consider a claim even for sexual assault, harassment, or misconduct.

Legal practitioners have found that since the Supreme Court's decision to uphold the "no exception" rule, prison administrators are incentivized to implement large obstacles that deter prisoners from filing a claim. The higher the hurdle the less likely the prison or its staff members will be subjected to a lawsuit and potential damages. Scholars also note that "by cutting off

[9] Estoppel refers to the legal principle that prevents someone from arguing something that contradicts what they previously stated. This principle is meant to prevent someone from being unjustly wronged by an inconsistency of someone else's words.

judicial review based on an inmate's failure to comply with his prison's own internal, administrative rules— regardless of the merits of the claim—the PLRA exhaustion requirement undermines external accountability" (Schlanger & Giovanna, 2008).

There have been some attempts to liberate the exhaustion provision specifically for inmate victims. In 2003, the Prison Rape Elimination Act (commonly known as the PREA) was passed to enforce a zero-tolerance policy for sexual misconduct in federal, state, and local correctional facilities for both prison officials as well as fellow inmates and require data collection from the Bureau of Prisons (The Prison Rape Elimination Act, 2003). Provisions within the PREA also include:

1) prohibiting prison facilities from imposing a time limit to file a grievance on cases involving sexual assault,
2) denying facilities the ability to informal grievance procedures to resolve matters involving staff as alleged perpetrators, and
3) allowing family members to and/or third parties to assist an inmate victim to file a grievance with respect to the abuse (Dorfman, 2018).

While the intention behind this effort is laudable, implementation across the United States has been slow and subjected to unique policy practices in individual prisons. Further, these regulations only alleviate some of the burden set forth by the PREA for inmate victims filing grievances; however, this does not excuse them from the exhaustion provision altogether. For instance, in *Ross v. Blake* (2016) the Supreme Court ruled that the exhaustion requirement does not have a "special circumstances" exception, particularly for sexual assault. The Court did clarify, however, that plaintiffs may potentially succeed if – and only if - there is lack of availability of administrative remedies. While this may provide hope for some inmate victims, it

is very rare for this to occur. By keeping this provision in place (with no exceptions) inmate victims of sexual assault will continue to be deterred or, sometimes, even precluded from bringing a claim.

In *Minix v. Pazara* (2007), the plaintiff, a juvenile inmate, filed a mental/emotional claim for sexual assault alleging he was beaten and raped by several inmates at his facility. The court held, however, that the plaintiff failed to exhaust administrative remedies set forth by the individual prison facility. Because the plaintiff's guardian filed the grievance on his behalf — as opposed to the plaintiff himself —after the alleged incident, the claim was dismissed. Similarly in *Hawes v. Bowden* (2009), the plaintiff, filed a claim against a prison staffer alleging sexual assault and misconduct and seeking to hold defendant liable for pain and suffering resulting from her actions. However, the court ruled against the plaintiff due to failure to exhaust an administrative remedy — failure to be incarcerated at facility when complaint was filed. Inmate victims looking to bring a claim for mental/emotional suffering are bogged down by unnecessary obstacles needed to file a report or grievance. The courts are mainly aligned on the exhaustion provision, often ruling in favor of the defendant if, and when, the plaintiff has failed to meet the arbitrary requirements set forth by the individual prison facility.

Physical Injury Provision

Even if inmate victims can meet the administrative requirements and are eligible to bring forth a claim, they face the hurdle of the physical injury provision. This provision leaves more questions than answers. It states that an inmate alleging mental or emotional distress cannot recover compensatory damages unless they have also shown an *accompanying physical injury* or the *commission of a sexual act*. However, the law fails to properly constitute a physical injury, define the severity of the physical injury, or address whether rape constitutes a physical injury,

leaving the courts split and prisoners unsure if their case is actually worth merit (Filler & Greenfield, 2020, p. 260).

The original version of 42 U.S.C. § 1997e(e) excluded the term "sexual act" and only stated that

> *No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury*

Shortly after the PLRA's passage, practitioners noticed that the circuit courts remained split on whether rape or sexual abuse constituted a physical injury and whether a victim could receive compensatory damages for a constitutional violation of a coerced sexual act. This ambiguity left many legal scholars and litigators baffled and, therefore, committed to advocating for the reformation of the PLRA to include rape and/or sexual abuse as a physical injury (Belitz, 2018, p. 293). In 2004, advocate Deborah Golden (2006) proposed the following amendment to the language of 42 U.S.C. § 1997e(e)

> *No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury,* ***sexual assault or abuse*** (p.105).

In February 2013, as part of the Violence Against Women's Act, Congress amended the language to include "commission of a sexual act." Although amending the language broadened the scope for abuse, courts remain divided on the issue (Belitz, 2018, p. 294).

Court Interpretation. 18 U.S.C. § 2246 provides a narrow definition of a "sexual act." According to the Harvard Civil Rights Civil Liberties Law Review, a "sexual act" only covers "genital, oral, anal, or digital intercourse (Belitz, 2018, p. 295). This statute illustrates that

specific sexual abuse (as defined) is worthy of compensation. However, those who experience sexual misconduct or harassment—also defined in this statute as the "intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person" (Definitions for 18 U.S.C. § 2246)—are often precluded from the definition of a "sexual act" and find that a court may or may not rule in their favor.

For instance, in *Smith v. Shady* (2007), the inmate plaintiff, filed a mental/emotional claim for sexual harassment alleging that an officer grabbed his penis and held it in her hand. The court ruled that this did not, in fact, constitute a physical injury or the commission of a sexual act, and, therefore, the plaintiff could not recover compensatory damages. Similarly in *Hancock v. Payne* (2006), the plaintiff, filed a mental/emotional claim for sexual assault alleging fondling, sexual battery by sodomy, and other related assaults. The court held that the physical injury requirement was not met because the plaintiff failed to claim, "physical injury beyond the bare allegation of sexual assault" (Colgan, 2012). Inmate victims hoping to recover damages from those sexual acts not narrowly defined by 18 U.S.C. § 2246—such as sexual misconduct or harassment—are less likely to recover compensatory damages for the lack of an accompanying physical injury. In cases of rape or sexual abuse, some courts have ruled in favor of inmates when the abuse is narrowly defined by the statute. If the sexual act falls outside of this scope, however, inmates are still left to wonder if their claim will succeed.

Why the PLRA Matters

The potential impact of this legislation is substantial. According to the Bureau of Justice Statistics (2021) of the roughly 27,000 allegations of sexual assault or victimization within U.S. prisons, approximately 45 percent were alleged to be perpetrated by inmates and approximately 55 percent by prison officials or staff. Further, the rate of assaults has continued to increase since 2015 and shows no signs of slowing. Specifically, The Marshall Project (2018), a prisoner advocacy group, reported a 180 percent increase in prisoner allegations from 2011 to 2015. This increase strongly suggests that the issue of sexual assault in prisons may worsen. This issue is further exacerbated when analyzing race in today's prison system.

Race as a Prison Construct

According to the Federal Bureau of Prisons (2022), 38.8% of the nation's prison population is Black despite accounting for 13.4% of the nation's total population. The endemic racism within the prison and justice system is nothing new. In fact, the racial disparity has been ongoing since the end of chattel slavery in the U.S. However, the Prison Litigation Reform Act's exhaustion and physical injury provisions are more likely to adversely affect inmate victims of color. This disproportionality stems from the racial disparity set forth by excess force and punishments within the prison facility.

The Southern Poverty Law Center (2000) reported that in six states guards have been accused of race-based threats, beatings, and appearing in mock Klan attire. In 2015, a northern California prison was criticized by state investigators for perpetuating an "entrenched culture" of racism after prisoner complaints of excessive force and assaults made by prison guards (Lefkowitz, 2018, p. 210). The investigative report cited that the issue of racism in the prison was a serious problem, noting that majority of inmates were minorities and majority of prison officers were white.

The New York Times (2016) found a correlation between the racial makeup of inmates and racial makeup of prison staff:

> At Clinton, a prison near the Canadian border where only one of the 998 guards is African American, [B]lack inmates were nearly four times as likely to be sent to isolation as whites, and they were held there for an average of 125 days, compared with 90 days for whites.

This racial disparity illustrates the disproportionate treatment received by Black inmates when there is a larger number of white prison staff. However, this racial disparity appears to dissipate when the racial composition of prison staff diversifies.

Although legal scholars have yet to directly address and show evidence of the disparate impact of race on the Prison Litigation Reform Act, one can infer that inmate victims of color are at a severe disadvantage if the exhaustion and physical injury provisions remain intact. Both provisions serve as unnecessary hurdles that likely affect inmate victims of color more than white inmate victims. This provision limits remedies for Black and Brown inmates and most likely deters them more from bringing a claim. Further, the physical injury provision precludes Black and Brown inmate victims from recovering damages and becoming "whole" again. It also allows prison facilities to continue the "culture of racism" and prevents them from taking accountability for their deeply rooted racist systems. It is imperative that lawmakers seek to amend the PLRA's provisions, but also legal researchers and scholars evaluate civil suits under the PLRA using a racial equity lens.

Qualified Immunity Standards

In addition to acknowledging the racial implications of the PLRA, an amendment to these provisions would likely decrease the overall potential for abusers to raise the qualified immunity standard. Qualified immunity is a legal doctrine that shields government officials or officers

from being held personally liable for constitutional violations unless they violate "clearly established statutory or constitutional rights of which a reasonable person would have known." (Golden, 2004, p. 58). Deborah Golden (2004) has noted that these attempts are generally unsuccessful in cases of rape or sexual assault, however, prison officials often assert this doctrine in most claims brought for mental/emotional suffering for sexual assault—asserting they were unaware rape or sexual assault as a violation of prisoner's rights.

For plaintiffs to succeed against the qualified immunity doctrine they must show that the law protecting their rights is well established. This can be especially difficult for inmate victims bringing a claim of rape or sexual assault. Because the language of the PLRA is ambiguous for the physical injury requirement and courts are split on what is defined as a physical injury or "sexual act," it may be difficult to show that the law is well established.

Further, the systematic foundation of the qualified immunity standard perpetuates mistreatment of inmate victims of sexual assault. Prison officials may feel entitled to operate within their own best interests and have very little remorse for their behavior towards prisoners. By amending these provisions, officials will be incentivized to act in the prisoner's best interest rather than their own.

Revisions to the PLRA will not only allow prisoners access to justice but provide a larger social good. By amending both provisions to exempt victims of sexual assault, misconduct, and/or harassment, lawmakers would be bringing attention to the looming issue of sexual assault. This amendment would act as a zero-tolerance policy (re-emphasizing the PREA's mission) and drive forward much needed policy standards for rape within prisons. Inmate victims would likely be incentivized to bring claims and recover damages to be "whole" again. Additionally, this amendment may encourage increased clarity for the PLRA's language and urge a straightforward

definition for the physical injury requirement that the courts can use to rule effectively on these cases (Golden, 2004, p. 57).

Attempts to Rectify the PLRA

The Prison Litigation Reform Act has garnered the attention of both practitioners and lawmakers alike. Since its passage in 1996, members of Congress have worked to mitigate the effects of the PLRA, but their efforts have failed to consider the unique experiences of inmate victims of sexual assault, particularly victims of color.

In addition to the 2003 Prison Rape Elimination Act, Representative Mary Gay Scanlon (D-PA) introduced H.R. 961 – The Justice for Juveniles Act on February 11, 2022, with bipartisan support from Representative Kelly Armstrong (R-ND-At Large) and Representative Van Taylor (R-TX). If signed into law, this bipartisan legislation will protect young people from abuse within the incarceration system by exempting them from the strict requirements of the PLRA and the physical injury requirement. This legislation, in turn, could have larger policy implications both internally for inmates and externally for prisons. This legislation mirrors the call-to-action necessary for inmate victims of sexual assault in prisons. The bill passed the House of Representative on June 23, 2021, and is awaiting review in the Senate.

Policy Recommendations

To mitigate the challenges posed by PLRA exemptions, policymakers and legal scholars must make the following policy recommendations:

- Analyze the disparate impact of race on the PLRA by researching and reporting on the number of mental/emotional claims brought by inmate victims (of sexual assault) of color.
- Amend the PLRA's exhaustion provision to allow inmate victims of sexual assault to bring a claim without first meeting the [often] onerous and technical grievance requirements set forth by their individual prison
- Amend the physical injury provisions to allow inmate victims of sexual assault to recover compensatory damages without showing an accompanying physical injury and without ambiguity from the "commission of a sexual act" clause.

These amendments would create an exemption for prisoner civil rights claims involving sexual assault, harassment, and misconduct. As such, it will still allow for the original goals of the PLRA.

Conclusion

While the original goal of the Prison Litigation Reform Act was to decrease the number of frivolous claims brought into federal courts, it has precluded claims of merit as well. The PLRA's exhaustion and physical injury provisions have created unjust burdens on inmate victims, especially victims of color, seeking to bring a claim and recover compensatory damages for mental or emotional claims. Ivory Mitchell's story illustrates the potential racial implications of the PLRA. Not only are Black and Brown inmate victims more likely to be assaulted or punished in prison, but they are less likely to bring a claim or recover damages because of the insurmountable barriers exacerbated by the Prison Litigation Reform Act's two provision. These hurdles further the racially systemic issues within the U.S. prison system.

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