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# An unfair prison litigation system

By David Fathi | August 25, 2009

IN 2004, a teenage girl incarcerated at the Illinois Youth Center in Warrenville was sexually abused by a male employee at the facility. The abuse consisted of repeated acts of oral sex and sexual intercourse. There was no doubt that the abuse occurred, and the employee ultimately pleaded guilty to two counts of criminal sexual assault.

The girl, identified in court documents as “B,” eventually filed suit in federal court, seeking compensation. But in July, a federal judge in Chicago dismissed her case. Why? Because she had failed to comply with the technical requirements of a little-known federal law called the Prison Litigation Reform Act (PLRA).

This law, passed in 1996, creates a separate and unequal legal system for the more than 2.3 million prisoners in the United States. It singles out their lawsuits for a host of burdens and restrictions that apply to no one else. These restrictions cover not only those who have been convicted of crime, but also pretrial detainees, who are presumed innocent, and - as B discovered - youth in juvenile facilities. Human Rights Watch is unaware of any other country in which national legislation singles out prisoners for a unique set of obstacles to vindicating their legal rights in court.

So what did B do wrong? Among its many other requirements, the PLRA requires that before a detained person may sue over the conditions of her confinement, she must first take her complaints through all levels of the facility’s grievance system, complying with all deadlines and other procedural rules. If the detained person fails to comply with all technical requirements, or misses any deadlines, her right to sue may be lost forever.

B testified that she did not file a grievance about the abuse because she was afraid of retaliation. She did eventually give investigators a written statement saying that the employee had sexually assaulted her. But that wasn’t good enough. According to the court, giving a written statement is not the same as filing a formal grievance, and under the unforgiving standards of the PLRA, the young woman’s claims were dismissed.

Even discounting the well-justified fear of retaliation, it’s unrealistic to expect an incarcerated teenager who is being sexually abused by staff to navigate the deadlines and procedural requirements of a multi-step grievance system. These rules are difficult enough for adult prisoners to follow, and as any parent knows, many teenagers are less capable than adults of carrying out tasks that require sustained attention and compliance with deadlines. In addition, incarcerated youth suffer from high rates of mental illness, learning problems, impulse-control disorders, and other disabilities that make pursuing a complex task challenging or impossible. Add to that the well-established fact that many victims of sexual assault suffer from post-traumatic responses that make it impossible for them to report the assault

immediately.

B's case is not unique. In a recent report, Human Rights Watch documented numerous cases in which the Prison Litigation Reform Act kept prisoners who have suffered physical abuse, sexual assault, or other serious injury from seeking a remedy. The National Prison Rape Elimination Commission, established by Congress in 2003, recently concluded that the law blocks access to the courts for many victims of sexual abuse, and called for its reform.

The law's sponsors argued that it was necessary to deal with "frivolous" lawsuits brought by prisoners. But it has resulted in the dismissal of claims involving serious physical injury, sexual assault, and intentional abuse by prison staff - claims that no reasonable person would characterize as frivolous.

In the last Congress, Representatives Bobby Scott and John Conyers introduced the Prison Abuse Remedies Act, which would have made major reforms to the PLRA and avoided results like the dismissal of B's lawsuit. The bill did not pass, but similar legislation is likely to be introduced in the coming weeks. It deserves the support of both Congress and the Obama administration. It's time to restore the rule of law to America's prisons, jails, and juvenile facilities.

*David Fathi is US program director at Human Rights Watch. ■*