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JUSTICE FOR JUVENILES ACT

SEPTEMBER 18, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 5053]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5053) to exempt juveniles from the requirements for suits by prisoners, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

Purpose and Summary

H.R. 5053, the "Justice for Juveniles Act," is a bipartisan bill that would eliminate the administrative exhaustion requirement for youth before they may file a lawsuit that alleges violations concerning the conditions of their incarceration. The administrative grievance procedure, established by the Prison Litigation Reform Act (PLRA), requires inmates at federal, state, and local facilities to file administrative complaints through the prison in which they are detained. Under the proposed bill, youth could initiate legal ac-

99–006

tion to address prison conditions without first filing administrative complaints. This legislation is all the more necessary during the current COVID–19 pandemic, which has highlighted the need for various criminal justice reforms. Conditions within prisons have further deteriorated and hundreds of incarcerated individuals have died. Even before the pandemic, incarcerated youth faced formidable barriers to challenging the conditions of their confinement or seeking redress for physical abuse. This legislation will help address these pressing problems.

Background and Need for the Legislation

I. ADMINISTRATIVE GRIEVANCE REQUIREMENTS UNDER THE PLRA

The PLRA was designed to address the problem of the large numbers of *pro se* prisoner lawsuits that were being filed and inundating the federal courts.[1] Before the enactment of the PLRA, the overwhelming majority of prisoner cases were civil rights cases filed by state prisoners in federal district courts and were filed *pro se*.[2] The vast majority of the pre-PLRA *pro se* cases were filed under 42 U.S.C. § 1983.[3] Generally, to establish a claim under 42 U.S.C. § 1983, a plaintiff must show that a person acting under color of state law deprived him of a right secured by the Constitution or the laws of the United States.[4] Before Congress enacted the PLRA, incarcerated juveniles filed very few lawsuits.[5]

Pursuant to the changes brought on by the PLRA, before an incarcerated individual can file a lawsuit, he or she must take the complaint through all levels of a correctional facility's grievance system.[6] If a person fails to comply with these requirements, including missing a filing deadline that can be as short as a few days, he or she may no longer be able to bring a lawsuit.[7] An incarcerated individual may also only recover compensation in cases where there has been a physical injury, so those who have been subjected to sexual assault without an obvious physical injury or mental abuse may be denied a remedy.[8] Federal law also restricts the power of the federal courts to make and enforce orders that remedy unlawful prison or jail conditions.[9]

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[1] BERNARD D. REAMS, JR. & WILLIAM H. MANZ, A LEGISLATIVE HISTORY OF THE PRISON LITIGATION REFORM ACT OF 1996 iii (1997).

[2] Howard B. Eisenberg, *Rethinking Prisoner Civil Rights Cases and the Provision of Counsel*, 17 S. ILL. U.L.J. 417, 420, 421 n.8 (1993) (citing William B. Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 617 (1979) (data based on a study of prisoner civil rights cases filed in five federal district courts in 1975, 1976, and the first half of 1977)).

[3] Lois Bloom & Helen Hershkoff, *Federal Courts, Magistrate Judges, and the Pro Se Plaintiff*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 475, 480 (2002).

[4] *See* Nicini v. Morra, 212 F.3d 798, 805 (3d Cir. 2000).

[5] Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers,* 32 U.S.F. L. REV. 675, 681 (1998) (noting that in the first portion of 1998 there were "less than a dozen reported opinions directly involving challenges to conditions in juvenile detention centers").

[6] 42 U.S.C. § 1997e(a) (2018).

[7] *See e.g.,* Woodford v. Ngo, 548 U.S. 81, 88 (2006).

[8] 42 U.S.C. § 1997e(e) (2018) ("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."). Sexual assaults frequently don't result in signs of physical harm and even those that do may not be documented given the limited medical treatment available in some correctional facilities.

[9] 18 U.S.C. § 3626(a)(1)–(2) (2018).

II. YOUTH FACE UNIQUE CHALLENGES IN PURSUING CLAIMS UNDER THE PLRA

The administrative remedy requirement is a high burden for children to meet, as it requires a sophisticated understanding of how to navigate technical procedures. "Adolescents . . . are a highly vulnerable group and struggle particularly to satisfy the exhaustion requirement . . . [h]eld to the adult standard, minors are unduly prevented from litigating their abuses and thus deprived of a critical tool for improving their conditions of incarceration." [10] The problem is exacerbated because grievance procedures tend to rely on written communication and juveniles in the justice system typically have serious education deficits.[11] Juveniles are also uniquely vulnerable to retaliation for filing grievances.[12]

Cases from around the country make clear that juveniles facing serious harm are deprived of legal protections because of the PLRA exhaustion requirements. In *Hunter* v. *Corr. Corp.*, a 17-year-old was sexually assaulted in an adult facility.[13] The case was dismissed because the court ruled he should have exhausted his administrative remedies first.[14] In another case, from Kentucky, a juvenile filed a lawsuit alleging that staff had hit him, shocked him with a stun gun, and then led him down the hall by his testicles to an isolation cell.[15] Although his lawyer had discussed the incident with the jail administrator, the Federal Bureau of Investigation, the State Police, and the Kentucky Department of Juvenile Justice, the court ruled that this did not satisfy the PLRA and the suit was dismissed for failure to exhaust administrative remedies.[16]

Even when there are multiple incidents to report, children still find a hard time seeking relief from a court. In one Indiana facility, a juvenile was repeatedly beaten, once with "padlock-laden socks," while in custody.[17] After one beating, he suffered a seizure, but no one helped him, and he was beaten again the next day.[18] He was raped and witnessed another child being sexually assaulted.[19] The

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[10] Nicola A. Cohen, *Why* Ross v. Black *Opens a Door to Federal Courts for Incarcerated Adolescents*, 51(2) COLUM. J. L. & SOC. PROBS. 177, 179–180 (2017), http://jlsp.law.columbia.edu/wp-content/uploads/sites/8/2018/04/Vol51-Cohen.pdf; *See also* Anna Rapa, *One Brick Too Many: The Prison Litigation Reform Act As A Barrier to Legitimate Juvenile Lawsuits*, 23 T.M. COOLEY L. REV. 263, 265 (2006) ("[J]uveniles are more vulnerable, less educated, and less able to advocate for themselves, so the interests of prison autonomy are outweighed by the juveniles' need for the government to provide extra protection while they are in custody.").

[11] *See* Center for Juvenile Justice Reform, *Addressing the Unmet Needs of Children and Youth in the Child Welfare and Justice Systems* (2012), https://cjjr.georgetown.edu/wp-content/uploads/2015/03/EducationalNeedsofChildrenandYouth_May2010.pdf (finding youth in a juvenile correctional facility to score on average about four years below their age-equivalent person on standardized tests in reading and math); Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Youth Needs and Services: Findings from the Survey of Youth in Residential Placements,* JUV. JUST. BULL. (Apr. 2010) at 5, http://www.ncjrs.gov/pdffiles1/ojjdp/227728.pdf (concluding that youth in the justice system are more likely to need evaluation and remedial services, perform below grade level, or have a disability that qualifies them for special education services than their peers).

[12] *See, e.g.,* Lisa Gartner, *Beaten, Then Silenced*, PHILA. INQUIRER (Feb. 20, 2019), https://www.inquirer.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html (describing how youth were intimidated into keeping silent about abuses in a juvenile facility for decades).

[13] 441 F. Supp. 2d 78, 80 (D.D.C. 2006).

[14] *Id.*

[15] Brock v. Kenton County, KY, 93 Fed.Appx. 793 (6th Cir. 2004).

[16] *Id.*

[17] Minix v. Pazera, No. 1:04–CV–447, 2005 WL 1799538 (N.D. Ind. July 27, 2005).

[18] *Id.*

[19] *Id.*

juvenile was afraid to report the assaults to staff—and his fear was natural enough in light of the fact that some of the staff were involved in arranging fights between juveniles, or would even "handcuff one juvenile so other juvenile detainees could beat him."[20] Although his mother spoke with staff and wrote to the juvenile judges in the jurisdiction, attempted to meet with the superintendent of one of the facilities, and contacted the Department of Corrections Deputy Commissioner and the Governor, the federal district court dismissed the family's federal claims under the PLRA's exhaustion rule because the juvenile had not himself filed a grievance in the juvenile facility.[21]

III. YOUTH SHOULD BE TREATED DIFFERENTLY UNDER THE PLRA DUE TO COGNITIVE DIFFERENCES

In the past fifty years, the Supreme Court has concluded on a number of occasions that laws pertaining to juveniles should be evaluated through a prism that is developmentally appropriate.[22] In a variety of circumstances the Court has held that juvenile defendants may be susceptible to outside pressure[23] and "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[24] Further, the Supreme Court has long held that a child's immaturity and lack of knowledge can pose unique obstacles to navigating legal proceedings. In *J.D.B.* v. *North Carolina*, for example, the Supreme Court explained that failing to take age into account "and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards" to which they are entitled.[25] Similarly, in *Haley* v. *Ohio*, the Supreme Court, holding an interrogation unconstitutional, noted that "when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. . . . Age 15 is a tender and difficult age for a boy of any race. . . . [; h]e cannot be judged by the more exacting standards of maturity."[26]

Hearings

In compliance with section 103(i) of House Resolution 6, on July 16, 2019, the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held a hearing titled, Women and Girls in the Criminal Justice System," to examine pressing issues impacting

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[20] *Id.*
[21] *Id.*
[22] *See, e.g.,* Roper v. Simmons, 543 U.S. 551, 569 (2005) (holding the death penalty unconstitutional as applied to youth because they are more susceptible to pressure, their character is not fully developed, and they are more impulsive); *Eddings* v. *Oklahoma*, 455 U.S. 102, 115–16 (holding death penalty unconstitutional when mitigating factors were not presented and noting that children "generally are less mature and responsible than adults"); *Graham* v. *Florida*, 560 U.S 48, 68 (2010) (children "are more vulnerable or susceptible to . . . outside pressures" than adults); *Bellotti* v. *Baird*, 443 U.S. 622, 635 (1979) (plurality opinion) (children "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.").
[23] *See, e.g., Roper,* 543 U.S. at 569 (holding the death penalty unconstitutional as applied to youth because they are more susceptible to pressure, their character is not fully developed, and they are more impulsive); *Eddings*, 455 U.S. at 115–16 (holding death penalty unconstitutional when mitigating factors were not presented and noting that children "generally are less mature and responsible than adults"); Graham, 560 U.S at 48 (children "are more vulnerable or susceptible to . . . outside pressures" than adults).
[24] *Bellotti,* 443 U.S. at 635 (plurality opinion).
[25] 564 U.S. 261, 272 (2011).
[26] 332 U.S. 596, 599–600 (1948).

women and young girls in the criminal justice system. The hearing included discussion of the PLRA's administrative burdens and their impact on upholding Constitutional standards.

Committee Consideration

On September 9, 2020, the Committee met in open session and ordered the bill, H.R. 5053, favorably reported, by a voice vote, a quorum being present.

Committee Votes

No record votes occurred during the Committee's consideration of H.R. 5053.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 5053 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5053 does not have any performance goals or measures. Prior to the enactment of the PLRA, reports indicate that youth complaints and lawsuits comprised a very small percentage of the total suits brought by prisoners.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5053 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the "Justice for Juveniles Act."

Sec. 2. Exemption of juveniles from the requirements for suits by prisoners. Section 2 amends the definition of a "prisoner" under Section 7 of the Civil Rights of Institutionalized Persons Act (Act) to remove persons adjudicated delinquent.

In addition, Section 2 adds a new section, section (i), to Section 7 of the Act by exempting youth under the age of 22 from the requirements of the Act, which sets forth the requirements an incarcerated individual must follow before he or she can file a lawsuit for allegations of abuse. Further, it exempts a person from the requirements of the Act for any prison condition that occurred before he or she reached the age of 22.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

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SEC. 7. SUITS BY PRISONERS.

(a) APPLICABILITY OF ADMINISTRATIVE REMEDIES.—No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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.

(b) FAILURE OF STATE TO ADOPT OR ADHERE TO ADMINISTRATIVE GRIEVANCE PROCEDURE.—The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 3 or 5 of this Act.

(c) DISMISSAL.—(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) ATTORNEY'S FEES.—(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 2 of the Revised Statutes; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988).

(e) LIMITATION ON RECOVERY.—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, United States Code).

(f) HEARINGS.—(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) WAIVER OF REPLY.—(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) DEFINITION.—As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, [sentenced for, or adjudicated delinquent for,] *or sentenced for* violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(i) EXEMPTION OF JUVENILE PRISONERS.—This section shall not apply to an action pending on the date of enactment of the Justice for Juveniles Act or filed on or after such date if such action is—

(1) brought by a prisoner who has not attained 22 years of age; or

(2) brought by any prisoner with respect to a prison condition that occurred before the prisoner attained 22 years of age.

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