ANSWERING THE CALL: COMBATTING THE PLRA'S EXHAUSTION REQUIREMENT FOR JUVENILES THROUGH INCREASED INDEPENDENT ADVOCACY

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"Youth is more than chronological fact; it is a time and condition of life when a person may be most susceptible to influence and to psychological damage."[1]

ABSTRACT

The Prison Litigation Reform Act (PLRA), specifically the exhaustion provision, creates a significant barrier for juveniles who are experiencing abuse in correctional facilities. The PLRA's exhaustion provision requires that before a claim by a prisoner can be brought in federal court, inmates must first exhaust the internal grievance procedures set forth by the detention center administrators. Although recent Supreme Court decisions have acknowledged that juveniles should be treated differently than adults in the criminal system, the PLRA still applies to juveniles in the same way that it applies to adults. The failure of the Act to acknowledge the major cognitive differences between adults and the youth has led to continued abuses within our nation's juvenile detention facilities. Although many notes have addressed the need to amend the PLRA to include a distinction between adults and juveniles, there is no sign that the legislature intends to do so. Despite the legislature's failure to act, juvenile detention centers are capable of making changes to their internal grievance procedures to make it easier for juveniles to exhaust and bring their meritorious claims in court.

Youth and the elderly have long been regarded as vulnerable members of our society that deserve the utmost protection. However, the PLRA does not provide adequate protection of incarcerated youth and has led to many instances of abuse in juvenile facilities to continue, simply due to a juvenile's failure to comply with often complex administrative procedures.

This Note will address the current issues with the internal

1. Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (quoting J. Powell).

grievance procedures set forth by juvenile correctional facilities in the United States and propose changes to the procedures that will help lift the barrier between juvenile offenders and their access to the judicial system. Acknowledging scientific research and recent Supreme Court decisions establishing the significant cognitive differences between adults and youth, internal grievance procedures should be revised to account for these differences. The call for increased advocacy of incarcerated youth must be answered to ensure proper oversight of our juvenile facilities and to prevent abuse within our juvenile justice system.

I. INTRODUCTION

In 2003, Steven Zick was sentenced to a year in a juvenile facility for theft. Shortly after arriving, Zick was assaulted by several other offenders as part of an "initiation" process.[2] As a result of the beating, Zick suffered a black eye and several bruises, but staff at the facility took no action to protect Zick or even ask him how the injuries occurred.[3] The beatings continued to occur and one of the incidents resulted in Zick suffering a seizure which caused him to violently jerk and foam at the mouth.[4] Staff were called to the scene, but no actions were taken to protect Zick from further beatings, and he was beaten again the next evening and was raped by another offender.[5] Out of fear of further attacks, Zick did not immediately report the beatings and was eventually transferred to another facility where he continued to suffer severe abuse.[6] Cathy Minix, Steven's mother, became concerned about her son's well-being after witnessing bruising on his face and upper body.[7] His mother then reported the allegations to staff at the facility, and she was told that prison staff were actively investigating the situation, but Cathy never received any information on how to properly grieve or what

2. Minix v. Pazera, No. 1:04 CV 447 RM, 2005 WL 1799538, at *1 (N.D. Ind. July 27, 2005).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

steps the facility was taking to protect her son.[8] Following inaction by the administrators at the facility, Cathy filed suit on her son's behalf against the Indiana Department of Corrections and several workers at the Department of Corrections.[9]

After the suit was filed, the Department of Corrections moved to dismiss the suit on the grounds that Zick and his mother failed to exhaust the internal grievance procedures.[10] The Court granted the motion on the grounds that Cathy's complaints were not directed to the proper people, did not contain the required information, and they were not issued within the time prescribed.[11] Additionally, the Court found that the PLRA exhaustion requirement applied to Steven himself, and his mother's efforts did not satisfy her son's obligations.[12] It did not matter that Steven did not report these incidents out of fear, that his mother had met with detention center officials, or that she had written a letter to the governor over her concerns.[13]

Steven's failure to exhaust his administrative remedies precluded his recovery due to the exhaustion requirement of the Prison Litigation Reform Act (PLRA) that requires inmates to exhaust their administrative remedies before they can file their claims in court.[14] The PLRA was passed into law to combat meritless claims filed by prisoners.[15] Although the Act has been successful in decreasing frivolous claims brought by inmates, it has caused a major injustice to juveniles attempting to bring legitimate claims. These injustices, like the one Steven Zick experienced, should compel those in the legal community to take a closer look at the PLRA and examine how it is adversely

8. *Id.* at *3.
9. *Id.*
10. *Id.* at *4.
11. *Id.*
12. *Id.* at *5
13. *Id.*
14. 42 U.S.C. § 1997e(a) (2000) (requiring prisoners to exhaust administrative
remedies before filing suit).
15. 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, 266 (2006); 141 CONG. REC. 27,042 (1995) (statement of Sen. Hatch explaining that the purpose of the PLRA was to "do away with frivolous lawsuits").

affecting juveniles and leading to continued abuses within our juvenile detention facilities across the country. Although there has been plenty of support from legal scholars to amend the PLRA and include distinctions for juveniles, there is no indication that Congress intends to amend the Act. Despite the failure of Congress to amend the PLRA, changes can be made to the internal grievance procedures themselves that make it easier for juvenile offenders to understand and exhaust them. Additionally, providing juveniles with advocates that will aid them in filing their grievances can help counteract the harmful effects the PLRA has had on juvenile offenders and their access to the courts.

II. BACKGROUND

a. The Purpose of the PLRA

The Prison Litigation Reform Act (PLRA) was passed on April 26, 1996, as an appropriations bill in an attempt to limit the amount of claims being brought by prisoners and to preserve prison autonomy.[16] In the committee hearing, Senator Hatch stated, "Frivolous lawsuits filed by prisoners tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population."[17] Senator Hatch went on to stress that the purpose of this act was to prevent frivolous suits and not to thwart legitimate claims by prisoners from reaching the courts.[18] Senator Dole stated that in the years leading up to the passage of the bill, "[l]awsuits filed by inmates had grown from 6,600 in 1975 to more than 39,000 in 1994."[19] The cost of these frivolous claims was an estimated $81 million per year.[20] As a result of the influx of prisoner suits, the

16. *Legislative History of Prison Litigation Reform Act of 1996*, Pub. L. No. 104-134 (1996).

17. 141 CONG. REC. 27,042 (1995) (statement of Sen. Hatch).

18. *Id.*

19. *Id.* (statement of Sen. Dole discussing the frivolous prisoner lawsuits and the need for congressional intervention).

20. *Id.* (statement of Sen. Dole citing an estimate by the National Association
of Attorneys General).

bill set forth several provisions that would limit a prisoner's ability to file their claims in federal court.[21] These provisions include a limitation on damages,[22] requirement of indigent inmates to pay filing fees, pre-judicial screening, and the exhaustion requirement.[23]

Another purpose of the act was to ensure prison autonomy and prevent judicial interference with the prison administration.[24] Proponents of the act were concerned with the perceived judicial activism the Court was exercising when handling issues within the prison system.[25] Before the 1960's, the "hands-off doctrine" prevailed and the courts generally did not review claimed violations of state prisoner's rights.[26] The "hands-off doctrine" meant that the judiciary would not interfere with internal operations of prisons.[27] Under this doctrine, the courts were without power to supervise prison administration.[28] The "hands-off doctrine" centered around ideas of separation of powers, federalism, and the lack of judicial expertise in penology.[29] After the 1960s, this doctrine began to fade and the courts began to review various aspects of police and prosecutorial conduct and took a more expansive reading of 42 U.S.C. § 1983.[30]

21. 42 U.S.C. § 1997e (2000).

22. *See* Siggers-El v. Barlow, 433 F. Supp. 2d 811 (E.D. Mich. 2006) (holding that "to bar mental or emotional damages would effectively immunize officials from liability for severe constitutional violations, so long as no physical injury is established."). Although no Supreme Court decision has established that the limitation of emotional or mental injury is an unconstitutional provision of the act, it is somewhat significant that at least one district court is finding it to be so.

23. 42 U.S.C § 1997e(a) (2000).

24. 141 CONG. REC. 27,044-4 (daily ed. Sept. 29, 1995) (statement of Sen. Kyl explaining the dual purposes of the PLRA).

25. James B. Jacobs, *Prison Reform Amid the Ruins of Prisoners' Rights, in the Future of Imprisonment* 184-85 (Michael Tonry ed., 2004).

26. *See* Margo Schlanger, *The Courts, Beyond the Hero Judge: Institutional Reform Litigation as Litigation*, 97 MICH. L. REV. 1994, 2000 (1999).

27. Kenneth C. Haas, *Judicial Politics and Correctional Reform: An Analysis of the Decline of the Hands-off Doctrine*, 1977 DET. C.L. REV. 795, 796 (1977).

28. *Id.*

29. Ronald L. Goldfarb & Linda R. Singer, *Redressing Prisoners' Grievances*, 39 GEO. WASH. L. REV. 175 (1970).

30. *Id.*

Since the 1960s, the courts now advocate for a balance between deference toward prison administration and protection of prisoners' constitutional rights.[31] The courts now recognize that some conditions within our Nation's prisons are egregious and result in such clear violations of one's constitutional rights that the courts have a right to review and condemn such conduct.[32] In reaction to the abandonment of the "hands-off doctrine," the PLRA was enacted to preserve prison autonomy. Specifically, "the exhaustion requirement was implemented to eliminate unwarranted federal-court interference with the administration of prisons, by allowing correction officials the time and opportunity to address complaints internally before the initiation of a federal case."[33]

Early on in the passage of the PLRA, there was criticism from senators on the harsh effects this bill would have on prisoners' access to justice.[34] One issue with the passage of the bill was that because it was part of an appropriations bill, it received little consideration and in fact, only one hearing was held on the matter.[35] Additionally, opponents of the bill found that it placed too great of a burden on legitimate prison lawsuits[36] and that it was a "dangerous legislative incursion into the work of the judicial branch."[37] A large number of legal scholars have found issue with almost every single provision of the act, finding that these provisions prevent legitimate claims

31. *See* Turner v. Safley, 482 U.S. 78, 89 (1987) (indicating that a regulation that infringes on prisoners' constitutional rights will be upheld if it is "reasonably related to legitimate penological interests").

32. Bell v. Wolfish, 441 U.S. 520, 562 (1979) (holding that "the deplorable conditions and Draconian restrictions of some of our Nation's prisons are too well known to require recounting here, and the federal courts have rightly condemned these sordid aspects of our prison systems.").

33. Prisoners' Rights Litigation, 22 AM. JUR. TRIAL 1 (1975).

34. 142 CONG. REC. 5193 (1996) (statement of Sen. Kennedy criticizing the PLRA and explaining the limited discussion surrounding its passage); 142 CONG. REC. 5193 (1996).

35. 142 CONG. REC. 5193 (1996) (statement of Sen. Kennedy).

36. 142 CONG. REC. 27 (1995) (statement of Sen. Biden questioning the constitutionality of the act).

37. 142 CONG. REC. 5193 (1996) (statement of Sen. Kennedy) ("The PLRA is itself patently unconstitutional, and a dangerous legislative incursion into the work of the judicial branch.").

from being brought.[38] Despite there being sufficient evidence to establish that the act's intended purpose of preventing frivolous claims while protecting legitimate ones is not being achieved, the PLRA is still in effect today.[39]

b. Issues with the Scope and Application of the Exhaustion Requirement Addressed by the Supreme Court

Although the PLRA has been criticized in its entirety, the exhaustion requirement has been the most litigated and discussed provision. Of the six Supreme Court cases involving the PLRA, four of them have dealt with the exhaustion requirement.[40] This provision requires an incarcerated person planning to sue in federal court to exhaust a correctional facility's available administrative remedies before bringing their claim.[41] If a defendant asserts failure to exhaust as an affirmative defense, the court must determine if the plaintiff exhausted and, if they have not, the claim will be dismissed regardless of the complaint's merits.[42] The PLRA's exhaustion requirement amended an earlier exhaustion requirement established in the Civil Rights of Institutionalized Persons Act (CRIPA), which made the exhaustion requirement discretionary.[43] The requirement of exhaustion could only be ordered if the state's prison grievance procedures met federal standards and, even if those standards were met, the court would only apply the requirement if it was appropriate and in the interest of justice.[44]

38. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555 (2003) (Discussing the exhaustion section in how it "deprives federal courts of the ability to correct unconstitutional conduct whenever plaintiffs have simply failed to exhaust internal avenues.").

39. Tillman v. Allen, 187 F. Supp. 3d 664, 672 (E.D. Va. 2016) (holding that Tillman clearly failed to exhaust his administrative remedies in accordance with the PLRA).

40. Woodford v. Ngo, 548 U.S. 81, 126 S. Ct. 2378 (2006); Jones v. Bock, 549 U.S. 199, 127 S. Ct. 910 (2007); Ross v. Blake, 578 U.S. 632, 136 S. Ct. 1850 (2016); Booth v. Churner, 532 U.S. 731 (2001).

41. 42 U.S.C. § 1997e(a).

42. *See* Jones v. Bock, 549 U.S. 199, 216, 127 S. Ct. 910, 921 (2007).

43. Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997a(a), 1997c(a)(1) (1980).

44. *Id.*

After the implementation of the PLRA's stricter exhaustion requirement, circuits were split on the scope of the provision and how to procedurally apply it. In response to these inconsistencies among the circuits, the Supreme Court issued several opinions to address the misapplications of the exhaustion requirement.[45]

The first Supreme Court case to address the issue of the exhaustion requirement was *Booth v. Churner*.[46] Timothy Booth was an inmate at a correctional facility in Pennsylvania who filed an action claiming a violation of his Eighth Amendment right to be free from cruel and unusual punishment.[47] Booth claimed officers assaulted him by tightening handcuffs on his wrists causing bruising, throwing cleaning materials in his face, and denying him adequate medical attention.[48] Booth filed a grievance with the facility but did not go beyond that initial step because the administrative process could not award the monetary damages he sought.[49] The question before the Court was whether or not a remedial scheme is "available" if the process is incapable of awarding the damages the inmate demands.[50] The Court interpreted the word "available" to mean exhaustion is mandated even if the remedies sought are not offered through the administrative process.[51] Following this decision, exhaustion was no longer left to the discretion of the Court and became mandatory regardless of the relief sought and its availability.[52] This case made it clear that exhaustion is centered on procedures, not outcomes.[53]

In *Woodford v. Ngo*, the court addressed the issue of proper exhaustion versus exhaustion simpliciter.[54] Proper exhaustion requires the prisoner to complete the administrative review

45. *See Tillman*, 187 F. Supp 3d at 672.
46. Booth v. Churner, 532 U.S. 731 (2001).
47. *Id.* at 734.
48. *Id.*
49. *Id.*
50. *Id.* at 736.
51. *Id.* at 738.
52. *Id.*
53. Alison M. Mikkor, *Correcting for Bias and Blind Spots in PLRA Exhaustion Law*, 21 GEO. MASON L. REV 573, 592 (2014).
54. Woodford v. Ngo, 548 U.S. 81, 88, 126 S. Ct. 2378, 2384-85 (2006).

process in accordance with the procedural rules, including deadlines.[55] Exhaustion simpliciter simply means that a prisoner may not bring suit until administrative remedies are no longer available and why they are no longer available is irrelevant.[56] Unavailability will be satisfied even if a prisoner deliberately refrains from filing in a timely manner.[57] The Court found that the word "exhaustion" in the PLRA holds the same meaning it does in administrative law, which is proper exhaustion.[58] The Court reasoned that the intent of the legislature was clearly proper exhaustion considering the main goal of the PLRA was to cut down on frivolous lawsuits.[59] To apply exhaustion simpliciter would go against the very purpose of the act by allowing prisoners to deliberately fail to meet the procedural requirements and allow their claims to go forward in federal court.[60] Three Justices, Stevens, Souter, and Ginsburg dissented and explained that although the PLRA mandated exhaustion of administrative remedies, it did not distinguish between denial on the merits and denial for some other procedural reason.[61] Justice Stevens found that the adoption of the proper exhaustion requirement is not required by the text of the statute, but rather was imposed by the Court.[62] Moreover, Justice Stevens noted that, while the PLRA was intended to reduce frivolous lawsuits, the exhaustion requirement "bars litigation at random, irrespective of whether a claim is meritorious or frivolous."[63]

The language of the PLRA also does not make clear whether the exhaustion provision should be pleaded by the plaintiff or if it is an affirmative defense.[64] The circuits were split on the issue and the Supreme Court, in *Jones*, adopted the majority rule that

55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.* at 90, 126 S. Ct. at 2385-86.
59. *Id.*
60. *Id.*
61. *Id.* at 105, 126 S. Ct. at 2394 (Stevens, J., Dissenting).
62. *Id.* ("In the words of federal courts jurisprudence, the text of the PLRA does not impose a waiver, or a procedural default, sanction, upon those prisoners who make such procedural errors.").
63. *Id.* at 118, 126 S. Ct. at 2401 (Stevens, J., Dissenting).
64. *Jones*, 549 U.S. at 211, 127 S. Ct. at 919.

the exhaustion requirement was an affirmative defense.[65] The Court found that the PLRA itself is not a source of a prisoner's claim because the claims were typically brought under 42 U.S.C. § 1983, which does not require exhaustion.[66] Secondly, the Court held that exhausted claims could be severed and proceed separately from dismissed, unexhausted claims brought in the same action.[67] Lastly, the Court held that a prisoner was not required by the PLRA to identify by name in his administrative grievance all of the persons later named in his civil suit unless the procedures themselves established such a requirement.[68] Although *Jones* is viewed as a more pro-plaintiff opinion than the previous Supreme Court decisions, it still reflects the same deference to prison procedural rules.

In 2016, the Supreme Court considered another § 1983 claim in *Ross v. Blake*; except in this case, the Court seemed to offer more deference to prisoners by offering some exceptions to the mandatory exhaustion requirement.[69] Two guards in a Maryland prison, James Madigan and Michael Ross, moved an inmate, Shaidon Blake, to the facility's segregation unit.[70] Blake alleged that during the move, the guards shoved him in the back, pushed him, and punched him in the face several times.[71] Blake reported the assault to a senior corrections officer who referred the incident to the Maryland prison system's Internal Investigative Unit (IIU).[72] When Blake later sued both guards in federal court, Ross raised the PLRA exhaustion requirement as an affirmative defense against Blake's § 1983 excessive force claims.[73] Blake was unaware that to properly exhaust his claim internally, he needed to file a claim under the Administrative Remedy Procedure (ARP), which involves filing a formal grievance with

65. *Id.*
66. *Id.* (citing Patsy v. Board of Regents of Fla., 457 U.S. 496 (1992)).
67. *Id.* at 223-24, 127 S. Ct. at 925-26.
68. *Id.* at 219, 127 S. Ct. at 923.
69. Ross v. Blake, 578 U.S. 632, 637, 136 S. Ct. 1850, 1855-56 (2016).
70. *Id.* at 636, 136 S. Ct. at 1855.
71. *Id.*
72. *Id.*
73. *Id.* at 637, 136 S. Ct. at 1855.

the prison warden.[74] Given the reasonableness of Blake's error, this case presented an opportunity for the Court to specify when, if ever, it would excuse a failure to exhaust.[75] Following the facts in *Ross*, the Court introduced a textual exception to the exhaustion requirement: An inmate need only exhaust remedies that are available.[76] The Court found three specific examples of when remedies could be considered unavailable under the PLRA.[77] First, if the officers are unable or unwilling to provide any relief to aggrieved inmates.[78] Second, if no ordinary inmate can discern or navigate the administrative scheme.[79] Third, if prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.[80] Although the Court finally opened the door to some exceptions to proper exhaustion in *Ross*, the lower courts have often misunderstood the list of exceptions as comprehensive, rather than a directive for courts to look to the case facts when determining whether to excuse a failure to exhaust.[81]

Despite the more pro-plaintiff opinions of *Jones* and *Ross*, the exhaustion requirement still acts as a barrier to prisoners' access

74. *Id.*

75. *Id.* at 644-46, 136 S. Ct. at 1860.

76. *Id.* at 642, 136 S. Ct. at 1858.

77. *See* Ross v. Blake, 578 U.S. 632, 643-44, 136 S. Ct. at 1859-60 (2016) (recognizing need for real-world examples to guide lower courts' application of new rule); *see also* Pearson v. Taylor, 665 F. App'x 858, 868 (11th Cir. 2016) (deciding plaintiff's argument did not fall within any Ross exception); Romero v. Ahsan, No. 13-7695, 2016 U.S. Dist. LEXIS 177725, at *19 (D.N.J. Dec. 22, 2016) (recognizing only three circumstances exempting exhaustion); Winfield v. DeRosso, No. 07-CV-4570, 2016 U.S. Dist. LEXIS 89693, at *12 (E.D.N.Y. July 8, 2016) (following strict adherence to three circumstances for exemption from exhaustion), adopted by No. 07-CV-4570, 2016 U.S. Dist. LEXIS 136047 (E.D.N.Y. Sept. 30, 2016).

78. *Ross*, 578 U.S. at 643-44, 136 S. Ct. at 1859-60.

79. *Id.*

80. *Id.*

81. *See* Nicola A. Cohen, *Why Ross v. Blake Opens a Door to Federal Courts for Incarcerated Adolescents*, 51 COLUM. J.L. & SOC. PROBS. 177, 200 (2017); *see also* Meredith Sterritt, *The Prison Litigation Reform Act &* Ross v. Blake*: Why the Constitution Requires Amending the Exhaustion Requirement to Protect Inmates' Access to Federal Court*, 53 SUFFOLK U. L. REV. 115, 125 (2020).

to the courts.[82] In the aftermath of the *Woodford* decision, a survey of reported cases citing to the decision were dismissed entirely for failure to exhaust.[83] All claims raised in the complaint survived the exhaustion requirement in fewer than fifteen percent of reported cases.[84] Additionally, the rule established in *Woodford* creates incentives for prison administrators to deny claims on procedural rather than substantive grounds, thereby insulating their decisions from judicial scrutiny even if there are clear violations of a prisoner's constitutional rights.[85] Although the Court recognized exceptions to total exhaustion in *Ross*, the decision did not make it clear that these exceptions were not an exhaustive list, and this has prevented the lower courts from looking at exhaustion on a case-by-case basis. When failing to determine if exhaustion was "available" to a plaintiff on a case-by-case basis, relief is barred regardless of the different circumstances surrounding a prisoner's failure to exhaust. It is evident that these decisions fail to recognize that exhaustion is a difficult hurdle for vulnerable groups such as juveniles, first-time offenders, the illiterate, the mentally ill, and non-English speakers, and often these vulnerable groups will be left voiceless due to the provisions of the PLRA.[86]

82. Allen E. Honick, *It's "Exhausting": Reconciling a Prisoner's Right to Meaningful Remedies for Constitutional Violations with the Need for Agency Autonomy*, 45 U. BALT. L. REV. 155, 162-63 (2015) (calling the PLRA a "roadblock" between inmates and courts).

83. Giovanna Shay & Johanna Kalb, *More Stories of Jurisdiction-Stripping and Executive Power: Interpreting the Prison Litigation Reform Act (PLRA)*, 29 CARDOZO L. REV. 291, 321 n. 228 (2007).

84. *Id.* at 321.

85. Brief for the A.C.L.U. et al. as Amici Curiae Supporting Respondent, Woodford v. Ngo, 126 S. Ct. 2378 (2006) (No. 05-416).

86. Brief for the Jerome N. Frank Legal Services Organization of the Yale Law School as Amicus Curiae Supporting Respondent, Woodford v. Ngo, 126 S. Ct. 2378 (2006) (No. 05-416), 2006 WL 304573, at *17.

III. MAJOR COGNITIVE DIFFERENCES BETWEEN ADULTS AND CHILDREN

a. The Prison Litigation Reform Act as it Applies to Juveniles

The PLRA defines the term prisoner to mean, "any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."[87] It further defines the term "prison" broadly to mean "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law."[88] Based on these definitions, courts have determined that the act is to apply to juveniles in the same way that it applies to adults.[89] Applying the PLRA to juveniles in the same way it is applied to adults has been brought into question numerous times. In a hearing held after the act was passed, the Senate Judiciary Committee heard testimony about how the statute negatively affects juveniles in custody.[90] The late Senator Wellstone stated that, "The PLRA has had a devastating effect on the conditions in which juvenile offenders are held" and called for the prospective relief of the PLRA to be inapplicable to prisoners under sixteen years old and the mentally ill because of their inability to advocate for themselves.[91] Despite his proposal being passed as an amendment to the Mental Health of Juvenile Justice Act of 2002, it has never been passed as an amendment to the PLRA.[92] The

87. 18 U.S.C. § 3626(g)(3).

88. 18 U.S.C. § 3626 (g)(5).

89. Christina A. v. Bloomberg, 315 F.3d 990 (8th Cir. 2003); Alexander S. v.
Boyd, 113 F.3d 1373, 1348-85 (4th Cir. 1997); *see also*
Doe v. Cook Cnty., No. 99 C 3945, 1999 U.S. Dist. LEXIS 18191, at *13 (N.D. III. Nov. 18, 1999).

90. *Implementation of Prisoners Rights Legislation: Hearing on the Prison Litigation Reform Act*, Pub. L. No. 104-134 Before the S. Comm. on the Judiciary, 104th Cong. 58 (1996), available at 1996 WL 556530.

91. 145 CONG. REC. 3062 (1999) (statement by Sen. Wellstone).

92. Mental Health Juvenile Justice Act, S.464, 106th Cong. (1999); S.465,

decision to apply the PLRA to juveniles coupled with the strict interpretation of "exhaustion" has led to major injustices for juveniles suffering abuse in juvenile correctional facilities.[93] When examining the cognitive differences between adults and children recognized by scientific research as well as the courts, it is hard to comprehend how the legislature can reason that the complex provisions of the PLRA should apply equally to incarcerated youth. This section will address the major cognitive differences between adults and children and provide a clear understanding of how juveniles are negatively affected by the provisions of the PLRA. Even though scientists and the courts have repeatedly recognized major differences between adults and children, the PLRA gives little consideration to these findings.

b. Recognition of Cognitive Differences Between Adults and Children by the Supreme Court

The courts have slowly begun to recognize that juveniles differ significantly in their cognitive abilities. In 2005, Justice Kennedy wrote for the Court in *Roper* and found that the death penalty for juveniles under the age of eighteen was prohibited by the Eighth and Fourteenth Amendments.[94] Using sociological and scientific studies as a guide, Justice Kennedy established three general differences between juveniles under eighteen and adults.[95] First, a "lack of maturity and an underdeveloped sense of responsibility are found in youth more often than adults and are more understandable among the young."[96] Secondly, "juveniles are more vulnerable or susceptible to negative influences and outside pressures."[97] Lastly, "the character of a

106th Cong. (1999); H.R. 837, 106th Cong. (1999); *see also* 18 U.S.C. § 3626 (2000).

93. *See* Brock v. Kenyon Cnty., Ky, No. 02-5442, 2004 WL 603929 (6th Cir. Mar. 23, 2004); M.C. ex rel. Crider v. Whitcomb, 2007 WL 854019 (S.D. Ind. Mar. 2, 2007); Minix v. Pazera, No. 1:04 CV 447 RM, 2005 WL 1799538, at *1 (N.D. Ind. July 27, 2005).

94. Roper v. Simmons, 543 U.S. 551, 568 (2005).

95. *Id.* at 569.

96. *Id.*

97. *Id.*

juvenile is not as well formed as that of an adult."[98] Justice Kennedy went on to explain that "once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults."[99] This opinion is significant in that it heavily relied on scientific research establishing major cognitive difference between youth and adults. Despite this research being acknowledged in terms of criminal sentencing of the youth, it was never consulted when constructing the PLRA. It is concerning that the Supreme Court found scientific research on cognitive development highly persuasive, but the legislature chose to ignore it and apply the act to juveniles.

Echoing his opinion in *Roper*, Justice Kennedy also found that life without the possibility of parole for nonhomicidal offenses for juveniles was also prohibited by the Eighth Amendment.[100] In *Graham v. Florida*, Justice Kennedy acknowledged that young people have difficulty in participating in their own representation, so a case by case approach to sentencing is inadequate.[101] The Court found that juveniles' mistrust of adults, limited understandings of the criminal justice system and the roles of the institutional actors within it, make them less likely to aid their lawyers in their defense.[102] Additionally, a juvenile's difficulty in weighing long-term consequences, coupled with their impulsiveness, can lead to poor decisions by one charged with a juvenile offense.[103] If one acknowledges that these issues are present in criminal sentencing, it is likely that these same issues would be present in a juvenile's ability to comply with complex grievance procedures.

Justice Sotomayor, in *J.D.B v. North Carolina*, ruled that age is a factor to be considered in determining whether an individual

98. *Id.*

99. *Id.* at 571.

100. Graham v. Florida, 560 U.S. 48, 82, 130 S. Ct. 2011, 2034 (2010).

101. *Id.* at 78, 130 S. Ct. at 2032.

102. *Id.* (Justice Kennedy citing Brief for NAACP Legal Defense & Educational Fund et al. as *Amici Curiae* 7-12; Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L.REV. 245, 272-73 (2005)).

103. *Id.*

is in custody.[104] The Court relied on the fact that even where a "reasonable person" standard would otherwise apply, the common law has reflected that children are not adults.[105] In some circumstances, a child's age "would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave."[106] A reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.[107] The Court found that taking this reality into account would not do any damage to the objective nature of police conduct.[108] All throughout the opinion, Justice Sotomayor reiterates the significant cognitive differences between adults and children established in prior Supreme Court decisions.[109] These differences, are "self-evident to anyone who was a child once himself, including any police officer or judge."[110] Again, these same cognitive differences are acknowledged by the Court but are not applied to the provisions of the PLRA.

c. Scientific and Sociological Research Recognizing Cognitive and Psychosocial Differences Between Adults and Children

Adolescence is commonly defined as beginning at age ten or eleven and continuing to age eighteen or nineteen.[111] Within the last decade, scientific and sociological research has been cited as evidence that existing legal doctrine must be modified to properly

104. J.D.B . v. North Carolina, 564 U.S. 261, 277, 131 S. Ct. 2394, 2406 (2011) ("we hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of the test.").

105. *Id.* at 274, 131 S. Ct. at 2404.

106. *Id.* at 271-72, 131 S. Ct. at 2402-03 (citing Eddings v. Oklahoma, 455 U.S. 104 (1982)).

107. *Id.* at 275, 131 S. Ct. at 2404-05.

108. *Id.*

109. *Id.*

110. *Id.* at 272, 131 S. Ct. at 2403 (quoting Justice Sotomayor).

111. *See* Brief for the American Psychological Ass'n, and the Missouri Psychological Ass'n as Amici Curiae Supporting Respondent, *Roper*, 543 U.S. 551 (No. 03-633), 2004 WL 1636447, at *4; *see also* Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469, 476 (2000).

protect adolescents. This research shows that adolescents suffer more than adults from higher rates of illiteracy and immaturity due to developmental differences.[112] Additionally, "behavioral studies indicate that adolescents often undervalue true consequences and instead value impulsivity, fun-seeking, and peer approval more so than adults."[113] These psychological and cognitive differences have been recognized in certain situations involving juveniles in the criminal justice system[114] but, have not yet been applied in the context of the PLRA's exhaustion requirement.

1. High Rates of Illiteracy and Cognitive Disabilities

The U.S. prison population suffers from high rates of illiteracy and cognitive disabilities. Almost three-fourths of the adult prison population have not completed high school and read at or below an eighth-grade level.[115] Whereas 85% of incarcerated youth are functionally illiterate.[116] Around 30% to 70% of the youth in the juvenile justice system suffer from learning disabilities.[117] Additionally, 47.7% of youth incarcerated in correctional facilities have some form of an emotional disorder.[118]

These high rates of illiteracy and disabilities in incarcerated youth have been attributed to susceptibility theory which holds

112. Cohen, *supra* note 81, at 206.

113. *See* LAURENCE STEINBERG, ADOLESCENCE 88 (6th ed. 2002).

114. Roper v. Simmons, 543 U.S. 551, 568 (2005) (citing Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339 (1992)). *see also* Thomas Grisso, *Dealing with Juveniles' Competence to Stand Trial: What We Need to Know*, 18 QLR 371, 379 (1999) (discussing how scientific research has been cited to justify age being a relevant factor in determining *Miranda* rights issues).

115. JENNIFER BRONSON ET. AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 249151, DISABILITY AMONG PRISON AND JAIL INMATES, 2011-12 1 (2015) (reporting that 32% of incarcerated people have at least one disability).

116. Emily Music, *Teaching Literacy in Order to Turn the Page on Recidivism*, 41 J.L. & EDUC. 723, 723 (2012).

117. Jennifer A. L. Sheldon-Sherman, *The IDEA of an Adequate Education for All: Ensuring Success for Incarcerated Youth with Disabilities*, 42 J.L. & EDUC. 227 (2013).

118. Mary Magee Quinn et al., *Youth with Disabilities in Juvenile Corrections: A National Survey*, 71 EXCEPTIONAL CHILDREN 339, 340 (2005).

that individuals with disabilities have cognitive deficits that predispose them to criminal or delinquent behavior.[119] "These characteristics include: (a) poorly developed impulse control, (b) irritability, (c) suggestibility, (d) an inability to anticipate consequences, and (e) inadequate perception of social cues."[120] Additionally, adolescents sent to correctional facilities are less likely to have completed high school, and this lack of adequate education is closely correlated to illiteracy.[121]

Susceptibility, deficient education, and illiteracy undoubtedly effect adolescents' ability to comprehend legal processes. In a study that found that young defendants were more likely than adults to miscomprehend *Miranda* warnings, Thomas Grisso explained that "certain disabilities such as attention deficit disorders, can interfere with youths' capacities to attend to the trial process, to assist counsel, and to consider the long-range consequences of their decisions."[122] Grisso went on to suggest the law should recognize a lower threshold for raising the question of trial competence, especially for youths in criminal court.[123] This rationale can in-turn be applied to the exhaustion requirement of the PLRA. Adopting a lower threshold for determining when a juvenile has exhausted, would consider the cognitive differences between adults and youth, as well as the high rates of illiteracy. Grievance procedures often contain complex legal jargon and are typically written on a twelfth grade reading level.[124] It is evident that these grievance procedures are written without any regard for the low literacy rates of incarcerated youths and their inability to comprehend complex legal information.

119. *Id.*

120. *Id.*

121. Mindee O'Cummings et al., *Importance of Literacy for Youth Involved in the Juvenile Justice System*, NAT'L EVALUATION & TECHNICAL ASSISTANCE CTR. FOR THE EDUC. OF CHILD. & YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT RISK (2010), https://files.eric.ed.gov/fulltext/ED594436.pdf (study finding that a large number of youths who are incarcerated are also marginally illiterate and have already experienced school failure).

122. Thomas Grisso, *Dealing with Juveniles' Competence to Stand Trial: What We Need to Know*, 18 QLR 371, 379 (1999).

123. *Id.*

124. Cohen, *supra* note 81, at 209 n.162.

2. Maturity Differences Between Adults and Children

"Jurisprudence addressing the maturity disparities between adults and children has long been understood to restrict minors from participating in certain activities, such as, jury duty, voting, enlisting in the military, getting married, or entering into a contract."[125] More recently, scholars as well as the Court have recognized that an "adolescent's lack of maturity makes them less culpable for their actions."[126] When making grievance-related decisions, concerns regarding maturity disparities should also be considered to ensure the juvenile is able to properly exhaust.

Brain imaging technology has revealed that an adolescent's brain does not reach full maturity until after the age of eighteen, and prior to maturity, the parts of the brain that control one's decision-making processes are not yet developed.[127] Mature judgment is established only when the brain fully develops in one's early twenties.[128] Prior to maturity, adolescents are less likely to consider alternative courses of action, understand the perspectives of others, or restrain impulses.[129] Moreover, adults are more capable than juveniles of weighing the options available

125. *See J.D.B.*, 564 U.S. at 273, 131 S. Ct. at 2403 (noting types of "legal disqualifications placed on children as a class" in society include "limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent").

126. *See Roper*, 543 U.S. 551 at 571 ("Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."); Emily Buss, *Developmental Jurisprudence*, 88 TEMP. L. REV. 741, 741 (2016) ("In the past decade, the Supreme Court decided a series of criminal cases involving minor offenders that expressly took account of their immaturity."); *see also* Thomas Grisso, *Dealing with Juveniles' Competence to Stand Trial: What We Need to Know*, 18 QLR 371, 383 (1999) ("we should push very hard for recognition of immaturity—not just mental disorder or mental retardation—as a potential basis for incompetence to stand trial in criminal court, and for incompetence to stand trial in juvenile court in cases in which the youth faces penalties that may extend into the adult years.").

127. Brief of the American Medical Ass'n et al., Roper, 543 U.S. 551 (No. 03-633), 2004 WL 1633549, at *1.

128. Kathryn Lynn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 L. & HUM. BEHAV. 78, 79 (2008) (citing research indicating the "brain may not mature to adult capacity until the early twenties").

129. Brief of the American Medical Ass'n, *supra* note 111, at *7.

to resolve an issue because their decision-making processes are fully developed.[130]

In a study conducted by doctors Elizabeth Cauffman and Laurence Steinberg, antisocial decision-making by youths and adults were assessed by presenting participants with a set of hypothetical situations, which called on them to choose between antisocial and social behavior.[131] Participants were presented with scenarios such as: "You're out shopping with some of your friends, and they decide to take some clothing without paying for it. You don't think it's a good idea, but they say you should take something too."[132] Participants were first asked, whether they would participate if they knew there would be no consequences, and secondly, would they steal if consequences were inevitable.[133] The study found that age differences in antisocial decision-making were attributable to differences in psychosocial maturity, and that participants under the age of nineteen were more likely to engage in antisocial behavior.[134] In finding that adolescents are less psychosocially mature than adults in ways that affect their decision-making in antisocial situations, "lends scientific credibility to the argument that juvenile offenders may warrant special treatment because of diminished responsibility."[135] To establish effective policies and regulations concerning legal decisions involving juveniles, an understanding of the psychosocial as well as cognitive factors that affect judgement of a juvenile must be considered.[136]

In light of scientific research, it is clear that an adolescent's decision-making processes are underdeveloped, and as a result, they are ill-equipped to properly weigh their options, especially when dealing with complex legal issues. In the grievance context,

130. Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 DEVELOPMENTAL REV. 1, 1 (1992) (highlighting how adolescents seek different outcomes than adults from decision-making).

131. Elizabeth Cauffman & Laurence Steinberg, (*Im)maturity of Judgment in Adolescence: Why Adolescents May be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 749 (2000).

132. *Id.*

133. *Id.*

134. *Id.* at 755.

135. *Id.* at 759.

136. *Id.* at 741.

these cognitive and psychosocial factors will affect how they understand and comply with the strict grievance procedures.[137] In situations where an incarcerated juvenile is without counsel, they are left to make sense of the complex legal jargon on their own, despite their cognitive deficiencies. It is apparent that the legislature did not consider the scientific research regarding the cognitive and psychosocial differences between adults and youth when passing the PLRA.[138] For these reasons, the PLRA should not be considered effective policy and juvenile offenders should receive special treatment when complying with grievance procedures.

IV. IMPROVING JUVENILES' ACCESS TO THE JUSTICE SYSTEM

a. The Importance of Prison Litigation and a Useable Grievance Mechanism

A prisoner's ability to have his or her claims heard in a court of law is an important avenue for documenting and addressing abuses and conditions that one might experience during incarceration. Barring a prisoner's claim based on a technicality, such as failing to exhaust, means the abuse suffered could potentially continue without any intervention, or be otherwise undiscovered. The courts have a duty to ensure protection of an individual's constitutional rights, including those individuals who are incarcerated.[139] Of the 625 juvenile detention facilities in the United States,[140] there are less than a dozen reported opinions

137. *See supra* notes 52-60 and accompanying text (explaining the requirement of "total exhaustion" of all grievance procedures including deadlines).

138. *See generally* 141 CONG. REC. 27 (1995) (it is significant that the congressional record fails to even address whether the PLRA should be applied differently to juveniles).

139. Peter Keenan, *Constitutional Law: The Supreme Court's Recent Battle against Judicial Oversight of Prison Affairs*, 1989 ANN. SURV. AM. L. 507, 539 (1989).

140. The Annie E. Casey Foundation, *Juvenile Detention Explained* (March 26, 2021), https://www.aecf.org/blog/what-is-juvenile detention#:~:text=How%20many%20juvenile%20detention%20centers,centers%20across%20the%20United%20States.

directly involving challenges to conditions in juvenile detention centers.[141] Although some might find this statistic troubling, several of these cases resulted in a determination that the conditions were unconstitutional, and as a result, the facilities were ordered to make changes.[142] Allowing juveniles to challenge abuses and conditions while incarcerated will lead to necessary change within our Nation's facilities. Thus, it is important to revise existing grievance procedures by considering the cognitive deficiencies faced by incarcerated youth and provide juveniles with independent advocates to assist them in filing their grievances.

b. Tailoring Grievance Procedures to Adolescents' Needs

An effective grievance policy must have a "complete understanding of the many factors–psychosocial as well as cognitive–that affect the evolution of judgement over the course of adolescence and into adulthood."[143] When reliance is placed on an understanding of the scientific research regarding cognitive development in revising grievance procedures, the ability for juvenile's to exhaust will increase. In turn, juveniles will be more trusting of the system, which some advocates say is a means of lowering recidivism rates.[144] Not only does revising grievance procedures benefit incarcerated juveniles, but it will benefit society as a whole.

When revising the grievance procedures, prison officials

141. 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).

142. Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972) (Judge Morris Lasker held that the conditions in the Manida facility were unconstitutional, and ordered numerous changes); Santiago v. Philadelphia, 435 F. Supp. 136 (E.D. Pa. 1977); H.C. v. Jarrard, 786 F.2d 1080 (11th Cir. 1986) ("District Court entered sweeping injunctive relief designed to bring the center up to constitutional standards"); L.B. v. Kierst, 56 F.3d 849 (8th Cir. 1995); Hanna v. Toner, 630 F.2d 442 (6th Cir. 1980); District of Columbia v. Jerry M., 571 A.2d 178 (D.C. 1990).

143. Cauffman & Steinberg, *supra* note 131, at 741.

144. Brief of National Police Accountability Project & Human Rights Defense Center as Amici Curiae in Support of Respondent, Ross v. Blake, 136 S. Ct. 1850 (2016) (No. 15-339), 2016 WL 1042961, at *8.

should look to the Prison Rape Elimination Act's (PREA) standards, which modified the exhaustion requirement for people in correctional facilities with sexual abuse claims.[145] The PREA states that an agency may not impose a time limit on an inmate to submit a grievance regarding sexual abuse.[146] Applying this standard to all juvenile grievances takes into account the decision-making processes of adolescents, and provides ample time for juveniles to make sense of the procedures before filing. Additionally, the PREA allows for third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates to assist inmates in filing requests and grievances on their behalf.[147] Allowing third parties to assist in all grievances, regardless of subject matter, will permit juveniles to enlist help from those they trust, and have their best interests in mind.[148] By doing away with short deadlines and allowing third party intervention, incarcerated youth will have a better chance of having their claims heard and change within our correctional facilities will be more likely.

c. Independent Advocates to Assist Juveniles in Complying with Internal Grievance Procedures

1. Defense Attorneys as Advocates Post-Disposition

"Although the right to counsel during the adjudicatory process has been firmly embedded in federal and state law since the Supreme Court's decision in *In re Gault*,[149] the Court has never explicitly held it to extend to the post-disposition stage of juvenile cases."[150] Once a juvenile offender has been committed to

145. *See generally* 28 C.F.R. § 115.52 (2012).

146. *Id.* § 115.52(b)(1).

147. *Id.* § 115.52(e)(1).

148. *See supra* notes 12-14 and accompanying text (explaining *Minix*, where the mother's claim on behalf of her son was dismissed as she could not properly grieve on his behalf).

149. In re Gault, 387 U.S. 1 (1967) (specifically extended the right to counsel, the right to have notice of charges, the right to confront witnesses, and the privilege against self-incrimination to children during the adjudicatory phase of the delinquency proceedings).

150. Laura Cohen, *Extend the Guiding Hand: Incarcerated Youth, Law School Clinics, and Expanding Access to Counsel*, 17 U. PA. J.L. & SOC. CHANGE

the care of the state, representation typically ends despite the fact that the need for representation often continues.[151] Even though the purported goal of juvenile detention is "rehabilitation,"[152] leaving incarcerated youth without a voice during their placement frustrates this goal. Therefore, "legal representation that extends until the juvenile is no longer committed to the state would ensure that a juvenile has a voice in the system."[153]

During the adjudicatory phase of a juvenile hearing, the defense attorney advocates for the client's stated interest.[154] However, once the child is committed to the state, the defense attorney would instead be required to advocate for what rehabilitation is and whether or not the client is receiving it.[155] It is at this point that the attorney is advocating for the state's purported interest of "rehabilitation," instead of the juvenile's stated interest. Therefore, to avoid this potential conflict, it is better suited to have independent advocates that operate separate from the state. Independent advocates are crucial in ensuring juveniles have people that are acting in their best interest and not in the interest of the facility in which they have been placed. Specifically, these advocates would be assisting juveniles in filing grievances.

2. Assisting in Grievance Filings: Law Students as Independent Advocates

Although law students alone would not be able to provide all of the post-disposition representation needed, it is a start in counter-acting the harmful effects of the PLRA's exhaustion requirement. While many law schools have juvenile defense

401, 412 (2014).

151. Megan F. Chaney, *Keeping the Promise of Gault: Requiring Post-Adjudicatory Juvenile Defenders*, 19 GEO. J. ON POVERTY L. & POL'Y 351, 355 (2012).

152. Robert Anthonsen, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER RACE & JUST. 729, 731-32 (2010).

153. Chaney, *supra* note 151, at 382 (without an individual assigned to each adjudicated youth, the youth run the risk of disappearing into a system).

154. *Id.* at 390.

155. *Id.*

clinics, most of these clinics are aimed to assist in the adjudicatory and dispositional phases of juvenile proceedings.[156] This note is proposing a clinic specifically designed to assist in educating juveniles on grievance procedures as well as assisting in the filing of such grievances. Law students would be overseen by an attorney who specializes in juvenile law. This clinical experience would provide law students with the expertise needed to practice in the area of juvenile defense while serving as an independent source of advocacy for incarcerated youth post-disposition.

At the Rutgers School of Law, Professor Laura Cohen has successfully started a clinic that focuses on post-disposition representation.[157] This clinic has successfully provided representation to over 240 incarcerated youths.[158] Cohen's clinic aids juveniles in preparation for parole hearings, appeals from denials of parole, and challenges to subsequent revocations. This clinic has been the basis for systematic reform efforts in New Jersey's juvenile detention facilities.[159] Without the presence of this clinic in New Jersey's facilities, it is likely that the issues within the juvenile detention facilities would have never been brought to light.[160] Clinics such as this one provide students with the opportunity to hone essential lawyering skills[161] while providing representation to those that arguably need it the most.

The clinic being proposed in this note would provide seminars for incarcerated youth that focus on how to properly file grievances and how to safely report abuses and conditions.

156. Cohen, *supra* note 150, at 414.

157. *See generally id.* (This entire note discusses Professor Cohen's experiences while running the clinic and the significant effect it has had on increasing representation post-disposition for juveniles).

158. *Id.* at 412.

159. *See* Troy D. v. Mickens, 806 F. Supp. 2d 758 (D.N.J. 2011); State ex rel. J.J., 427 N.J. Super. 541 (N.J. App. Div. 2012).

160. Cohen, *supra* note 150, at 414 ("Given the mantle of secrecy that cloaks juvenile prisons, none of these actions would have been possible without the presence of lawyers and students on the ground to gather empirical evidence and share clients' stories.").

161. *See* Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 370-84 (2009).

Students would then work one-on-one with juveniles in filing grievances. Providing this assistance would help alleviate the barriers the PLRA's exhaustion requirement places on juveniles by ensuring that they not only understand the grievance process, but properly exhaust it. Ultimately, this would allow more claims by juveniles to be heard in court and increase judicial oversight of juvenile detention facilities. Considering Rutgers School of Law already has a running clinic that focuses on post-disposition representation, its model can be used to form the clinic suggested in this note.

V. CONCLUSION

It is apparent that Congress has no intention of amending the PLRA to provide for special treatment of juveniles. In the absence of an act by Congress, juvenile detention facilities can counter-act the harmful effects of the PLRA's exhaustion requirement by revising their grievance policies. These revised policies will only be effective if the cognitive and psychosocial challenges faced by incarcerated youth are considered. The Prison Rape Elimination Act's minimum standards can serve as a guide on how to properly revise internal grievance procedures for all incarcerated youth. When juveniles' access to grievance procedures are increased, their access to the judicial system also increases. Thus, litigation concerning abuse and conditions of juvenile facilities places the public on notice and will ultimately influence reform.

Post-disposition representation is needed to ensure that incarcerated youth continue to have a voice even after they are committed to a facility. However, the conflicts that defense attorneys face when advocating for the youth make the need for independent advocates crucial. Implementing a clinic in which law students educate and aid juveniles in filing grievances will provide an important avenue for independent advocacy. Although it is troubling that the PLRA is still in effect despite the countless challenges to its' provisions, the proposals made in this note will hopefully aid in removing the barriers created by the Act and encourage law students across the country to answer the call and advocate.