

## Frequently Asked Questions (FAQ) Lawsuits and Legal Help

*Just Detention International (JDI) is a non-profit human rights organization that seeks to end sexual abuse in all forms of detention. JDI provides the general information below in an effort to respond to questions that we regularly receive from prisoner rape survivors. Please remember that laws are constantly changing and their application may vary from one case to the next. Legal advice must be tailored to the specific circumstances of each case and can only be provided by a qualified attorney. This FAQ does not constitute legal advice.*

### **1. Can JDI represent me in a lawsuit?**

JDI does not have the resources to provide legal advice or to represent anyone in a lawsuit. You can find organizations that represent inmates in JDI's *Resource Guide for Survivors of Sexual Abuse Behind Bars*, but please keep in mind that most of the groups listed there only accept a limited number of new clients.

### **2. I was sexually assaulted behind bars. What kind of lawsuit can I bring?**

You have the right to be free from sexual abuse while in detention, and officials have a duty to protect you from such harm.

When an official sexually abuses or allows others to sexually assault someone, they may violate the U.S. Constitution. Federal courts review whether someone's constitutional rights have been violated through civil rights lawsuits (known as Section 1983 cases for state prisoners and county jail inmates, and as Bivens cases for federal prisoners). As discussed in the answer to question 3 below, specific procedural requirements must be met before bringing these cases to court.

Sexual abuse in a state or county facility may also violate the state's constitution. While state constitutions often have greater protections than the federal constitution, many states impose the same procedural requirements on lawsuits brought by inmates as the federal courts.

Another type of lawsuit that may be brought for money damages (not trying to get policies or practices changed) is a tort action. Torts are general lawsuits that are brought when someone has inflicted harm on someone else. Bringing a tort claim against a government official or entity is more complex than suing another individual. For example, the Federal Tort Claims Act specifies when and how a federal government official can be sued. Most states have a similar law that would apply to state and county inmates.

### **3. I want to file a lawsuit. What should I do?**

In federal court, and in most state courts, no prisoner can sue the government without first completing the internal grievance process of the facility where he or she is incarcerated. This requires complying with all of the grievance policy rules, including any time limitations for

making the complaint. It also requires completing the entire grievance process, including any appeals up the chain of command that are permitted.

Even if the grievance system cannot “correct” the abuse, the facility’s process for making a complaint and appealing any decisions must be completed before a judge will review your claims. The grievance and appeals should clearly lay out what happened and what kind of solution you think is needed. It is important to keep copies of all documents relating to the grievance, including every grievance filed and every response received. It is also a good idea to keep a journal with all of the dates of whenever you complained to an official and any response (or lack of response) that you received. While written grievances and responses are most important, this journal should also include verbal complaints that you made and any verbal responses you received from staff.

Initiating a lawsuit requires filing a complaint, in which you explain what happened that caused you to bring the lawsuit, who violated your rights, how you have complained about it, what kind of response you received to your complaints, and what you want from the court. Be as clear as possible and try to provide specific dates when you can. You will need to figure out where to file your claim (state court or U.S. District Court), what kind of claim you have, and who you want to sue. Some courts have model forms that you can use, which may be available in your facility’s law library.

#### **4. Do you think I could win a lawsuit?**

There is no way to know if a lawsuit will be successful before it starts. To best ensure that a judge will carefully review your case, you should be as clear and concise as possible. It is a good idea to provide only the facts that are relevant to why you are complaining, while being as detailed with that information as possible. It is also helpful to provide the court with copies of any relevant grievances or requests that you have made and the response that you have received. Writing out a timeline of events may help you remember specific details and is a record that you can give to the court.

#### **5. Where can I get more information?**

The law library at your facility may have resources that can help you, including forms from the federal district court and/or a jailhouse lawyer’s manual explaining how to file a civil rights lawsuit. At the very least, you should be able to access statutes and cases from the law library.

The National Lawyers Guild and the Center for Constitutional Rights have published a handbook for prisoners who wish to file a Section 1983 lawsuit in federal court regarding poor conditions in prison and/or abuse by prison staff. To receive a copy via mail, you will need to send **\$2.00** in stamps, check or money order with your request to: Jailhouse Lawyers’ Handbook, National Lawyers Guild, 132 Nassau Street, RM 922, New York, NY 10038. Please be aware that the National Lawyers Guild is unable to provide legal advice or representation.

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