

Honolulu, Hawaii

FEB 16 2007

RE: S.B. No. 1490  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Madam:

Your Committee on Public Safety, to which was referred S.B. No. 1490 entitled:

"A BILL FOR AN ACT RELATING TO PRISON LITIGATION,"

begs leave to report as follows:

The purpose of this measure is to limit the ability of detained or incarcerated individuals to file frivolous lawsuits through state courts.

Specifically, this measure:

- (1) Makes statutory provisions for and limitations on prisoners filing in forma pauperis (without liability for court costs or fees);
- (2) Requires prisoners to exhaust administrative remedies before bringing actions with respect to prison conditions; and
- (3) Limits recovery for prisoners in civil actions for injuries suffered while incarcerated.

Testimony in support of this measure was submitted by the Judiciary of the State of Hawaii, the Department of Public Safety, and the Department of the Attorney General. Testimony in opposition was submitted by the American Civil Liberties Union of Hawai'i and one individual.



Your Committee finds that frivolous lawsuits cost the State and its taxpayers a loss of valuable resources. However, it is important to ensure the availability of the courts to all people to address violations of their rights. Therefore, your Committee finds limitations on frivolous and malicious lawsuits are reasonable as long as these limitations do not preclude valid claims from being heard.

Your Committee further finds that juveniles committed to the care and custody of the Office of Youth Services, or youth correctional or detention facilities, are especially vulnerable and should be excluded from the limitations to court actions suggested in this measure.

Your Committee finds that many of the actions dismissed for failure to state a claim are brought by indigent prisoners appearing pro se who have no legal training and limited or no access to legal counsel. Your Committee is concerned that this may result in the dismissal of some valid claims that were not properly set forth before the court.

Your Committee further finds that the requirement of a showing of physical injury would preclude valid causes of action, including sexual assault.

Accordingly, this measure was amended in the following manner to:

- (1) Expressly exclude juveniles committed to the care and custody of the Office of Youth Services, or youth correctional or detention facilities, and deleting "or adjudicated delinquent" from the definition of "prisoner" to reflect that exclusion;
- (2) Exclude dismissals of actions for failure to state a claim as a basis for precluding subsequent litigation;
- (3) Increase the number of previously dismissed malicious or frivolous actions precluding the filing of in forma pauperis actions from three to four;
- (4) Delete the provision that the failure of the State to adopt or adhere to any administrative grievance procedure as a basis of action under any other state or federal law;



- (5) Add a showing of sexual assault as a basis for initiating civil actions for mental or emotional injury suffered while in custody;
- (6) Add the imminent danger of serious mental or emotional injury to the exception of the prepayment requirement for prisoners who have previously had four actions dismissed on the basis of frivolousness or maliciousness;
- (7) Exclude the provision relating to limitations on civil actions brought by incarcerated felons, since felons are included in the section limiting civil actions brought by prisoners confined in jail, prison, or other correctional facility, and would therefore be redundant; and
- (8) Delay the effective date to January 1, 2050, to allow for further discussion of the issues.

Various technical nonsubstantive changes were also made for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Public Safety that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1490, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1490, S.D. 1, and be referred to the Committee on Judiciary and Labor.

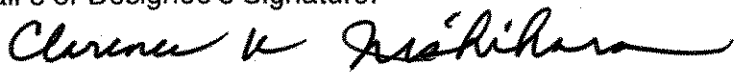
Respectfully submitted on  
behalf of the members of the  
Committee on Public Safety,

  
\_\_\_\_\_  
WILL ESPERO, Chair



The Senate  
Twenty-Fourth Legislature  
State of Hawaii

Record of Votes  
Committee on Public Safety  
PBS

Bill / Resolution No.:* <b>SB 1490</b>	Committee Referral: <b>PBS, JDL</b>	Date: <b>2/13/07</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ESPERO, Will (C)	✓			
NISHIHARA, Clarence K. (VC)	✓			
SAKAMOTO, Norman				✓
WHALEN, Paul	✓			
<b>TOTAL</b>	<b>3</b>			<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution:                              Original                              Yellow                              Pink File with Committee Report              Clerk's Office                              Drafting Agency				

\*Only one measure per Record of Votes