



BY FAX: 586-8504.

Committee: Committee on Public Safety and Military Affairs
Hearing Date/Time: Thursday, January 31, 2008, 8:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 3186, Relating to Prison Litigation

Dear Chair Evans and Members of the Committee on Public Safety and Military Affairs:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 3186, which seeks to require inmates to pay for the civil lawsuit they file in state court and requires inmates who have three lawsuits deemed "frivolous" to pay the filing fees prior to filing another lawsuit.

This bill puts insurmountable barriers in place for those inmates who have plainly meritorious claims and are seeking redress of fundamental rights. Over the past year, the media has exposed serious constitutional and other problems with Hawaii's prisons — problems that resurfaced only a few years after the dissolution of the Spear Consent Decree. This bill seems to be a thinly-veiled attempt to block meritorious cases from court, all while the State remains under close scrutiny by the United States Department of Justice and others.

In fact, Hawaii law already provides the court with a remedy to declare an individual a vexatious litigant, *see* H.R.S. § 634J-7, and the judiciary is already equipped with ample tools to deal with these cases. For example, courts are permitted to dismiss *in forma pauperis* cases if they obviously lack an arguable basis in law or fact. In addition, prisoners who repeatedly abuse the judicial system can be ordered to cease their abuses, and the orders are enforceable with sanctions.

Finally, an individual should not be subject to special obstacles to the civil justice system based solely on his or her status as a detainee or an inmate without any showing of an attempt to abuse the judicial system.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its

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Hon. Rep. Evans, Chair, PSM Committee
and Members Thereof
January 31, 2008
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services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years. Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney

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No. _____

**TESTIMONY ON HOUSE BILL 3186
RELATING TO PRISON LITIGATION**

by

Clayton A. Frank, Director
Department of Public Safety

House Committee On Public Safety & Military Affairs
Representative Cindy Evans, Chair

State Capitol, Conference Room 309

Representative Evans and Members of the Committee:

The Department of Public Safety (PSD) strongly supports House Bill 3186. This measure is patterned after the Federal Prison Litigation Reform Act (PLRA), which was enacted in 1996. This measure requires any prisoner who is detained and wishes to file a lawsuit *in forma pauperis*, to submit financial documents from their detaining facility demonstrating their inability to pay the filing fees for the lawsuit they wish to file. The proposed procedure provides that inmates seeking *in forma pauperis* status pay a portion of the filing fee when adequate funds are available in their inmate trust account. This measure also provides that after the dismissal of four lawsuits as frivolous or for failure to state a claim that the petitioner must pay the filing fee in advance for any future lawsuits as most citizens are required to do.

In 2005, the Office of the Attorney General responded to 65 lawsuits naming PSD or its staff as defendants. The number of lawsuits filed against PSD climbed to 115 in 2006, and increased again in 2007. In comparison, statistics from the Bureau of Justice Statistics show that in the Federal courts prisoner petitions filed from 1980 to 1996 rose from 23,230 to 68,235. The PLRA was enacted in 1996, and prisoner filings decreased from 68,235 to 25,504 in 2000. The filing rate, the number of petitions filed per 1,000 inmates fell from 37 in 1995 to 19 in 2000.

PSD strongly supports this measure because it does not infringe upon any inmate's right to file complaints or litigation, but simply structures the process to eliminate frivolous and unnecessary lawsuits, and to reduce the costs to all components of litigating inmate lawsuits. Given the latest trend in inmate litigation in Hawaii as well as the analogous information from the Federal system, inmate lawsuits will continue to increase without this measure. Neither PSD, the Office of the Attorney General or the courts can continue to properly and effectively deal with this increase in litigation without substantial increases in funds and manpower. This measure will aid in the prudent expenditure of government funds relating to litigation without infringing upon any inmates civil and Constitutional rights.

Thank you for the opportunity to testify.

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COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Cindy Evans, Chair

Rep. Sharon Har, Vice Chair

Thursday, January 31, 2008

8:30 AM

Room 309

STRONG OPPOSITION TO HB 3186 – PRISON LITIGATION

Aloha Chair Evans, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai`i for a decade. I respectfully offer our testimony, always being mindful that Hawai`i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 3186 requires inmates to pay for the civil lawsuit they file in state court and requires inmates who have three lawsuits deemed 'frivolous' to pay the filing fees prior to filing another lawsuit.

Community Alliance on Prisons strongly objects to erecting barriers to litigation simply because a person is incarcerated. Hawai`i statutes already provide the courts with a remedy for declaring a person a 'vexatious litigant', so we fail to understand the need for this bill.

In fact, prison litigation is sometimes the only way that reform happens. Prison litigation is sometimes the only way that the public knows what is going on in our correctional system.

Since the idea of curtailing the rights of people to sue has been offered by the administration for the past several years, SB 3186 just appears to us to be a mean-spirited and vexatious bill!

Please hold this bill and allow our laws and courts to work in our democratic system of government.

Mahalo for this opportunity to testify.