LINDA LINGLE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 3107
RELATING TO PRISON LITIGATION
by
Clayton A. Frank, Director
Department of Public Safety

Senate Committee On Public Safety
Senator Will Espero, Chair

State Capitol, Conference Room 225

Senator Espero and Members of the Committee:

The Department of Public Safety (PSD) strongly supports Senate Bill 3107. This measure is patterned after an aspect of the Federal Prison Litigation Reform Act (PLRA), which was enacted in 1996. SB3107 provides that any inmate filing a civil lawsuit while incarcerated must exhaust their administrative remedies on the controversy which is the subject of the lawsuit, prior to filing suit.

The exhaustion of administrative remedies is a long standing principle in civil law and this measure will simply codify the process. Requiring an inmate to file an administrative claim with the detaining agency serves several functional purposes, but primarily, it provides the named defendants, often PSD or its staff, the opportunity to resolve the issue at hand in an administrative process prior to clogging the court's dockets with unnecessary lawsuits. Litigation requires a much longer time frame as well as additional man-hours and expense for the plaintiff, the defendant, the Attorney General's staff, and PSD. Requiring the

exhaustion of administrative remedies also guarantees that the issue will be clarified and well documented prior to the filing of any lawsuit, which will help expedite the litigation if the issue is not resolved administratively.

PSD strongly supports this measure because as with the PLRA, it does not infringe upon any inmate's right to file litigation, but simply requires both parties to engage in an administrative process to attempt to resolve the controversy prior to litigation. Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai`i 96817

Phone/E-mail: (808) 533-3454/communityallianceonprisons@hotmail.com

COMMITTEE ON PUBLIC SAFETY
Sen. Will Espero, Chair
Sen. Clarence Nishihara, Vice Chair
Tuesday, January 29, 2008
2:45 PM
Room 225
STRONG OPPOSITION - HB 3107 – PRISON LITIGATION

Aloha Chair Espero, Vice Chair Nishihara 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 home and their loved ones.

SB 3107 requires inmates to exhaust their administrative remedies before filing a lawsuit in state court, to avoid frivolous lawsuits.

Community Alliance on Prisons strongly opposes this bill. The language is vague and unclear and could lead to arbitrary and capricious decisions. Could prisons keep adding 'steps' to the process? How are the civil rights of the incarcerated individual protected?

In a January 2007 a NY Times article entitled, 'Limits on Prison Suits Are Eased,' Chief Justice John G. Roberts, Jr., speaking for the court, said that the barriers the lower court had put in place 'cannot fairly be viewed' as a correct interpretation of the law, the Prison Litigation Reform Act of 1995. Unless Congress explicitly provided otherwise, Chief Justice Roberts explained, **courts should apply to prisoners' lawsuits the same procedural rules they apply to any other lawsuit and 'should generally not depart from the usual practice under the federal rules on the basis of perceived policy concerns.'** (Jones v. Bock, No. 05-7058). Full article follows

We respectfully ask the committee to hold this measure. Mahalo for this opportunity to testify.

January 23, 2007
New York Times

Limits on Prison Suits Are Eased

By LINDA GREENHOUSE

WASHINGTON, Jan. 22 - Twelve years ago, Congress passed a law intended to make it harder for prisoners to file lawsuits challenging prison conditions as illegal or unconstitutional. On Monday, the Supreme Court ruled unanimously that a federal appeals court had overstepped its bounds by making prisoner lawsuits even harder to file than Congress intended.

The barriers the lower court had put in place 'cannot fairly be viewed' as a correct interpretation of the law, the Prison Litigation Reform Act of 1995, Chief Justice John G. Roberts Jr. said for the court. Unless Congress explicitly provided otherwise, Chief Justice Roberts explained, courts should apply to prisoners' lawsuits the same procedural rules they apply to any other lawsuit and 'should generally not depart from the usual practice under the federal rules on the basis of perceived policy concerns.'

The ruling was greeted with relief by advocates for prisoners' rights, who said the lower court's approach had threatened to make it all but impossible for an inmate not represented by a lawyer to navigate the procedural hurdles to get a case accepted for a hearing.

"A loss would have been devastating," said Elizabeth Alexander, director of the National Prison Project of the American Civil Liberties Union, which filed a brief in support of three Michigan inmates whose separate cases were consolidated by the court for a single decision. Dismissed by the United States Court of Appeals for the Sixth Circuit, their complaints about their treatment are now reinstated.

Ms. Alexander said the decision, Jones v. Bock, No. 05-7058, marked the first time in a half-dozen rulings that the Supreme Court had not adopted the most unfavorable possible interpretation of the Prison Litigation Reform Act.

At issue was the Sixth Circuit's interpretation of the law. The appeals court, which covers Ohio, Kentucky and Tennessee as well as Michigan, adopted three rules to carry out the law's requirement that before going to federal court with a complaint about prison conditions, an inmate must first 'exhaust' any administrative remedies provided by the prison.

First, the appeals court held, this requirement meant that inmates had to prove they had exhausted their remedies, in contrast to the ordinary federal rule that places on the defendant the burden of showing, as a defense, that the plaintiff had failed to meet an exhaustion requirement. Second, prisoners could not sue anyone they had not first named during the internal grievance process. And third, a lawsuit that contained a mixture of exhausted and unexhausted claims should be dismissed in its entirety.

In his opinion on Monday, Chief Justice Roberts said "we understand the reasons" for the Sixth Circuit's approach. He noted that prisoners' lawsuits accounted for nearly 10 percent of all civil cases filed in federal court and that many were without merit.

But he added that the circuit's choice of its "more onerous pleading rules" was not based on the statute. "The judge's job is to construe the statute, not to make it better" he said.