

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 2474  
RELATING TO PRISON LITIGATION**

by

Jodie F. Maesaka-Hirata, Director  
Department of Public Safety

Committee on Public Safety and Military Affairs  
Representative Henry J.C. Aquino, Chair  
Representative Ty Cullen, Vice Chair

Thursday, February 9, 2012, 9:00 AM  
State Capitol, Room 309

Chair Aquino, Vice Chair Cullen, and Members of the Committees:

The Department of Public Safety (PSD) strongly supports House Bill 2474. This measure is patterned after the Federal Prison Litigation Reform Act (PLRA), which was enacted in 1996. This measure requires any prisoner, who is incarcerated or detained seeking to file a lawsuit in forma pauperis, to submit financial documents certified by the detaining facility indicating the prisoner's inability to pay the filing fees for the lawsuit or appeal. The proposed procedure provides that inmates seeking in forma pauperis status pay a portion of the filing fee when funds are available in the inmate's trust account. This measure also provides that after the dismissal of four or more in forma pauperis civil actions or appeals dismissed by any State or Federal court as frivolous or malicious, or for

failure to state a claim, the prisoner must pay the filing fee in advance for any future lawsuits similar to the requirements for the general public.

PSD strongly supports this measure, because it balances a prisoner's right to file complaints or litigation, eliminates frivolous and unnecessary litigation, and reduces the costs associated with the litigation of prisoner lawsuits. This measure will assist with the prudent expenditure of government funds relating to litigation without infringing upon the prisoner's Civil and Constitutional rights.

Thank you for the opportunity to testify.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2474, RELATING TO PRISON LITIGATION.**

**BEFORE THE:**

**HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

**DATE:** Thursday, February 9, 2012 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Caron M. Inagaki, Deputy Attorney General

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Chair Aquino and Members of the Committee:

The Department of the Attorney General (the "Department") strongly supports this bill.

This bill creates a state law equivalent to a portion of the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321, relating specifically to the portions of the PLRA codified in 28 U.S.C. §1915, that impose certain limitations and conditions on in forma pauperis prisoner lawsuits. A prisoner may bring a court action "in forma pauperis," i.e., without having to pay any court fees and cost if the prisoner is able to show that he or she is unable to pay such fees and costs. However, this bill will require the prisoner to pay fees and costs if the prisoner does not provide the proper evidence of inability to pay or if the prisoner has had four or more in forma pauperis actions or appeals dismissed as frivolous or malicious, unless the prisoner is in imminent danger of serious injury.

Congress enacted the PLRA in the wake of a sharp rise in prisoner litigation. The PLRA contains a variety of provisions designed to bring this litigation under control. The PLRA has been successful in its mission and, since its passage, the number of prisoner lawsuits in federal courts has markedly decreased. This bill should similarly help to curb and reduce fraudulent assertions of inability to pay and the number of frivolous lawsuits prisoners file in state court. The number of lawsuits filed by prisoners being handled by the Department increases every year. Currently, an in forma pauperis application requires only the word of the applicant that he or she is unable to pay. This bill would prevent prisoners from proceeding in forma pauperis by a fraudulent assertion that they are unable to pay court fees and costs since the bill requires that the

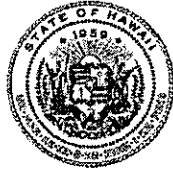
prisoner submit a statement certified by the correctional facility that the prisoner does not have the means to pay.

The bill also will curtail frivolous lawsuits since the prisoner will have to pay the full filing fee in advance of any further actions, if the prisoner has had four or more in forma pauperis actions or appeals dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is in imminent danger of serious injury. A prisoner will be more circumspect in the number and type of claims he or she brings if the filing of multiple meritless actions will result in having to pay all fees and costs in future actions.

Frivolous lawsuits filed by Hawaii's prisoners divert the resources of the Department of Public Safety and the Department of the Attorney General, as well as the Judiciary, away from other litigation that has or may have merit.

This bill does not prevent prisoners from filing lawsuits or other court actions, but simply structures the process to eliminate fraudulent assertions of poverty and reduce frivolous and unnecessary lawsuits.

We respectfully request that this bill be passed.



**HOUSE OF REPRESENTATIVES**

STATE OF HAWAII  
STATE CAPITOL  
415 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96813

**TO: COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS**

Representative Henry J.C. Aquino. Chair  
Thursday, February 9, 2012  
9:00 a.m.  
Room 309

**STRONG OPPOSITION for HB2474 – RELATING TO PRISON LITIGATION**

From: Representative Faye P. Hanohano

Aloha Chair Aquino, Vice Chair Cullen and Member of the Committee!

As a retired Adult Correction Officer I am writing in STRONG OPPOSITION for HB2474- Relating to Prison Litigation. This bill has been heard during the Lingle's Administration and was killed four times due to unconstitutional legal issues. This bill doesn't project the spirit of Aloha and is not PONO!

Mahalo for this opportunity to express my mana'o!

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday, February 9, 2012

9:00 a.m.

Room 309

### OPPOSITION to HB 2474 - PRISON LITIGATION

Aloha Chair Aquino, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered, always being mindful that 6,000 Hawai'i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 2474 imposes certain limitations and conditions on in forma pauperis prisoner lawsuits.

Community Alliance on Prisons opposes this measure because of the chilling effect it could have on legitimate claims filed pro se by incarcerated individuals. We strongly object to erecting barriers to litigation simply because a person is incarcerated and indigent. 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.

We have been told by attorneys that many cases are thrown out because the incarcerated individual may not have filled out the form correctly or for other similar reasons, not because it is considered 'frivolous'. This bill appears to say that **those who can afford attorneys have more rights than those who are indigent**. Community Alliance on Prisons asserts that this is patently unjust.

We are aware of many constitutional violations that have been overlooked by authorities. Bills like this make it difficult for individuals to have those violations addressed, especially since the correctional facility where the violations may have occurred would now be part of the process. In fact, prison litigation is sometimes the only way that reform happens and is sometimes the only way that the public knows what is going on in our correctional system. In the Senate hearing on this bill, PSD and the AG were asked how many state lawsuits are filed per year. Neither agency could answer the question while strongly supporting diminishing the rights of the incarcerated.

Since the idea of curtailing the rights of incarcerated people to sue has been offered by the previous administration numerous times, HB 2474 just appears to us to be a mean-spirited and vexatious bill!

Mahalo for the opportunity to share our thoughts and experience on this bill that we hope the committee will HOLD.