

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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No. _____

**TESTIMONY ON SENATE BILL 2225 SD 1
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

Wednesday, March 14, 2012, 10:30 AM
State Capitol, Room 309

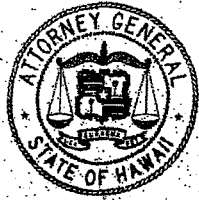
Chair Aquino, Vice Chair Cullen, and Members of the Committees:

The Department of Public Safety (PSD) strongly supports Senate Bill 2225 SD1. 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**

ON THE FOLLOWING MEASURE:

S.B. NO. 2225, S.D. 1, RELATING TO PRISON LITIGATION.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Wednesday, March 14, 2012 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Kendall J. Moser, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General 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, which 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 costs, 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 will 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 of Attorney General 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, because

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.



Committee: Committee on Public Safety and Military Affairs
Hearing Date/Time: Wednesday, March 14, 2012, 10:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2225, SD1, Relating to Prison Litigation

Dear Chair Aquino 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 S.B. 2225, SD1.

This bill puts insurmountable barriers in place for those inmates who have plainly meritorious claims and are seeking redress of fundamental rights. 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.

Hawaii law already provides the court with an adequate 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. 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.

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 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

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, March 14, 2012

10:30 a.m.

Room 309

STRONG OPPOSITION TO SB 2225 SD1- 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 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.

SB 2225 SD1 imposes certain limitations and conditions on in forma pauperis prisoner lawsuits.

Community Alliance on Prisons is in strong opposition to this attack on indigent incarcerated persons. Bills like this were introduced during the Lingle reign and now the Democrats are picking up all these conservative bills. This bill purportedly seeks to eliminate frivolous lawsuits by individuals who claim they are indigent. It is based on the 1996 federal Prison Litigation Reform Act, passed by conservatives who sought to silence the claims of incarcerated individuals.

Prior committees asked Public Safety for the numbers of these lawsuits and they are either unable or unwilling to provide that information as yet. In our humble opinion, no committee should pass legislation without verifying that these assertions are true.

Many attorneys have testified that 'frivolous lawsuits' sometimes mean that the incarcerated person, who files a suit on his/her own (pro se), has their case thrown out because they file the form incorrectly or some other mistakes were made because they are not attorneys - not because their claim was invalid or frivolous.

Erecting barriers to litigation simply because a person is incarcerated and indigent is unjust. Is the message that individuals who can afford attorneys have more rights than those who are 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. Many constitutional violations have been overlooked by authorities and bills like this make it difficult for individuals to have those violations addressed. 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.

We strongly object to this mean-spirited and vexatious bill and respectfully ask that the committee HOLD this measure.

Mahalo for this opportunity to testify.

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 7:33 AM
To: PBMtestimony
Cc: maukalani78@hotmail.com
Subject: Testimony for SB2225 on 3/14/2012 10:30:00 AM

Testimony for PBM 3/14/2012 10:30:00 AM SB2225

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Elaine Funakoshi
Organization: Individual
E-mail: maukalani78@hotmail.com
Submitted on: 3/12/2012

Comments:

Dear Chair Aquino, Vice Chair Cullen and Committee Members:

By now, you've heard all the pros and cons on this measure.

~~I oppose SB 2225 SD1 because I don't understand why there are different standards for the incarcerated from the general public. For example, I'm told that the Micronesians repeatedly sue the DOE/State even if they're denied every year, and can do so until the child reaches age 18. Is that not frivolous versus the inmate's reason for reapplying is sometimes due to administrative procedures.~~

Please give serious consideration to your decision.

I thank you for being able to submit my point of view.

Mahalao and Aloha,
Elaine Funakoshi

PBMtestimony

From: Catherine Lampton [clampton@hawaii.rr.com]
Sent: Monday, March 12, 2012 9:15 AM
To: PBMtestimony
Subject: SB 2225 SD 1

Aloha Sirs:

I am writing in strong opposition to SB 2225 SD 1 because:

- This bill seeks to eliminate frivolous lawsuits by individuals who claim they are indigent
- It is based on the 1996 federal Prison Litigation Reform Act, passed by conservatives who sought to silence the claims of incarcerated individuals
- Prior committees asked Public Safety for the numbers of these lawsuits and they are either unable or unwilling to provide that information as yet
- No committee should pass legislation without verifying that these assertions are true
- Many attorneys have testified that 'frivolous lawsuits' sometimes mean that the incarcerated person, who files a suit on his/her own (pro se) has their case thrown out because they file the form incorrectly or some other mistakes were made because they are not attorneys – not because their claim was invalid or frivolous
- Bills like this were introduced during the Lingle reign and now the Democrats are picking up all these conservative bills, WHY?
- Erecting barriers to litigation simply because a person is incarcerated and indigent is unjust
- Is the message that individuals who can afford attorneys have more rights than those who are 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
- Many constitutional violations have been overlooked by authorities and bills like this make it difficult for individuals to have those violations addressed
- 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
- We strongly object to this mean-spirited and vexatious bill!

Mahalo for your time and energy defending everyone's liberties and due process rights,

Catherine Lampton
Keaau 96749

PBMtestimony

From: Robert Petricci [nimo1767@gmail.com]
Sent: Sunday, March 11, 2012 6:42 PM
To: PBMtestimony
Subject: SB 2225 SD1

I stand in strong opposin to SB 2225 SD1

This bill seeks to eliminate frivolous lawsuits by individuals who claim they are indigent

- It is based on the 1996 federal Prison Litigation Reform Act, passed by conservatives who sought to silence the claims of incarcerated individuals
- Prior committees asked Public Safety for the numbers of these lawsuits and they are either unable or unwilling to provide that information as yet
- No committee should pass legislation without verifying that these assertions are true
- Many attorneys have testified that 'frivolous lawsuits' sometimes mean that the incarcerated person, who files a suit on his/her own (pro se) has their case thrown out because they file the form incorrectly or some other mistakes were made because they are not attorneys – not because their claim was invalid or frivolous
- Bills like this were introduced during the Lingle reign and now the Democrats are picking up all these conservative bills, WHY?
- Erecting barriers to litigation simply because a person is incarcerated and indigent is unjust
- Is the message that individuals who can afford attorneys have more rights than those who are 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
- Many constitutional violations have been overlooked by authorities and bills like this make it difficult for individuals to have those violations addressed
- 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
- We strongly object to this mean-spirited and vexatious bill!

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 11, 2012 11:54 AM
To: PBMtestimony
Cc: mattrifkin28@gmail.com
Subject: Testimony for SB2225 on 3/14/2012 10:30:00 AM

Testimony for PBM 3/14/2012 10:30:00 AM SB2225

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Matthew Rifkin
Organization: Individual
E-mail: mattrifkin28@gmail.com
Submitted on: 3/11/2012

Comments:

Aloha. I am a resident of Hawaii County and I strongly oppose this bill.

This bill attempts to silence the claims of incarcerated people by eliminating "frivolous" lawsuits by people who are indigent in prison.

Is it true that the Department of Public Safety has refused to provide the actual data for this?

Making it impossible for people to file lawsuits just because they are in prison and without money is unjust. Do not allow this to happen.

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 13, 2012 1:07 PM
To: PBMtestimony
Cc: anthonymsimoneau@gmail.com
Subject: Testimony for SB2225 on 3/14/2012 10:30:00 AM

Testimony for PBM 3/14/2012 10:30:00 AM SB2225

Conference room: 309
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Anthony Simoneau
Organization: Individual
E-mail: anthonymsimoneau@gmail.com
Submitted on: 3/13/2012

Comments:

I am in relative support of this measure. However, more emphasis needs to be placed on "why" prisoners are opting to litigate claims? You may find that most incarcerated individuals would rather not litigate if their concerns were met on the facility administrative level.

I am such an individual with 2 pending tort litigations. I exhausted all administrative methods regarding such claim and all processes were ignored by facility and PSD Directors. The processes in which incarcerated individuals have are limited. The only way to change the etiology of PSD and Corrections lack of response to "Grievances" is through Litigation.

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 11, 2012 10:38 PM
To: PBMtestimony
Cc: evernw@aol.com
Subject: Testimony for SB2225 on 3/14/2012 10:30:00 AM

Testimony for PBM 3/14/2012 10:30:00 AM SB2225

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Evern E Williams
Organization: Individual
E-mail: evernw@aol.com
Submitted on: 3/11/2012

Comments:

I strongly oppose SB2225 SD1.

Prison litigation must be protected, not weakened. This is the only way valid grievances can be presented. Incarcerated persons often do not have the legal expertise to make sure there are no technicalities. ~~If anything, we should provide a way to make sure the filing are done correctly.~~

Peter Carlisle did not give the legislature correct information about the number of so called "frivolous" litigations were processed. If you look further you will see that the premise of this bill is highly flawed.