

SB 2225

RELATING TO PRISON LITIGATION

Description:

Imposes certain limitations and conditions on in forma pauperis prisoner lawsuits.

NEIL ABERCROMBIE
GOVERNOR



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

JODIE F. MAESAKA-HIRATA
DIRECTOR

MARTHA TORNEY
Deputy Director
Administration

JOE W. BOOKER, JR.
Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2225
RELATING TO PRISON LITIGATION**

by

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

**Committee on Public Safety, Government Operations,
and Military Affairs
Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair**

**Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair**

**Tuesday, January 31, 2012, 2:45 PM
State Capitol, Room 224**

**Chair Will Espero, Chair Clayton Hee, Vice Chair Michelle N. Kidani, Vice Chair
Maile S. L. Shimabukuro, and Members of the Committees:**

**The Department of Public Safety (PSD) strongly supports Senate Bill
2225. 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, RELATING TO PRISON LITIGATION.

BEFORE THE:

SENATE COMMITTEES ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AND ON
JUDICIARY AND LABOR

DATE: Tuesday, January 31, 2012 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 224

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

Chair Espero, Chair Hee and Members of the Committees:

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.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS & MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Michelle Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuro, Vice Chair

Tuesday, January 31, 2012

2:45 p.m.

Room 224

OPPOSITION to SB 2225 - PRISON LITIGATION

Aloha Chairs Espero and Hee, Vice Chairs Kidani and Shimabukuro and Members of the Committees!

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.

SB 2225 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 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.

Since the idea of curtailing the rights of incarcerated people to sue has been offered by the previous administration numerous times, SB 2225 just appears to us to be a mean-spirited and vexatious bill!

Mahalo for the opportunity to share our thoughts on this bill.



Committee: Committee on Public Safety, Government Operations and Military Affairs
Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, January 31, 2012, 2:45 p.m.
Place: Room 224
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2225, Relating to
Prison Litigation

Dear Chair Espero and Chair Hee and Members of the Committees:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 2225.

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 Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org