



**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 COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 23, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call Kendall J. Moser, Deputy Attorney General at 586-1494.

Chair Ige 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.