

# SB 2735

## **RELATING TO PRISON LITIGATION**

*Description:*

Requires prisoners to exhaust administrative remedies before bringing a civil court action.

NEIL ABERCROMBIE  
GOVERNOR



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

**TESTIMONY ON SENATE BILL 2735  
RELATING TO PRISON LITIGATION**

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

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

Thursday, February 9, 2012, 2:45 PM  
State Capitol, Room 224

Chair Espero, Vice Chair Kidani, and Members of the Committee:

The Department of Public Safety (PSD) strongly supports Senate Bill (SB) 2735, which is an essential measure that enhances the provisions of SB 2225 that passed your Committee on January 31, 2012. This measure is patterned after an aspect of the Federal Prison Litigation Reform Act (PLRA), which was enacted in 1996. The process dictated by this measure is currently being utilized for prisoner litigation in the Federal Courts.

SB 2735 provides that no action shall be brought in any state court with respect to prison conditions, under any state or federal law, by a prisoner confined in any jail, prison, or other correctional facility, until such administrative remedies as are available are exhausted. It is important to note that this measure is not applicable and explicitly excludes juveniles incarcerated in youth correctional facilities.

SB 2735 allows the correctional facilities the time and opportunity to address complaints internally, through the inmate grievance system, before allowing a prisoner to initiate a state lawsuit. This encourages a resolution at the lowest level without involving attorneys, the courts, and other cost related to litigation. The inmate grievance system is a three step process, which allows for by passing a step based on the specific facts of the grievance complaint. The grievance process has stringent time filing and response deadlines, which will allow a prisoner to progress to the next step, if a response from prison officials is untimely. In some situations, the action taken via the administrative process will satisfy the inmate's immediate concerns, improve prison administration accountability and knowledge, and provide a record at the earliest stage for use in future proceedings. This record will help to expedite the litigation process, if the issue is not resolved administratively.

The exhaustion of administrative remedies is a long standing principle in civil law and administrative law. This measure will simply codify the philosophy and the process encouraged by professional correctional organizations, the federal courts, and the legal community. Requiring an inmate to file an administrative claim with the detaining facility serves several functions by providing the named defendants, often PSD or its staff, with the opportunity to resolve the issue at hand in an administrative process without clogging the court's dockets with unnecessary litigation. The litigation forum requires a much longer time frame for resolution, as well as additional expenses for the plaintiff, the defendant, the Department of the Attorney General, the Judiciary and PSD.

PSD strongly supports this measure, because it mandates an administrative procedure to resolve prisoner complaints about prison conditions, does not infringe on an 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.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2735, RELATING TO PRISON LITIGATION.

**BEFORE THE:**

SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY

**DATE:** Thursday, February 9, 2012 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 224

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

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Chair Espero 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 of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321, relating specifically to the portion of the PLRA codified as 42 U.S.C. §1997(e) that requires prisoners to exhaust the administrative remedies available to them before they can bring an action based on prison conditions in state court.

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. One of those provisions requires that a prisoner exhaust all available administrative remedies for any suit challenging prison conditions. The purpose of this provision was to allow the correctional facilities the time and opportunity to address complaints internally before allowing the initiation of a federal lawsuit. In some instances, the corrective action taken in response to an inmate's grievance would satisfy the inmate as well as improve prison administration, obviating the need for litigation. It was also recognized that, in some cases, internal review would filter out frivolous claims. The PLRA has been successful in markedly reducing prisoner lawsuits.

This bill would similarly require inmates to avail themselves of the internal administrative process to allow the correctional facility to address the prisoners' complaints before a lawsuit can be filed in state court. Inmates would still be allowed to file suit, but only after they have completed the available administrative process and were dissatisfied with the

result. In this way, lawsuits can be avoided if the inmate is satisfied with the result of the administrative process. Litigation requires substantial time, resources, and expenses for the plaintiff, the Department of Public Safety, the Department of the Attorney General, and the Judiciary. In addition, by requiring that prisoners exhaust their administrative remedies, the issues can be better clarified and documented if the prisoner later chooses to file a lawsuit, streamlining and expediting the subsequent litigation.

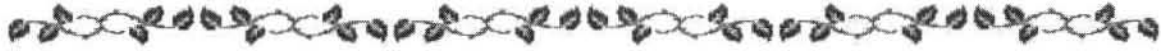
This bill does not in any way infringe on a prisoner's right to file a lawsuit; it simply requires the parties to first engage in an administrative process to attempt to resolve a controversy prior to litigation.

We respectfully request that this bill be passed.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS & MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Michelle Kidani, Vice Chair

Thursday, February 9, 2012

2:45 p.m.

Room 224

### Comments on SB 2735- PRISON LITIGATION

Aloha Chair Espero, Vice Chair Kidani 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.

SB 2735 requires prisoners to exhaust administrative remedies before bringing a civil court action.

Community Alliance on Prisons, of course, believes that one must exhaust all administrative remedies before filing a court case. Yet this is not so simple for our people who are confined, especially for those serving their sentences abroad in the corporate prisons in Arizona.

We constantly field complaints by our men who have been told they have to file a Hawai'i grievance, yet that form that is not always available in Arizona. When they contact the Hawai'i department of public safety they are told that they have to file a CCA grievance form and get bounced around between AZ and HI. We believe this unprofessional behavior is to exhaust the inmate so he cannot exhaust his administrative remedies in due time.

The rules need to be clear and understood by all. Sadly, the prisons in Arizona truly seem to be run like the Wild West with arbitrary rules and accompanying violence.

What is an individual with a legitimate claim to do? CCA is running the show and our department appears to be following their lead, i.e. the tail is wagging the dog.

Please remind the department that CCA is NOT A PARTNER, they are a contractor/vendor and the department's role is one of **oversight of that contract** and the **protection of our people** held in those facilities.

Mahalo for this opportunity to share our concerns.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 08, 2012 12:02 PM  
**To:** PGM Testimony  
**Cc:** anthonymsimoneau@gmail.com  
**Subject:** Testimony for SB2735 on 2/9/2012 2:45:00 PM

Testimony for PGM 2/9/2012 2:45:00 PM SB2735

Conference room: 224  
Testifier position: Oppose  
Testifier will be present: Yes  
Submitted by: Tony Simoneau  
Organization: Individual  
E-mail: [anthonymsimoneau@gmail.com](mailto:anthonymsimoneau@gmail.com)  
Submitted on: 2/8/2012

Comments:

Finding myself as a first time offender at the OCCC Correctional Facility, and experiencing the tortous conditions that currently exist, I cannot support this bill. Its purpose and language would mandate a silence of Correctional Facility conditions. I can speak from experience that the Administrative solutions referred to as a Grievance often times do not work. After the inmate exhausts the Administrative process, what mechanism would they then have if this bill was adopted?

We all know the facilities are overcrowded, and a vast drain on resources. The conditions currently at OCCC are not remotely in compliance with State, Federal, or Facility guidelines. Must we forget that two decades ago a decree established by an inmate Spear and a DOJ investigation made the Corrections Department become compliant through such litigation after such Administrative inquires went unanswered?

Sometimes litigation is the only way to bring about change, especially with regards to correcting habitual behavior and lack of compliance. The same issues brought up 2 decades ago by the DOJ investigation still go on behind the walls at OCCC. Thus, I explore you to think of the Constitutional Rights of ALL Hawaii Citizens, and not support this bill. Keeping the mechanism in place for the PSD and Corrections Department to Comply with Facility Conditions and the law.