



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2237, RELATING TO PRISON LITIGATION.

**BEFORE THE:**

HOUSE COMMITTEE ON PUBLIC SAFETY

**DATE:** Thursday, February 06, 2014

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** David M. Louie, Attorney General, or  
John Cregor, Deputy Attorney General

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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 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 before filing 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 prisoner, 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.



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL (HB) 2237  
RELATING TO PRISON LITIGATION

by  
Ted Sakai, Director  
Department of Public Safety

House Committee on Public Safety  
Representative Henry J.C. Aquino, Chair  
Representative Kaniela Ing, Vice Chair

Thursday, February 6, 2014, 10:00 AM  
State Capitol, Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** HB 2237. 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.

HB 2237 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.

HB 2237 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 circumventing a grievance step based on the specific facts of the grievance complaint. The grievance process has stringent 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.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, February 6, 2014

10:00 a.m.

Room 309

## OPPOSITION TO HB 2237 - PRISON LITIGATION

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 2237 requires prisoners to exhaust administrative remedies before bringing a civil court action.

Community Alliance on Prisons opposes this measure, which on the face of it, looks reasonable.

Of course individuals should exhaust their administrative remedies before filing a lawsuit. The difference is that things in prison do not work as they do in the community.

When I was at Saguaro in 2007, I was stunned to see the low number of grievances filed by Hawai'i individuals. When I questioned this, I was told that there is an informal process that takes places to handle problems, however, there is no paper trail generated in this process making it impossible to track. This results in many problems going unsolved and it keeps Hawai'i in the dark about how the contracted prison really operates.

We respectfully ask the committee to hold this bill.

Mahalo for this opportunity to testify.

**ing2-Travis**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 05, 2014 10:05 AM  
**To:** pbstestimony  
**Cc:** maucrowe@gmail.com  
**Subject:** Submitted testimony for HB2237 on Feb 6, 2014 10:00AM

**HB2237**

Submitted on: 2/5/2014

Testimony for PBS on Feb 6, 2014 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Oppose	No

Comments: HB2237 should be opposed. The for profit prisons don't keep track of administrative procedures. That is unfair. This puts prisoners in an impossible place if they try to bring a complaint.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**ing2-Travis**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 05, 2014 2:58 PM  
**To:** pbstestimony  
**Cc:** maukalani78@hotmail.com  
**Subject:** Submitted testimony for HB2237 on Feb 6, 2014 10:00AM

**HB2237**

Submitted on: 2/5/2014

Testimony for PBS on Feb 6, 2014 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Oppose	No

Comments: COMMITTEE ON PUBLIC SAFETY (3 bills) Rep. Henry Aquino, Chair Rep. Kaniela Ing, Vice Chair Thursday, February 6, 2014 10:00 a.m. Re: HB 2237, Relating to Prison Litigation Dear Chair Aquino, Vice Chair Ing and Committee Members: Thank you for the opportunity to submit my opposition to HB2237. As a constituent of Hawai'i I believe any individual of our state should be afforded the opportunity to file his complaint. There needs to be a process established that will document steps taken so there is a "paper trail" for the inmate to access. Again, mahalo. Aloha, E. Ileina funakoshi

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