

# H B. NO. 1404

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## A BILL FOR AN ACT

RELATING TO PRISON LITIGATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 607, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4           "§607- Proceedings in forma pauperis. (a) Subject to  
5 subsection (b), any court of the State may authorize the  
6 commencement, prosecution, or defense of any suit, action, or  
7 proceeding, civil or criminal, or appeal therein, without  
8 prepayment of fees or security therefor, by a person who is  
9 incarcerated in a correctional facility if that person submits  
10 an affidavit that includes a statement of all assets such  
11 prisoner possesses and that declares that the person is unable  
12 to pay such fees or give security therefor. Such affidavit  
13 shall state the nature of the action, defense, or appeal and  
14 the affiant's belief that the person is entitled to redress.

15           (b) A prisoner seeking to bring a civil action or appeal a  
16 judgment in a civil action or proceeding without prepayment of  
17 fees or security therefor, in addition to filing the affidavit  
18 filed under subsection (a), shall submit a certified copy of

1 the trust fund account statement (or institutional equivalent)  
2 for the prisoner for the six-month period immediately preceding  
3 the filing of the complaint or notice of appeal, obtained from  
4 the appropriate official of each prison at which the prisoner  
5 is or was confined.

6 (c) An appeal may not be taken in forma pauperis if the  
7 trial court certifies in writing that it is not taken in good  
8 faith.

9 (d) Notwithstanding subsection (a), if a prisoner brings  
10 a civil action or files an appeal in forma pauperis, the  
11 prisoner shall be required to pay the full amount of a filing  
12 fee. The court shall assess and, when funds exist, collect, as  
13 a partial payment of any court fees required by law, an initial  
14 partial filing fee of twenty per-cent of the greater of:

15 (1) The average monthly deposits to the prisoner's account;  
16 or

17 (2) The average monthly balance in the prisoner's  
18 account for the six-month period immediately  
19 preceding the filing of the complaint or notice of  
20 appeal.

21 After payment of the initial partial filing fee, the prisoner  
22 shall be required to make monthly payments of twenty per-cent

1 of the preceding month's income credited to the prisoner's  
2 account. The agency having custody of the prisoner shall  
3 forward payments from the prisoner's account to the clerk of the  
4 court each time the amount in the account exceeds \$10 until the  
5 filing fees are paid. In no event shall the filing fee  
6 collected exceed the amount of fees permitted by statute for  
7 the commencement of a civil action or an appeal of a civil  
8 action or criminal judgment.

9 (e) Any prisoner who has had three or more in forma  
10 pauperis civil actions dismissed by the court for failure to  
11 state a claim, malicious, or as frivolous must pay the full  
12 filing fee in advance for any further civil actions during the  
13 time the prisoner remains incarcerated. With the exception of  
14 the preceding circumstance, in no event shall a prisoner be  
15 prohibited from bringing a civil action or appealing a civil or  
16 criminal judgment for the reason that the prisoner has no  
17 assets and no means by which to pay the initial partial filing  
18 fee.

19 (f) Upon the filing of an affidavit in accordance with  
20 subsection (a) and the prepayment of any partial filing fee as  
21 may be required under subsection (d), the court may direct  
22 payment by the State of the expenses of (1) printing the record

1 on appeal in any civil or criminal case, if such printing is  
2 required by the appellate court; and (2) preparing a transcript  
3 of proceedings in any civil or criminal case, if such transcript  
4 is required by the appellate court. Such expenses shall be paid  
5 when authorized by the administrative director of the courts.

6 (g) Notwithstanding any filing fee, or any portion thereof,  
7 that may have been paid, the court shall dismiss the case at any  
8 time if the court determines that:

9 (1) The allegation of poverty is untrue; or

10 (2) The action or appeal

11 (A) Is frivolous or malicious;

12 (B) Fails to state a claim on which relief  
13 may be granted; or

14 (C) Seeks monetary relief against a defendant who is  
15 immune from such relief.

16 (h) Judgment may be rendered for costs at the conclusion of  
17 the suit or action as in other proceedings, but the State shall not  
18 be liable for any of the costs thus incurred. If the State has  
19 paid the cost of a stenographic transcript or printed record for  
20 the prevailing party, the same shall be taxed in favor of the  
21 State. If the judgment against a prisoner includes the payment of  
22 costs under this subsection, the prisoner shall be required to pay

1 the full amount of the costs ordered. The prisoner shall be  
2 required to make payments for costs under this subsection in the  
3 same manner as is provided for filing fees under subsection (d).  
4 In no event shall the costs collected exceed the amount of the  
5 costs ordered by the court.

6 (i) As used in this section, the term "prisoner" means any  
7 person incarcerated or detained in any facility who is accused of,  
8 convicted of, sentenced for, or adjudicated delinquent for,  
9 violations of criminal law or the terms and conditions of parole,  
10 probation, pretrial release, or diversionary program."

11 SECTION 2. Chapter 661, Hawaii Revised Statutes, is amended  
12 by adding a new section to be appropriately designated and to read  
13 as follows:

14 "§661- Exhaustion of administrative remedies; action by  
15 prisoners, when limited. (a) No action shall be brought with  
16 respect to prison conditions under any state or federal law, by  
17 a prisoner confined in any jail, prison, or other correctional  
18 facility until such administrative remedies as are available  
19 are exhausted.

20 (b) The failure of the State to adopt or adhere to an  
21 administrative grievance procedure shall not constitute the  
22 basis for an action under any other state or federal law.

1        (c) In no event shall a prisoner bring a civil action or appeal  
2 a judgment in a civil action or proceeding under any state or federal  
3 law if the prisoner has, on three or more prior occasions, while  
4 incarcerated or detained in any jail, prison, or other correctional  
5 facility, brought an action or appeal in a court that was dismissed  
6 on the grounds that it is frivolous, malicious, or fails to state a  
7 claim upon which relief may be granted, unless the prisoner is under  
8 imminent danger of serious physical injury.

9        (d) As used in this chapter, the term "prisoner" means any  
10 person incarcerated or detained in any facility who is accused of,  
11 convicted of, sentenced for, or adjudicated delinquent for,  
12 violations of criminal law or the terms and conditions of parole,  
13 probation, pretrial release, or diversionary program."

14        SECTION 3. Chapter 663, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17        "§663-        **Limitation on recovery for prisoners.** (a) No  
18 civil action may be brought by a prisoner confined in a jail,  
19 prison, or other correctional facility for mental or emotional  
20 injury suffered while in custody without a prior showing of  
21 physical injury.



## JUSTIFICATION SHEET

DEPARTMENT: Public Safety.

TITLE: A BILL FOR AN ACT RELATING TO PRISON LITIGATION.

PURPOSE: Limit ability of detained or incarcerated individual's ability to file frivolous lawsuits through state courts.

MEANS: Add new sections to chapters 607, 661, and 663, Hawaii Revised Statutes.

JUSTIFICATION: The federal Prison Litigation Reform Act of 1995 (PLRA) restricts and discourages litigation by prisoners. Its provisions fall into two broad categories: the prospective relief provisions directed at institutional reform injunctive litigation, and the prisoner litigation provisions, directed generally at civil actions brought by prisoners. This legislation proposes to take components of federal law and adopt them to state law as appropriate.

The key component of the proposed litigation reform is the "three strikes provision". If a detainee or incarcerated individual files three separate lawsuits or appeals, each of which is dismissed by a judge as frivolous, malicious, or fails to state a proper claim, each case thus constitutes a 'strike.' After three strikes, the individual is barred from filing another lawsuit in forma pauperis -- or unless the individual pays the entire court filing fee in advance. The only exception to this rule is if the individual is at risk of suffering imminent, serious physical injury in the immediate future. In this case, the court will evaluate the exception at the time the individual attempts to file a new lawsuit.

Additionally, individuals will be limited in their ability to file lawsuits for monetary damages based on mental or emotional injury, unless the individual can demonstrate physical injury as well. This limitation does not apply for injunctive or declaratory relief.

Impact on public: Detainees and incarcerated individuals will be held more accountable for the time and resources involved in frivolous lawsuits.

Impact on department and other agencies: The Judiciary and the Department of the Attorney General will realize relief through less caseloads.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Judiciary, Department of the Attorney General.

EFFECTIVE DATE: Upon approval.