H.B. NO. 3186

A BILL FOR AN ACT

RELATING TO PRISON LITIGATION.

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

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

"**§607- Proceedings in forma pauperis.** (a) Any court of the State may authorize the commencement, prosecution, or defense of any suit, action, or proceeding or appeal therein, without prepayment of fees or security therefor, by a person who is incarcerated in a correctional facility if that person submits a statement certified by the correctional facility, of all financial assets for the previous six months such prisoner possesses or possessed and an affidavit or declaration given pursuant to §710-1061, Hawaii Revised Statutes, that the person is unable to pay such fees or give security therefor. A copy of the complaint or claim in any suit, action, or proceeding must accompany any application for in forma pauperis.

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

1 (c) If a prisoner brings a civil action or files an appeal
2 in forma pauperis not in compliance with subsection (a) or if
3 the court denies the in forma pauperis application, the prisoner
4 shall be required to pay the full amount of a filing fee. The
5 court shall assess and, when funds exist, collect, as a partial
6 payment of any court fees required by law, an initial partial
7 filing fee of twenty per cent of the greater of:
8 (1) The average month deposits to the prisoner's account;
9 or
10 (2) The average monthly balance in the prisoner's account
11 for the six-month period immediately preceding the
12 filing of the complaint or notice of appeal.
13 After payment of the initial partial filing fee, the prisoner
14 shall be required to make monthly payments of twenty per cent of
15 the preceding month's income credited to the prisoner's account.
16 The agency having custody of the prisoner shall forward payments
17 from the prisoner's account to the clerk of the court each time
18 the amount in the account exceeds $10 until the filing fees are
19 paid. In no event shall the filing fee collected exceed the
20 amount of fees permitted by statute for the commencement of a
21 civil action or an appeal of a civil action or criminal
22 judgment.

1 (d) Any prisoner who has had four or more in forma
2 pauperis civil actions or appeals dismissed by any state or
3 federal court as frivolous, as malicious, or for failure to
4 state a claim, must pay the full filing fee in advance for any
5 further civil actions during the time the prisoner remains
6 incarcerated, unless the prisoner is in imminent danger of
7 serious physical, mental, or emotional injury; provided that the
8 prepayment requirement may be waived at the discretion of the
9 court in the interest of justice. With the exception of the
10 preceding circumstance, in no event shall a prisoner be
11 prohibited from bringing a civil action or appealing a civil or
12 criminal judgment for the reason that the prisoner has no assets
13 and no means by which to pay the initial partial filing fee.
14 (e) Upon compliance with subsection (a) and the prepayment
15 of any partial filing fee as may be required under subsection
16 (d), the court may direct payment by the State of the expenses
17 of:
18 (1) Printing the record on appeal if such printing is
19 required by the appellate court; and
20 (2) Preparing a transcript of proceedings if such
21 transcript is required by the appellate court.

1 Such expenses shall be paid when authorized by the
2 administrative director of the courts.
3 (f) Notwithstanding any filing fee, or any portion
4 thereof, that may have been paid, the court shall dismiss the
5 case at any time if the court determines that:
6 (1) The allegation of poverty is untrue; or
7 (2) The action or appeal
8 (A) Is frivolous or malicious;
9 (B) Fails to state a claim on which relief may be
10 granted; or
11 (C) Seeks monetary relief against a defendant who is
12 immune from such relief.
13 (g) Judgment may be rendered for costs at the conclusion
14 of the suit or action as in other proceedings, but the State
15 shall not be liable for any of the costs thus incurred. If the
16 State has paid the cost of a stenographic transcript or printed
17 record for the prevailing party, the cost shall be remitted in
18 favor of the State. If the judgment against a prisoner includes
19 the payment of costs under this subsection, the prisoner shall
20 be required to pay the full amount of the costs ordered. The
21 prisoner shall be required to make payments for costs under this
22 subsection in the same manner as is provided for filing fees

under subsection (c). In no event shall the costs collected exceed the amount of the costs ordered by the court.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, or sentenced for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. The term does not apply to juveniles incarcerated at youth correctional facilities."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3186

Report Title:
Prison litigation; in forma pauperis

Description:
Requires inmates to pay for the civil lawsuit they file in State court and requires inmates who have three lawsuits deemed "frivolous" to pay the filing fees prior to filing another lawsuit.

HB 3186

JUSTIFICATION SHEET

DEPARTMENT: PUBLIC SAFETY

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

PURPOSE: To deter frivolous prisoner litigation and to require inmates who are financially able to pay the required filing fees for any litigation filed in state courts while in custody.

MEANS: Add a new section to chapter 607, Hawaii Revised Statutes.

JUSTIFICATION: Requiring inmates to pay for the civil lawsuits they file in state courts as they are able will limit the number of frivolous filings in the State, similar to what the federal Prison Litigation Reform Act (PLRA) has done in the federal courts. Hawaii state inmates have been complying with similar rules and regulations for over a decade any time they file a lawsuit in U.S. District Court, and this has evidently not precluded legitimate claims from being litigated. In addition, the number of frivolous claims has declined nationwide since the enactment of the PLRA. This bill further requires "frequent filers" who have had at least three cases dismissed as frivolous or failure to state a claim, to pay the filing fee prior to the filing of the lawsuit. This prevents the inmates from clogging the state courts' calendars with frivolous lawsuits, causing the unnecessary expenditure of funds and man hours for the department, the Attorney General's staff, and the Judiciary.

Impact on the public: There should be a positive impact on the public as this measure should cut government expenditures on frivolous filings and claims.

HB 3186

Impact on the department and other agencies: This act should help clear the court calendar for the Judiciary, and provide the Attorney General's staff with an effective defense that will immediately resolve improper litigation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

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

EFFECTIVE DATE: Upon approval.