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**Testimony of Angus Love, Esquire
Pennsylvania Prison Society
House Judiciary Committee
Subcommittee on Courts
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RE: HB 2697 & HB 2770

On behalf of the Pennsylvania Prison Society, the nation's oldest prison advocacy agency, I would like to thank Chairman Clark and the committee for this opportunity to provide comment on HB 2697 and HB 2770. We share the concerns of this Committee, not only towards frivolous prisoner litigation, but to all frivolous litigation of any sort. We recognize the waste of time and effort that groundless lawsuits cause for the court system and the people who make it work. We must, however, take issue with the methodology utilized by HB 2697 and HB 2770 in addressing our mutual concern. In particular, we believe that certain provisions do not appear to be aimed at frivolous litigation but instead appear to impede the very few meritorious claims that arise out of institutional litigation. We are also concerned about overstepping the boundaries of the legislative branch. Certain provisions could be deemed an unconstitutional intrusion into the province of the judicial branch of our tricameral system of democratic government. We further believe that there are effective mechanisms in place via the Federal Rules of Civil Procedure to weed out both frivolous lawsuits and frivolous claims within other lawsuits.

We must view this problem in the proper context of our current prison environment. While inmate lawsuits may have risen dramatically, the prison populations have soared



to new record levels. Almost any study undertaken in this area will show that the actual percentage of inmate lawsuits filed, when compared to the percentage increase in population, show that there is actually less litigation per inmate than a decade ago. In Pennsylvania there were only 8000 inmates confined in the state system in 1980. Today the system has more than quadrupled to over 33,000 inmates, with the last year seeing the biggest increase (14.5%) in the Commonwealth's history. So any increase in lawsuits filed by inmates is largely attributable to the many more inmates in the system.

We should proceed with caution in shutting down a potential safety valve to the tensions and frustrations behind the walls of our prisons and jails. We should remember the old adage that the pen is mightier than the sword. We should recognize the value of an aggrieved individual seeking redress through our judicial system rather than taking matters into his or her hands. While frivolous litigation may cost us time and money, it is a minor inconvenience compared to the mayhem that can and has resulted behind the bars of our prisons and jails. Unlike our neighboring states of Ohio and New York, we have been very fortunate in not having any staff fatalities resulting from violence within our system for many a year.

The current efforts of these legislative initiatives and comparable legislation already passed in Washington, greatly alter the landscape of oversight of our prisons and jails. Justice William Brennan noted in the landmark prison overcrowding case *Rhodes v. Chapman* that inmates are a voteless, powerless, socially threatening minority that will never hold sway in the legislative arena. Thus it falls upon the courts in our Constitutional framework to be the final arbitrator of conditions in prison that allegedly fail to provide the basic necessities of life the Eighth Amendment requires. If we strip the court system of

this power, what mechanisms are left to seek redress to the cruel and barbarious practices that history tells us can and do recur.

Several provisions in HB 2697 raise some difficult issues. The limitations on remedies, perspective relief, time limits on settlements and damage issues clearly are designed to alter not frivolous but meritorious litigation. Similar provisions in the federal Prisoner Litigation Reform Act have already run afoul of the U.S. Constitution. See Chappell v. Gomez, No. 93-4421 FMS (N.D. Cal); Gavin v. Ray No. 78-700062 (S.D. Iowa) Casey v. Lewis, No. 90-0054 (Ariz. 1996); Weaver v. Clark, 1996 U.S. District Lexus 9682 (D. Neb 6/18/96). Challenges under the separation of powers doctrine will continue for many years to come. For these reasons, it is the position of the Pennsylvania Prison Society that neither of these bills will advance our mission of assuring humane conditions in the Commonwealth's prisons and jails.