

STAND. COM. REP. NO.

602

Honolulu, Hawaii

MAR - 6 2009

RE: S.B. No. 846  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred S.B. No. 846 entitled:

"A BILL FOR AN ACT RELATING TO POST CONVICTION PROCEEDINGS,"

begs leave to report as follows:

The purpose of this measure is to establish a statute of limitations of five years for the filing of habeas corpus actions challenging a judgment or other matters related to custody of a defendant, and establishes limitations on the basis for successive claims.

Your Committee received testimony in support of this measure from two government entities. Testimony in opposition was received from two organizations. Written testimony presented to the Committee may be reviewed on the Legislature's website.

In addition to a direct appeal to the Intermediate Court of Appeals and the Hawaii Supreme Court, and the filing of a writ of habeas corpus with the United States District Court, individuals convicted of crimes in state courts may also challenge their convictions, sentences, or other matters related to their custody by filing petitions in state courts for post-conviction relief pursuant to Rule 40 of the Hawaii Rules of Penal Procedure. Currently, there is no statute of limitations applicable to petitions for post-conviction relief.

Under this measure, a petition for post-conviction relief must be filed within five years of the latest of the date on

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which: (1) the judgment became final by conclusion of direct review or expiration of time for seeking review; (2) an impediment to filing a complaint created by government action in violation of the U.S. or Hawai'i constitution was removed; (3) a newly created constitutional rule was recognized and made retroactively applicable to cases on collateral review by the U.S. or Hawai'i Supreme Court; or (4) the factual predicate of the claims presented could have been discovered through due diligence, but only if the newly discovered evidence would be sufficient to establish that no reasonable fact finder would have found the applicant guilty of the offense.

This measure also requires dismissal of a claim in a second or successive complaint unless the claim relies on a previously unavailable new rule of constitutional law or on newly discovered evidence that could not previously have been discovered.

Because a petition for post-conviction relief is the only method of challenging judgment and custody that does not have a statute of limitation, some defendants repeatedly use this method to challenge convictions and custody long after the events at issue. Your Committee finds that establishment of a time limit promotes the finality of judgments and sentences while permitting a defendant a reasonable period of time to discover, prepare, and file an action to challenge a conviction and custody.

Some time ago, the Judiciary's Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules proposed a five year limitation on a petition for post-conviction relief under Rule 40 of the Hawaii Rules of Penal Procedure. The Hawaii Supreme Court rejected the proposal because of a conflict with the Legislature's authority with regard to habeas corpus. On reflection and on consideration of testimony submitted in opposition to the proposed five-year limitation period, your Committee finds that a fifteen-year limitation should be adopted.

Your Committee has amended this measure by:

- (1) Changing the five year limit to fifteen years in which to file a complaint;
- (2) Changing the effective date to July 1, 2050, to continue the discussions on this matter; and
- (3) Making technical, nonsubstantive amendments.



As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 846, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 846, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Government Operations,

  
BRIAN T. TANIGUCHI, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Judiciary and Government Operations**  
**JGO**

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB846</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JGO</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">3/6/09</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)				✓
BUNDA, Robert	✓			
GABBARD, Mike				✓
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	4			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="font-family: cursive; font-size: 1.2em;">Clarence K. Nishihara</div>				
<b>Distribution:</b> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

**\*Only one measure per Record of Votes**