



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 1046, H.D. 2 RELATING TO WRONGFUL IMPRISONMENT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, March 15, 2016

TIME: 09:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Mark Nomura, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports H.B. No. 1046, H.D. 2, which provides a procedure for persons who are actually innocent of crimes for which they were convicted and imprisoned, to seek compensation from the State. The Department opposed H.B. No. 1046, as originally introduced, for reasons raised previously.

H.B. No. 1046, H.D. 2, is substantially the product of the American Judicature Society-Hawaii Chapter's special committee on redress for unlawful imprisonment. The American Judicature Society is an independent, nonpartisan, national organization of judges, lawyers, and interested members of the public, whose mission is to improve the American justice system. The special committee on redress for unlawful imprisonment was co-chaired by the Honorable Jeannette H. Castagnetti, state circuit court judge, and Mark J. Bennett, Esq., former Hawaii Attorney General.

H.B. No. 1046, H.D. 2, represents the collaborative work of the special committee, which was comprised of a wide range of state and federal judicial representatives, as well as legal, educational, and community representatives from all interested stakeholders in the community. The committee considered wording from existing statutes in other states on issues such as the eligibility for compensation, evidence of innocence, evidence of a claim, burdens of proof, decision-making entities, exclusions, amounts of compensation, types of eligible benefits, attorney's fees, and tax implications.

Ultimately, the committee drafted proposed legislation that is substantially the same as H.D. 2. The Department believes that H.D. 2 presents a reasonable compensation statute, based

on the collaborative effort of significant stakeholders in the community, which balances the interests of an allegedly wrongfully imprisoned petitioner against the State's limited resources.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for HB1046 on Mar 15, 2016 09:00AM
Date: Sunday, March 13, 2016 12:43:44 PM
Attachments: [HB1046 TESTIMONY JUD 02-02-16 .PDF](#)

HB1046

Submitted on: 3/13/2016

Testimony for JDL on Mar 15, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Brady	Community Alliance on Prisons	Support	Yes

Comments:

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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Subject: *Submitted testimony for HB1046 on Mar 15, 2016 09:00AM*
Date: Monday, March 14, 2016 10:58:13 AM

HB1046

Submitted on: 3/14/2016

Testimony for JDL on Mar 15, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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Subject: *Submitted testimony for HB1046 on Mar 15, 2016 09:00AM*
Date: Monday, March 14, 2016 12:35:26 PM

HB1046

Submitted on: 3/14/2016

Testimony for JDL on Mar 15, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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Subject: *Submitted testimony for HB1046 on Mar 15, 2016 09:00AM*
Date: Monday, March 14, 2016 12:01:46 PM

HB1046

Submitted on: 3/14/2016

Testimony for JDL on Mar 15, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jermeljervonta Anderson	Individual	Support	No

Comments:

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A LAW CORPORATION

March 14, 2016

The Honorable Gilbert S.C. Keith-Agaran
Chair, Committee on Judiciary and Labor
State Capitol, Room 221
415 S. Beretania Street
Honolulu, HI 96813

The Honorable Maile S.L. Shimabukuro
Vice-Chair, Committee on Judiciary and Labor
State Capitol, Room 222
415 S. Beretania Street
Honolulu, HI 96813

Members of the Committee on Judiciary and Labor:
Senator Mike Gabbard, Senator Kaiali'i Kahele, Senator Donna Mercado Kim,
Senator Laura H. Thielen, and Senator Sam Slom

NOTICE OF HEARING

DATE: Tuesday, March 15, 2016
TIME: 9:00 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street
Honolulu, Hawaii

Re: **H.B. 1046, HD2, Relating to Wrongful Imprisonment**

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Finance:

I write in strong support of H.B. 1046, HD2, Relating to Wrongful Imprisonment. I had the privilege of co-chairing (with Hon. Jeannette Castagnetti) a 2015 American Judicature Society special committee established for the purpose of evaluating the need for a statute like H.B. 1046, HD2, and, if the special committee believed there was a need, recommending a possible statute to address the need.

The special committee consisted of many segments of the relevant community, including the state and federal judiciary (both state and federal judges served on the special committee), the Department of the Attorney General, the Office of the United States Attorney, the Hawaii Innocence Project, and other groups and individuals.

Chair Keith-Agaran, Vice-Chair Shimabukuro,
and Members of the Committee on Finance
March 14, 2016
Page 2

The special committee unanimously believed there was a need for a statute to provide monetary compensation to persons convicted of crimes of which they were innocent, yet for which they were imprisoned. Our system of justice is the best in the world, and yet it still sometimes results in innocent persons being convicted and imprisoned. It is only just and fair that we as a society provide monetary compensation in such circumstances.

The special committee reviewed legislation adopted in many of the several states and also looked at some of the objections to a 2015 proposed bill, particularly from the Attorney General. The special committee tried to draft a bill which was just and fair to those innocent persons convicted and imprisoned, and yet was also fair to the State and the taxpayers. The special committee believes it was able to do that and was able to unanimously and respectfully recommend a statute to the Legislature.

H.B. 1046, HD1 is largely the statute respectfully recommended by the special committee. The special committee believed the proposed statute afforded appropriate compensation and yet also provided appropriate safeguards for the State and the taxpayers, striking a far balance.

I would also respectfully ask the Committee to restore the compensation amounts in the HD1--\$50,000 per year, with the possibility of an additional maximum amount of \$100,000. The AJS special committee believed these amounts to be both fair, and in line with the amounts other states provide.

Because I believe H.B. 1046, HD2 is just and needed legislation, I respectfully ask the Committee to recommend its approval to the full Senate. I regret that because I am out of town. I will not be able to testify in person before the Committee.

Very truly yours,

A handwritten signature in dark ink, reading "Mark J. Bennett". The signature is written in a cursive, flowing style with a large initial "M".

Mark J. Bennett.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
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Subject: Submitted testimony for HB1046 on Mar 15, 2016 09:00AM
Date: Monday, March 14, 2016 8:51:55 AM

HB1046

Submitted on: 3/14/2016

Testimony for JDL on Mar 15, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Sandy Salmers	Individual	Support	No

Comments: I support HB 1046. This bill provides compensation and services for people who can demonstrate that they have been wrongfully convicted and imprisoned in the state of Hawai'i. Please rectify this wrong for innocent people who have suffered under the criminal justice system in Hawai'i. Mahalo.

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Via: Web: www.capitol.hawaii.gov/submittestimony.aspx

SENATE COMMITTEE ON JUDICIARY AND LABOR

Chair: Senator Gilbert S.C. Keith-Agaran

Vice Chair: Sen. Maile S.L. Shimabukuro

DATE: Tuesday, March 15, 2016

TIME: 9:00 AM

PLACE: Conference Room 016, State Capitol
415 Beretania Street
Honolulu, Hawai'i 96813

HB 1046-HD 2 RELATING TO WRONGFUL IMPRISONMENT

STRONG SUPPORT

Honorable Chair Keith-Agaran, Honorable Vice-Chair Shimabukuro, and Honorable Members of the Committee.

My name is Virginia Hensch, and I am the Founding Director of the Hawai'i Innocence Project and Co-ordinator of The Hawai'i Friends of the Innocence Movement, and I am here to testify in strong support of House Bill 1046.

In 1913, California and Wisconsin became the first states to create systematic financial restitution for citizens wrongly deprived of their liberty by wrongful convictions. For decades, they were the only states to provide this important safety net to help restore the wrongly convicted to a productive life. However, as exonerations began to be more publicized, more states began to enact statutory compensation. Between the turn of the 21st century and 2014, when Minnesota enacted a compensation statute, a total of 30 states (as well as the federal government and the District of Columbia) enacted compensation statutes. Not one of those jurisdictions has chosen to repeal a compensation statute.

As we begin the year 2016, however, Hawai'i remains among the minority of jurisdictions that fails to provide reasonable compensation to innocent persons who have been unjustly required to sacrifice their liberty and serve time for another person's crime.

In looking over the states with compensation, it is interesting to note that a majority of southern states, as well as a majority of "red" states over-all, have compensation statutes. This may be because compensation for the wrongly convicted is not just a liberal idea. It is sound policy, regardless of politics, and it makes fiscal sense.

A person who is imprisoned for another person's crime loses more than liberty and connections to family and community. The exoneree loses reputation, chances for education, earning power, credit towards a pension. They lose the chance to build equity in a house. The state loses the benefit of the taxes they would have paid on their earnings, had they not been wrongly incarcerated. Moreover, upon release, the exoneree's knowledge and skills are usually outdated. Many exonerees are diagnosed with post-traumatic stress disorders, which can further exacerbate their struggles in re-establishing a normal, productive life. Ironically, the exoneree does not even have access to the re-entry services available to a guilty person who has been released after serving their sentence.

Financial compensation, free tuition or job training, and other compensatory benefits can help the wrongfully convicted person make a smoother re-entry into society and increase their future self-sufficiency. It is not only simple justice to compensate the victims of wrongful incarceration, it makes economic sense to help put them in a position to contribute to society rather than leaving them in a position where they and their families are likely to be dependent on social services.

Compensation also allows government and citizens to make amends to the wrongly convicted person and, more generally, helps to repair damage to the state's public legitimacy and boost public faith in the good judgment and fairness of our system. It is a fundamental rule of good character to take responsibility when you hurt someone, and do what you can to make things right. This bill is an important step towards justice for the wrongly convicted.

Hearing this bill is an important first step toward righting a wrong, and I thank you for the opportunity to testify. Please move this bill forward.

Yours sincerely,

/s/ Virginia E. Hensch

Co-ordinator, Hawai'i Friends of the
Innocence Movement.

Co-Founder and Founding Director, and
Advisory Committee Member of the
Hawai'i Innocence Project.