The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 27, 2019, 2:05 PM
State Capitol, Conference Room 325

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2, Proposed H.D. 1, Relating to Criminal Defense.

Purpose: Establishes a time limitation for filing habeas corpus complaints and petitions for post-conviction judicial proceedings. Limits successive post-conviction complaints.

Judiciary's Position:

The Judiciary respectfully submits the following comments:

Pursuant to Article VI, section 7 of the Hawai‘i Constitution, the supreme court "shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedures, and appeals, which shall have the force and effect of law." In accordance with the power granted by Article VI, section 7 of the Hawai‘i Constitution, the Supreme Court promulgated the Hawai‘i Rules of Penal Procedure (HRPP), to establish the procedures and practices for the handing criminal cases in all state courts. HRPP Rule 40 sets forth court procedures to govern the court processes for post-conviction proceedings.

HRPP Rule 40, which has been in effect for more than forty years, encompasses all common law and other procedures for post-conviction proceedings, including habeas corpus and coram nobis. The rule establishes when such proceedings may be filed and when a Rule 40

petition is unavailable because an issue has been previously ruled upon or waived because the issue could have been previously raised. These limitations and other provisions in the rule have achieved the rule's objective of providing a balanced approach to post-convictions proceedings that maintain the integrity of criminal convictions while also comporting with constitutional due process requirements.

Thank you for providing the Judiciary with the opportunity to comment on Senate Bill No. 2, Proposed H.D. 1.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 2, PROPOSED H.D. 1, RELATING TO CRIMINAL DEFENSE.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 27, 2019 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill establishes a time limitation for seeking post-conviction relief in the state court, and establishes some limits on successive complaints. 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, and matters related to custody by filing petitions for post-conviction relief pursuant to Hawaii Rules of Penal Procedure Rule 40 and complaints pursuant to chapter 660, Hawaii Revised Statutes (HRS). This bill establishes time limitations for the Rule 40 petitions and the chapter 660 complaints.

Currently, there are no time limitations on petitions and complaints for post-conviction relief in state court. Defendants can and do file challenges to their convictions and custody long after the actual events at issue, making it difficult to address the merits of the challenges and, if necessary, to hold retrials or new hearings. Establishing a five-year statute of limitations would ensure that challenges to convictions and matters of custody could be reviewed and decided when the record and witnesses are more likely to remain available. In comparison, federal law, section 2244 of Title 28, United States Code, provides for a one-year period of limitations on the filing

of a federal writ of habeas corpus by persons in custody pursuant to judgments of state courts.

The need for time limitations was made clear in a recent case decided by the Hawaii Supreme Court. In its decision of Akau v. Hawaii, __ P.3d __ (2019), the Court granted the defendant's petition for post-conviction relief challenging his conviction for driving while under the influence of intoxicating liquor. He had waited over twenty-five years to raise the challenge. By that time, there were no transcripts of any of his court proceedings. The district court denied the petition, ruling that it would be "inequitable to grant the Petition because the passage of twenty-five (25) years has resulted in the unavailability of records, and unusually handicaps the State in meeting its burden and preparing a response to the Petition." Akau at *2. But the Supreme Court held that the petition could be heard, and concluded that the defendant's right to counsel was violated in 1987. It clearly was a claim that could have, and should have, been raised long ago.

In 2007, the Judiciary's Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules proposed an amendment to Rule 40 to establish a five-year period of limitation for a post-conviction relief petition. The Hawaii Supreme Court considered the proposal and declined to adopt it, stating in its Order: "After study and consideration of the comments we received, including consideration of the Legislature's authority with regard to the privilege of the writ of habeas corpus, we believe adoption of the proposal would be inappropriate." It deferred action to the Legislature, citing article I, section 15, of the Hawaii Constitution, which limits the power to suspend the privilege of the writ of habeas corpus to the Legislature. The Committee's proposal only applied to Rule 40 petitions. This bill is very similar to the Committee proposal, but extends its application to chapter 660, HRS.

This bill should have a positive impact on the public as it promotes finality to convictions and sentences in a more reasonable timeframe. Further, in the event that reconsideration or retrials are found to be necessary, evidence is more likely to be intact closer to the time of the offense involved.

We respectfully request that the Committee pass this bill.

LATE

Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Judiciary

March 27, 2019

S.B. 2, Proposed HD1: RELATING TO CRIMINAL DEFENSE

Chair Lee and Members of the Committee:

We **oppose** passage of S.B. 2, proposed HD1 which would place limitations on the ability of persons to file petitions for post-conviction relief. These petitions are the legal vehicles for overturning criminal convictions which have been finalized by the trial and appellate process. The Innocence Project has reported that, since 1989, 364 persons across the nation convicted of serious crimes have been exonerated by DNA evidence. Scores of other persons have had their convictions overturned on other grounds after serving years in prison. The main vehicle for freeing the innocent has been the petition for post-conviction relief.

The first part of S.B. 2, proposed HD1 would impose a five-year time limit for filing of this petition. Although there are some exceptions to the five-year limit, these exceptions are not sufficient to protect the rights of the person who is wrongfully imprisoned. Oftentimes, it takes a long period of time for a prisoner to obtain a legal review of his/her case following the finalization of the conviction. Attorneys and investigators are not made available as a matter of right once a person's appeal is resolved. Many of those exonerated by the Innocence Project have spent far more than five years in prison before obtaining successful legal review and reversal of their cases. Furthermore, many of those who are convicted and imprisoned are unsophisticated and uneducated and may not fully understand their legal rights. Often, it takes a persistent family member or other person from outside of the criminal justice system to prevail on an attorney or public official to investigate the possible injustice. This can take many years.

The second part of the bill would prohibit second or successive petitions for post-conviction relief from being filed. It is not uncommon for more than one petition to be filed before finding success in the criminal justice system. Sometimes an inmate will file a rudimentary petition without legal representation. Years later, an attorney might review the case and file a more legally sound petition which results in success. There are times when, following an unsuccessful petition filed by an attorney, a different attorney conducts a new review of the case and is successful in obtaining reversal of the conviction. Therefore, a limit on the number of petitions could have an unjust effect on the ability of a wrongfully convicted person to seek justice.

We respectfully oppose passage of this measure. Thank you for the opportunity to provide testimony in this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

LATE

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

March 27, 2019

RE: S.B. 2, PROPOSED H.D. 1; RELATING TO CRIMINAL DEFENSE.

Chair Lee, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 2, Proposed H.D. 1.

The purpose of this bill is to establish a 5-year time limitation on filing habeas corpus petitions, with exceptions, and prohibit successive petitions, with exceptions. A defendant's right to file a habeas corpus case in Hawaii is provided through the State Constitution, Hawaii Revised Statutes Chapter 660 and Hawaii Rules of Penal Procedure ("HRPP") Rule 40. The Department does not dispute this right; but does believe that limitations on time and successive petitions should be imposed in most cases.

The Department frequently receives HRPP Rule 40 petitions for cases that were completed over seven years prior to the filing of the petition. State law provides that records may be disposed, usually after seven years. This creates a problem, where a defendant complains about his or her case, and the records, both ours and those held by the courts, are no longer in existence. The problem of the availability of witnesses is also an important issue. Finally, this situation affects the peace of mind of crime victims.

Currently, federal law provides a one-year limitation for habeas corpus cases in both state and federal criminal cases, with exceptions, and provides a limitation on successive petitions. S.B. 2, Proposed H.D. 1, has basically the same provisions as federal law, with the exception that the time limitation would be five years instead of one year. In the past, the Permanent Committee on the Rules of Penal Procedure—consisting of representatives of the Judiciary, the Attorney General, the state Public Defender, the county prosecutors, and private defense counsel—approved an amendment

to HRPP Rule 40, to impose a five-year limitation on such filings. However, the Hawaii Supreme Court held that such a provision must first be provided by the Legislature.

The limitation on successive petitions is necessary, because many defendants who are serving long sentences file numerous petitions. These petitions almost always involve issues that were previously ruled upon, waived, or are frivolous. The amount of time and resources used to address these petitions is an unnecessary burden for the county prosecutors.

Overall, the Department believes that S.B. 2, Proposed H.D. 1, will help ensure that review of convictions and custody issues can be done while files and witnesses are available. It also promotes the finality of judgments and sentences, while allowing defendants a reasonable time to challenge judgments and custody.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 2, Proposed H.D. 1. Thank for you the opportunity to testify on this matter.

POLICE DEPARTMENT

CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHON GREMS
DEPUTY CHIEFS

OUR REFERENCE MK-KK

March 27, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: Senate Bill No. 2, Proposed H.D. 1, Relating to Criminal Defense

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2, Proposed H.D. 1, Relating to Criminal Defense.

Incidents that result in death are the most serious cases that law enforcement investigates. These death case investigations are time consuming and involve the expenditure of a tremendous amount of resources. In all death cases, the difference between the charges of murder or manslaughter is the state of mind of the perpetuator at the time the offense was committed. In many cases, this determination cannot be completely evaluated until the final conclusion of the investigation.

The HPD supports prohibiting the perpetrator from claiming that the discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance for which there is a reasonable explanation. Thus prohibiting the offense of murder and attempted murder to be reduced to manslaughter or attempted manslaughter.

Murder or assaulting anyone because of their sexual orientation or gender identity is not a criminal defense; it is a hate crime.

The HPD urges you to support Senate Bill No. 2, Proposed H.D. 1, Relating to Criminal Defense.

Thank you for the opportunity to testify.

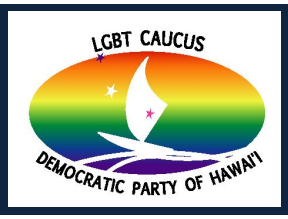
Sincerely,

Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:

Susan Ballard
Chief of Police

LGBT CAUCUS
FORMED IN 2001



THE FIRST CAUCUS OF THE
DEMOCRATIC PARTY
OF HAWAI'I

March 25, 2019

LATE

House's Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, HI 96813

Hearing: Wednesday, March 27, 2019 – 2:05 p.m.

RE: **STRONG OPPOSITION for Senate Bill 2 Proposed HD 1** – RELATING TO CRIMINAL DEFENSE

Aloha Chair Lee, Vice Chair San Buenaventura and fellow committee members,

I am writing in STRONG OPPOSITION for the proposed House Draft 1 to Senate Bill 2 on behalf of the LGBT Caucus of the Democratic Party of Hawai'i. The proposed HD 1 for SB 2 would limit the time a convicted individual from seeking post-conviction relief or any post-conviction judicial proceedings.

The LGBT Caucus cannot support the proposed HD 1 as we view it will just exacerbate Hawaii's overcrowded prisons. We are so overcrowded that we have resorted to using a for-profit out-of-state prison. This will negatively impact poorer wrongfully convicted individuals.

The LGBTQIA community is over represented in the US's prison system. Study after study has shown this to be the case and so we cannot in good conscience remain silent on this proposed HD 1.

The LGBT Caucus of the DPH asks that you oppose the proposed HD 1 and leave SB 2 intact as it will help to protect the LGBTQIA community.

We leave you with this quote "That it is better 100 guilty Persons should escape than that one innocent Person should suffer, is a Maxim that has been long and generally approved." – Benjamin Franklin

Mahalo nui loa,

Michael Golojuch, Jr.
Chair

LATE

SB-2
Submitted on: 3/25/2019 6:22:41 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Causha A Spellman	GLSEN-HI	Comments	No

Comments:

Aloha!

I am writing as the Policy Coordinator for GLSEN-HI. GLSEN is the leading national organization on safe and inclusive schools. GLSEN " seeks to end discrimination, harassment, and bullying based on sexual orientation, gender identity, and gender expression in K-12 schools". We know what safety looks like and how it can save lives. It is for this reason that we are writing in strong opposition to the following proposed changes: "Establishes a time limitation for filing habeas corpus complaints and petitions for post-conviction judicial proceedings. Limits successive complaints". We are request that the original language for the no gay/trans panic bill be put back.

Mahalo,

GLSEN-HI

LATE

HAWAI`I INNOCENCE PROJECT – LAW OFFICES
WILLIAM S. RICHARDSON SCHOOL OF LAW
2515 Dole Street, Honolulu, HI 96822
contacthip@hawaiiinnocenceproject.org

March 26, 2019

S.B. No. 2 - Relating to Criminal Defense
Committee on Judiciary - Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Public Hearing – Wednesday, March 27, 2019, 2:05 PM, State Capital, Conference Room 325

S.B. No. 2 seeks to put a 5-year time limitation on post-conviction habeas corpus filings, otherwise referred to as state Rule 40 petitions for post-conviction relief. The Hawai'i Innocence Project **strongly opposes** S.B. No. 2, and respectfully requests that the committee reject this bill.

The Hawai'i Innocence Project is a non-profit legal clinic with the goals of exonerating the wrongfully convicted, reforming the criminal justice system that failed our clients, and ultimately seeking justice for the victims by determining the real perpetrator of the crime. We strongly oppose S.B. No. 2 as it seeks to limit and time bar all defendants' rights to present a colorable claim to within a 5-year time window. This bill if approved, would put an arbitrary time deadline on defendants to bring credible claims of an illegal judgment, thereby limiting the constitutional rights of all defendants by potentially preventing them from seeking review of their conviction. Not only is the time bar provision proposed in this bill completely counter to our current Hawai'i legal precedent, it is also unrealistic in practice. This bill if approved would especially harm innocent defendants by time-barring their claims, as the national average time it takes to bring a claim of actual and factual innocence is a minimum of 8-10 years. For the reasons set forth below, we urge the committee to fully and completely reject this bill.

Legal Analysis Opposing S.B. No. 2

HRPP 40, or Rule 40, governs post-conviction relief petitions and provides the proper channel for defendants to seek review and relief from an improper or illegal judgment. HRPP 40 does not provide a defendant with open access to have their judgment reviewed, but actually creates strict guidelines that a defendant must meet in order to have their Rule 40 petition reviewed by the court. For example, under Rule 40(a)(1) defendants must show that there was a violation of the constitution, lack of jurisdiction, illegal sentence, newly discovered evidence, or grounds for a collateral attack on their judgment. If defendants have colorable claims under any of the subsections of Rule 40(a)(1), the Rule provides that defendants may seek relief from judgment "at any time but not prior to final judgment." Just this month, the Hawai'i Supreme Court addressed the issue of timeliness of Rule 40 petitions in Akau v. State, plainly stating that "[w]e therefore decline to impose a kind of judicially-crafted statute of limitations on Rule 40 petitions seeking relief from a judgment of conviction when that rule as promulgated explicitly states that such petitions may be brought "[a]t any time" so long as they are not brought "prior to final

judgment[.]""[1] The Court in its decision also mentions the fact that legislators rejected the Illinois statute as a model template for HRPP 40, which had a 20-year statute of limitations to bring post-conviction claims, as evidence that the drafters of Rule 40 intentionally rejected any time limitation for defendants to bring their claims.[2] Furthermore, the fact that Rule 40 references and includes *coram nobis* petitions under this rule, suggests that the drafters of Rule 40 were most concerned about the validity of judgments no matter the age of the judgment. For example, writ of *coram nobis* has historically been used to vacate judgments where defendants have fully served their sentence even if that sentence was completed decades prior, as in the case of Fred Korematsu.[3] We oppose any bill that would put a time limitation on Rule 40 petitions as any change would run counter to our current Hawai'i case law and the original intent and purpose of Rule 40 – to provide defendants with access to the courts in the event there is a legitimate legal challenge to their conviction.

With regards to the proposed limitations of this bill as it pertains to newly discovered evidence, Rule 40 provides that any evidence properly discovered after trial is viable for a Rule 40 petition, so long as that evidence was never raised and ruled upon in a previous Rule 40.[4] The current standard for what constitutes new evidence under Rule 40 was set forth in State v. McNulty.[5] Under McNulty, defendants can be granted a new trial based on newly discovered evidence if all prongs of the 4-part test are met.[6] McNulty does not place a time bar on when newly discovered evidence must be raised by defendants, only requiring that defendants meet the high burden of the 4-prong criteria. Therefore, this bill if passed would further restrain defendants' rights to bring evidence supporting a new trial based on newly discovered evidence by imposing a 5-year time limitation and also changing the 4th prong of the current test under McNulty. This bill seeks to require that new evidence be required "to establish by a preponderance of the evidence that no reasonable fact finder would have found the applicant guilty of the offense" while the current standard set out in McNulty requires that defendants show that "the evidence is of such a nature as would *probably* change the result of a later trial."[7] The current standards under Rule 40 and McNulty are already a very high burden for defendants to meet, witnessed by the very few and rare cases overturned based on newly discovered evidence in this state**.** Approving this bill that would effectively change the current McNulty standard to a "no reasonable fact finder" standard and coupling that with a 5-year time limitation as this bill seeks to do, would place incredible limitations on defendants' rights to due process under our Constitution.

Lastly, creating a 5-year time bar on bringing post-conviction claims raises potential issues with regards to waiver of legitimate claims. HRPP 40(a)(3) requires that defendants bring *all* potential legal claims when challenging their conviction or they will "waive" their right to raise that claim

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[1] Akau v. State, No. SCWC-13-0003754 (Haw. Mar. 5, 2019).
[2] *Id*. at 8.
[3] *See* Korematsu v. United States, 584 F.Supp. 1406, 1420 (D.C.Cal. 1984); *see also* The Writ of Error Coram Nobis in California, 30 Santa Clara L. Rev. 1, 3-7 (1990).
[4] *See* HRPP 40(a)(3) (rendering Rule 40 inapplicable to claims already adjudicated or waived).
[5] State v. McNulty, 60 Haw. 259, 588 P.2d 438 (1978).
[6] (1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial. McNulty, 60 Haw. at 267–68, 588 P.2d at 445 (citing Territory v. Abad , 39 Haw. 393, 395 (1953)).
[7] McNulty, 60 Haw. at 267–68, 588 P.2d at 445 (emphasis added).

at any future proceeding. Creating a 5-year time bar on bringing about a claim under HRPP 40, could cause defendants to waive credible claims that would otherwise be discovered or litigated if it was not for the time limitation. For example, a Rule 40 petition is typically the only opportunity that a defendant has to raise ineffective counsel claims, especially as it pertains to appellate counsel. To limit defendants to finding all evidence with which to support a claim of ineffective assistance of counsel along with all other potential legal arguments to a 5-year window, would likely result in credible claims being waived, not on the basis of their legal soundness but because of an arbitrary time limit. Furthermore, it would also put professional limitations and potentially raise ethical issues for attorneys who represent defendants in post-conviction proceedings by requiring their "due diligence" in finding and raising claims but at the same time limiting the amount of time with which they have to do this difficult job.

Practical Issues Opposing S.B. No. 2

Limiting a defendant's rights to post-conviction relief to 5 years, is not practicable. After defendants have been convicted and exhausted their direct appeals, they are no longer entitled to counsel. This often requires defendants to file a Rule 40 *pro se*, without the assistance or advice of an attorney. Requiring *pro se* defendants (most if not all of whom are without a legal education and are incarcerated) to identify and raise legal issues within a 5-year time window is completely impracticable. With regards to newly discovered evidence, it would likely be completely impossible for defendants to investigate and find new evidence while behind bars, and especially from a prison thousands of miles away from where the crime occurred.[8] Creating a small window with which defendants may raise colorable claims in a Rule 40 petition, would greatly limit any defendant from bringing their legitimate cases before the court. While organizations like ours can assist some defendants with their Rule 40 petitions, we are limited to cases of actual and factual innocence and even then, we receive more applications than we have staff and resources to process. Even with help from organizations like ours, it takes years (usually a minimum average of 8-10) to fully investigate a case and make sure that all potential claims have been identified and raised. If this bill is approved, our organization would not have the time or resources to appropriately review pending and waitlisted applications, many of whom have legitimate claims of wrongful conviction. To put a time limit on what is already an insurmountable task, would effectively limit defendants' rights under Hawai'i law and our Constitution.

We would also like to remind the legislature of how often science changes in the modern world. It was not long ago that we believed that no two humans have the same fingerprint, that microscopic hair analysis was accurate, that teeth impressions can be matched to bite marks left on victims, and that eye witnesses' memories are infallible – yet we now know that none of these things are true or reliable evidence.[9] Limiting defendants' rights to raise new claims on faulty "junk" science would be greatly hindered by imposing a 5-year time bar on bringing these issues before the court. Defendants would be forced to rush new forensic testing, hire experts, and file Rule 40 petitions on incomplete analysis if a time limit is imposed. Considering that most

[8] Most if not all Hawai'i inmates with sentences over 3 years in length are sent to Saguaro Correctional Center in Eloy, Arizona shortly after they are sentenced.

[9] *See e.g.* The President's Council of Advisors on Science and Technology (PCAST), *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods (2016);* The National Research Counsel, *Strengthening Forensic Science in the United States: A Path Forward (2009).*

forensic experts are on the mainland and that any forensic testing would likely also have to be completed out of state, would become increasingly even more difficult if any time limitation is imposed. For example, the most reliable evidence - DNA evidence, often takes months if not years to get court approval and then potentially the same amount of time for testing to be conducted, demonstrates the gravity of why a time limitation on bringing colorable claims before the court is problematic.

This bill would likely not provide relief for the judiciary but could in fact require more resources to be needed for the judiciary to evaluate Rule 40 claims brought under the proposed time limit. Defendants once notified of the 5-year time limitation on bringing claims would very likely rush to file, effectively clogging the courts with a flood of new petitions. The courts would also need to be even more cognizant of potential legitimate claims brought in Rule 40 petitions especially by defendants filing *pro se* because any rejection of a viable Rule 40 petition could bar a defendant from having enough time to refile or correct a potentially valid petition. Additionally, imposing this strict time line on Rule 40 petitions beginning July 1, 2019 without having the appropriate resources set aside for the judiciary or other organizations to assist these defendants, would be devastating to us and the defendants.

Lastly, it is both odd and rather tragic if this bill placing a 5-year a time limit on when an inmate can file a Rule 40, is passed during the same time period where there is credible evidence that the former Chief of Police Louis Kealoha, his wife the 2nd highest ranking Honolulu prosecutor Katherine Kealoha, and the now suspended prosecutor for Honolulu Keith Kaneshiro have all been alleged to have committed or taken part in circumventing our system of justice. Under this proposed legislation, the 5-year statute for defendants to bring a claim runs from when defendants first learn of the evidence, which could arguably be from the time they were charged. If this bill is passed, defendants who were wrongfully convicted and cannot prove that certain police or prosecutors played a role in their wrongful convictions, arguably would now be precluded from bringing a claim after 5 years.

The purpose, availability, and accessibility of Rule 40 petitions is to ensure that all convictions are sound, rooted in the law, and based on reliable evidence. Defendants already face an incredibly hard battle to be have their cases reviewed again by the courts after their conviction, based on the strict requirements of Rule 40 and McNulty. Defendants' rights should not be further restricted from raising any legitimate claim by being time-barred, especially for any defendant with claims of innocence. The Hawai‘i Innocence Project believes that S.B. No. 2 would not lead to positive reform for Hawai‘i's criminal justice system because it would bar defendants from seeking relief under Rule 40 based on an arbitrary time limit regardless of the credibility and legality of their claims. We appreciate your time and the opportunity to provide testimony in **strong opposition** to S.B. No. 2.

With warm aloha and gratitude,

Kenneth Lawson
Co-Director, Hawai‘i Innocence Project
and Law Professor, William S. Richardson School of Law

SB-2
Submitted on: 3/26/2019 10:23:17 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Pride Work HI	Pride at Work Hawaii	Oppose	No

Comments:

Aloha Represenatives,

Pride@Work Hawaii opposes the proposed House Draft 1 to SB 2.

Mahalo for the opportunity to testify.

Pride@Work Hawaii

LATE

SB-2
Submitted on: 3/26/2019 12:22:11 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Norman Capinpin	Filipino Law Student Association	Comments	No

Comments:

Dear Comittee Members,

Proposed SB2 HD1, is not the original language of the bill. Please **revert the bill back to the original** no gay/trans panic defense language, with the intent of protecting LGBTQ people in Hawai'i.

Respectfully Yours,

Norman P. Capinpin

LATE

ACLU Hawai'i

Committees:	House Committee on Judiciary
Hearing Date/Time:	Wednesday, March 27, 2019, 2:05 p.m.
Place:	Conference Room 325
Re:	*Testimony of the ACLU of Hawai'i Opposing S.B. 2, Proposed H.D. 1, Relating to Criminal Defense*

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee on Judiciary,

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in opposition to S.B. 2, Proposed H.D. 1**,[1] which creates a five year limitation beyond which post-conviction judicial proceedings filed under Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP Rule 40 petitions) to vacate, set aside, or correct judgment are barred.

While the Proposed H.D. 1 contains no findings, this version of S.B. 2 seems to have been drafted with the intention to legislatively overturn the March 5, 2019 Hawai'i Supreme Court decision in *Akau v. State*,[2] which specifically ruled that time limitations *do not apply* to HRPP Rule 40 petitions.

In *Akau*, Timmy Hyun Kyu Akau in 2013 filed a Rule 40 petition to vacate, set aside, or correct judgment his conviction in a 1987 driving under the influence (DUI) case. The Hawai'i Supreme Court ruled in Akau's favor, noting that in violation of clear guidance by the United States Supreme Court, Akau had been denied the representation of counsel in his criminal case. Akau was not informed of his constitutional rights by the court, which denied him a continuance so that he could get legal representation. In affirming his conviction, the Intermediate Court of Appeals (ICA) relied upon the doctrine of laches.[3] But the Hawai'i Supreme Court held in *Akau* that "the doctrine of laches does not apply in the case of HRPP Rule 40 petitions." The Supreme Court went further and noted that HRPP Rule 40(a)(1) explicitly states that Rule 40 petitions may be brought "[a]t any time so long as they are not brought prior to final judgment," and noted that the lack of a statute of limitations appeared to be deliberate.

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[1] The Proposed H.D. 1 is a completely different bill as compared to the original measure. The ACLU of Hawai'i takes no position on S.B. 2, as introduced.

[2] *Akau v. State*, SCWC-13-0003754.

[3] The doctrine of laches is based on the maxim that "equity aids the vigilant and not those who slumber on their rights." (Black's Law Dictionary). The outcome is that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party.

The Hawai‘i Supreme Court also noted that HRPP Rule 40 petitions govern *coram nobis*[4] proceedings, which is the same type of proceeding that was used to overturn the conviction of Fred Korematsu in *Korematsu v. United States.* The court noted that application of the doctrine of laches in the *Korematsu* case would have precluded the *coram nobis* proceeding and would have left Korematsu's conviction intact.

Neither we nor the Hawai‘i Supreme Court, of course, seek to equate Mr. Akau with Mr. Korematsu. Rather, we believe that the Court noted that Rule 40 petitions govern *coram nobis* proceedings to note the slippery slope we go down when time limitations like this are imposed where they were not supposed to exist.

The right of the incarcerated and/or wrongfully convicted to petition for post-conviction relief is fundamental to our notion of due process and it is unnecessary to limit this right in order to address a rare and extreme situation. This legislation is, at best, unnecessary, and at worst, detrimental to the due process rights of the wrongfully convicted. For these reasons, the ACLU of Hawai‘i urges the Committee to defer this measure.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai‘i

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for 50 years.

[4] As the Supreme Court noted, "a write of coram nobis acts as a remedy to correct errors of the most fundamental character where the petitioner has completed his [or her] sentence or is otherwise not in custody and circumstances compel such action to achieve justice."

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COMMITTEE ON JUDICIARY
Rep. Chris Kalani Lee, Chair
Rep. Joy SanBuenaventura, Vice Chair
Wednesday, March 27, 2019
2:05 pm
Room 325

LATE

STRONG OPPOSITION to SB 2 PROPOSED HD 1 - CRIMINAL DEFENSE

Aloha Chair Lee, Vice Chair SanBuenaventura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is saddened to see GUT & REPLACE used to diminish democracy and the quality of justice in Hawai`i nei.

The proposed HD1 is the prosecutorial response to the March 5, 2019 Akau decision by the Hawai`i Supreme Court.

We have read the Akau decision and, not being an attorney, it seems that cases like this would be extremely rare. The facts that the court relied on to justify are sound in that Mr. Akau had no counsel and was never informed of his right to counsel. This is a flagrant violation of his constitutional rights. The Hawai'i Supreme Court addressed the issue of timeliness of Rule 40 petitions plainly stating that "[*w]e therefore decline to impose a kind of judicially-crafted statute of limitations on Rule 40 petitions seeking relief from a judgment of conviction when that rule as promulgated explicitly states that such petitions may be brought "[a]t any time" so long as they are not brought "prior to final judgment."*

The Court in its decision also mentions the fact that legislators rejected the Illinois statute as a model template for HRPP 40, which had a 20-year statute of limitations to bring post-conviction claims, as evidence that the drafters of Rule 40 intentionally rejected any time limitation for defendants to bring their claims.

The Hawai`i Supreme Court decision does not appear to expand Rule 40 in the Akau case, they only applied the Rule as it stands that a judgment can be challenged at "any time". The court

concluded that Akau's right to counsel was violated in 1987 and held that the equitable doctrine of latches[1] does not apply to HRPP Rule 40 petitions.

The reaction to this decision by prosecutors is not surprising. They fight vigorously when their cases are legitimately challenged and their injustices are exposed.

Surely, the legislature is aware of the number of cases that have been overturned where the wrongfully convicted have been exonerated. A TIME magazine article[2] reported that

…the number of exonerations has generally increased since 1989, the first year in the National Registry's database.

… Experts say the increase in rate of exonerations can be explained, in part, by a growing trend of accountability in prosecutorial offices around the country. Twenty-nine counties, including Chicago's Cook County, Dallas County and Brooklyn's Kings County have adopted second-look procedures and special review units that are tasked with looking into questionable convictions.

… Data from the National Registry shows that more than half of exonerations involve perjury or false accusations. This problem is particularly prevalent in homicide cases and child sex abuse cases. Mistaken witness identification is often an issue in sexual assault cases.

The National Registry of Exonerations (NRE) released a report[3] on the 139 exonerations that occurred in 2017. Between 1989 and 2017, the **NRE documented 2,161 exonerations in the United States.** In their report, the NRE outlines the major themes and characteristics of that year's exonerations. According to the report, there were less exonerations in 2017 than in 2016: a decrease from 171 to 139. In addition to the 139 exonerations listed in the registry, at least 96 individuals in Chicago and Baltimore were exonerated in "group exonerations." **These occurred after it was revealed that law enforcement was systematically framing individuals for drug crimes they did not commit.** Some of the report's other key findings are:

- Official misconduct – defined by the NRE as "police, prosecutors, or other government officials who significantly abused their authority or the judicial process that contributed to the exoneree's conviction" – occurred in 84 of the 2017 exonerations.
- Seventeen exonerations were based in whole or in part on DNA evidence. DNA exonerations now account for 21% (459) of the exonerations in the Registry through 2017.
- Thirty-seven cases involved eyewitness misidentification.
- Twenty-nine exonerations involved a false confession.
- Perjury or a false accusation played a role in 87 of last year's exonerations.
- On average, each exoneree was incarcerated for 10.6 years, totaling almost 1,500 years spent waiting to be freed.

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[1] **Doctrine of Latches** – Latches is the legal doctrine that an unreasonable delay in seeking a remedy for a legal right or claim will prevent it from being enforced or allowed if the delay has prejudiced the opposing party.

[2] **THE WRONGFULLY CONVICTED** - Why more falsely accused people are being exonerated today than ever before
By Emily Barone http://time.com/wrongly-convicted/

[3] **THE NATIONAL REGISTRY OF EXONERATIONS** Exonerations in 2017, March 14, 2018.
https://www.law.umich.edu/special/exoneration/Documents/ExonerationsIn2017.pdf,
https://www.innocenceproject.org/report-exonerations-in-2017/

In 66 cases, no crime was actually committed, including over a dozen drug possession cases, 11 child sex abuse cases, and nine murder cases.

DNA has played a role in roughly a quarter of exonerations since 1989, the year it was first used to clear David Vasquez, who was falsely convicted of murder in Arlington County, Va. In the last decade the number of DNA exonerations has held steady at about 20 cases per year. (Biological evidence is typically tested before trial so the majority of DNA-related exonerations these days are for convictions that happened decades ago.)

But these reasons don't fully explain why so many false convictions are happening in the first place. There are underlying issues in the law enforcement and criminal justice system that run far deeper.

"If you fix problems like the drug tests, that's a good thing," says Gross[4]. *"But then the question is why were you stopped in the first place? Why were you asked to step out of the car? And why were you searched? That's the real question."*

Community Alliance on Prisons asserts that the 5-year time limit for Rule 40 petitions promotes injustice.

In the interest of fairness and justice, we urge the committee to hold this measure.

Justice Delayed IS Justice Denied

Mahalo for this opportunity to testify.

[4] Samuel Gross, a law professor at the University of Michigan who is co-founder and senior editor of the National Registry.

LATE

SB-2
Submitted on: 3/26/2019 3:28:15 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goodman	Hawaii Kai Homeless Task Force	Oppose	No

Comments:

TO: The House Committee on the Judiciary

FROM: Mike Goodman Esq., Director of the Hawaii Kai Homeless Task Force; Member of the Partners in Care Advocacy Committee.

RE: SB2 HD1

HEARING: Wednesday March 27, 2:05 P.M. Conference Room 325

Dear Representative Lee, Chair, Representative San Buenaventura, Vice Chair, and all Members of the House Committee on the Judiciary, thank you for the opportunity to testify in opposition to SB2 HD1.

HD1 gutted SB2 and replaced it with a bill that puts a five year limit on appeals for murder and attempted murder, with certain limited exceptions.

The Hawaii Kai Homeless Task Force, is dedicated to researching and implementing solutions to the homeless crisis. We don't usually comment on bills that have no homeless nexus. Nonetheless, HD1 of SB2 is such an afront to justice and standards of fair play, we felt compelled to speak out.

We are big supporters of "law and order", especially since the homeless are far more likely to be crime-vicitms. Respect for law and keeping public order requires that the guilty be punished and the innocent go free.

Law and public order are doubly diminished when someone is wrongly convicted: Families and others are denied the contributions of an innocent person and our communties are threatened by the real murderer who is still at-large. Making it harder for those who are wrongly convicted to seek relief is also a terrible way to reduce frivolous appeals and conserve judicial resources.

True, this bill tolls the five-year limit based on a preponderence of evidence, provided that the evidence could not have been discovered by a person of due dilligence. But that will do nothing to protect the vast majority of wrongly convicted defendants in the

real world. Exculpatory evidence is often found decades later. Failing to prove what a person of due dilligence could not have discovered it earlier is a subjective and dubious basis for keeping an innocent person incarcerated. It strikes at the heart of Blackstone's ratio: That it is better to see 10 guitly people go free than to convict one innocent person.

Thank you for the opportunity to testify.

LATE

SB-2
Submitted on: 3/25/2019 6:55:51 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Comments	No

Comments:

I request that the original language for no gay/trans panic be put back into the bill. mahalo.

LATE

SB-2
Submitted on: 3/25/2019 9:21:38 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Katya Katano	Individual	Comments	No

Comments:

I request that the original language, which would get rid of the gay/trans panic affirmative defense, be reinstated.

LATE

SB-2
Submitted on: 3/26/2019 9:00:41 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Darien Chow	Individual	Comments	No

Comments:

Aloha Honored Representatitves,

I am submitting a request to have the original language for the no gay/trans panic be put back in place from the revision that now has the habeus corpus language. I, among others in the community, feel that the revision has disturbed the true purpose of the original proposal, and seek to have it returned to before.

Thank you,

Darien C

LATE

SB-2
Submitted on: 3/26/2019 10:21:53 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Comments	No

Comments:

Proposed SB2 HD1 (about habeas corpus), is not the original bill. Please revert the bill to the original language of SB2, which provides for the elimination of the gay/trans panic defense in Hawai'i.

LATE

SB-2
Submitted on: 3/26/2019 10:48:45 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cherise Braxton-Brooks	Individual	Comments	No

Comments:

Proposed SB2 HB1 (about habeus corpus), is not the original language of the bill. Please revert the bill back to the original no gay/trans panic defense language, with the intent of protecting LGTBQ people in Hawaii.

LATE

S.B. No. 2 - Relating to Criminal Defense
Committee on Judiciary - Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Public Hearing – Wednesday, March 27, 2019, 2:05 PM, State Capital, Conference Room 325

State Legislators,

I respectfully submit testimony in **strong opposition** to SB2 HD1 proposing a 5-year time limitation on post-conviction relief, and request that the committee reject this bill. This bill irresponsibly ignores the shortcomings of our state criminal justice system, the high standard for a successful Rule 40 petition, and the plight of wrongfully convicted defendants serving sentences for crimes they did not commit.

As a law student and intern with the Hawai‘i Innocence Project, I have seen first-hand how difficult it is for defendants to bring successful challenges against their convictions. While there may be few cases of actual innocence – and I submit there are more than you may think – fundamental American legal principles have long recognized the need for the law to provide protection for the few as well as the many.

The current standard to overturn a conviction is extremely high, adequately preventing unmeritorious claims from succeeding. Further, while this bill purports to lessen the burden on our state courts, the opposite effect is likely to occur when defendants rush to submit petitions before the time limitation has run. Properly investigating and compiling a Rule 40 takes years, and such a time bar as the one proposed by this bill will negatively impact those who have been victimized by poor investigative work and a rush to prosecution.

Justice has no time limit. Please don’t give it one.

Thank you for your time and allowing me to submit testimony in opposition of this bill.

Very truly yours,

Molly Olds

SB-2
Submitted on: 3/26/2019 1:44:22 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
R. L. Hughes	Individual	Oppose	No

Comments:

We strongly oppose S.B. No. 2 as it seeks to limit and time bar all defendants' rights to present a colorable claim to within a 5-year time window. This bill if approved, would put an arbitrary time deadline on defendants to bring credible claims of an illegal judgment, thereby limiting the constitutional rights of all defendants by potentially preventing them from seeking review of their conviction. Not only is the time bar provision proposed in this bill completely counter to our current Hawai'i legal precedent, it is also unrealistic in practice. This bill if approved would especially harm innocent defendants by time-barring their claims, as the national average time it takes to bring a claim of actual and factual innocence is a minimum of 8-10 years. We urge the committee to fully and completely reject this bill.

LATE

SB-2
Submitted on: 3/26/2019 1:48:41 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Casey Hutnick	Individual	Oppose	No

Comments:

Passage of this bill would be a disservice to our justice system! A 5-year bar is ridiculously and embarrassingly arbitrary. In light of the numerous wrongful convictions throughout the country, I would be ashamed and deeply saddened to see Hawaii turn a blind eye to the possibility that they may have gotten it wrong. I whole-heartedly oppose!

LATE

SB-2
Submitted on: 3/26/2019 1:48:44 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Goldberg	Individual	Oppose	No

Comments:

Proposed SB2 HD1 (about habeas corpus), is not the original language of the bill. In it's current state, it is extremely harmful to the people it was intended to protect. Please revert the bill back to the original no gay/trans panic defense language, with the intent of protecting LGBTQ people in Hawai'i.

Best,

Rachel Goldberg

LATE

SB-2
Submitted on: 3/26/2019 2:27:36 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley Kaono	Individual	Oppose	No

Comments:

While it is unclear why the original version of this bill was "gutted and replaced", it is furthermore unclear why an arbitrary deadline of 5 years would be established in an effort to prevent defendants from challenging what may be a wrongful conviction.

The Hawaii Rules of Penal Procedure set a high bar for petitions of this nature under Rule 40 and provides the proper pathway to pursue post-conviction relief. Why impose ANY deadline on what could be a defendant's only real chance for justice, if given an improper/illegal judgment?

Gut and replace may be a valuable tool in many scenarios, but here, it is arbitrary and can only be interpreted as seeking to prevent defendants from challenging their convictions, no matter the validity of their claims.

I strongly urge the members of the House Judiciary Committee, please do not justify the use of gut and replace here and oppose the new form and text SB2 has taken.

LATE

SB-2
Submitted on: 3/26/2019 3:46:57 PM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kenneth McNeil	Individual	Oppose	No

Comments:

It is difficult to comprehend the metamorphasis of this Bill. The original intent of the Bill as passed by the Senate was noble. But, this Bill, as now proposed, is a back-door effort to restrict liberties. Have we not learned lessons from the past? The Supreme Court has repeatedly held "Conventional notions of finality of litigation have **no** place where life or liberty is at stake and infringement of constitutional rights is alleged. If government is always to be accountable to the judiciary for a man's imprisonment, access to the courts on habeas must not be thus impeded.

I am all too familliar with the consequences of a illigal conviction. For those who have never known injustice, it may be easy to say that it will not happen to them or those who they love. But, it does happen, and more than most realize.

A bill placing restrictions on liberty of this magnitude should never be added as an amendment. Reject this proposed bill and return it to its original purpose.

LATE

SB-2
Submitted on: 3/27/2019 8:10:29 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Spring Storm Stoker	Individual	Oppose	No

Comments:

I do not support this bill. Hate crimes are a serpartate category and should have severe additional punishments attached. Hate crimes also carry extra pain for the families, causing additional harm. Finally, hate crimes inspire others of the same beliefs to do this type of harm as well as we have seen in our country's history. We need additional punishments as a deterrent and to show that our government is opposed to hate crimes.

LATE

SB-2
Submitted on: 3/27/2019 10:31:18 AM
Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Jaworowski	Individual	Oppose	No

Comments:

I am in full support of SB2. I am in opposition to the proposed HD1, which is a gut and substitute bill that removes the contents of the otherwise good SB2 and instead imposes, out of the blue, a five year limitation on post conviction relief motions. I would like to see the reinstatement of the current senate draft, as that is a worthy bill that will help prevent violent acts. I do not approve the post conviction relief limitation. Someone coming out of a long jail term lacks money and resources and it may take that person a long time to get themselves to place in which it is possible for them to afford to prove their case for post conviction relief. I do not see why that. period of time should be cut short. The current SB2 is adequate to ensure justice in post conviction relief cases.

sanbuenaventura2 - Kevin

LATE

From: Shannon Rudolph <shannonkona@gmail.com>
Sent: Tuesday, March 26, 2019 3:08 PM
Subject: Please Vote NO on SB 2 HD 1

Aloha!
I am a 35 year Hawai'i resident. I oppose SB2 HD1.

Mahalo,
Shannon Rudolph
P.O. 243 Holualoa, Hi. 96725

sanbuenaventura2 - Kevin

From: Sarah Cordeiro <sanddc411@hotmail.com>
Sent: Tuesday, March 26, 2019 1:08 PM
To: JUDtestimony
Subject: Opposition to SB 2 HD 1

LATE

My name is Sarah Cordeiro

I oppose SB 2 HD 1.

Thank you for your time and allowing me to submit testimony in opposition of this bill.

Sarah Cordeiro
3331 old Haleakala hwy
Makawao, HI 96768

Sent from my iPad

sanbuenaventura2 - Kevin

LATE

From: Richard Fried <rfried@croninfried.com>
Sent: Tuesday, March 26, 2019 1:01 PM
To: JUDtestimony
Subject: Opposition to SB 2 HD 1

My name is L. Richard Fried, Jr.

I oppose SB 2 HD 1 for the following reasons: a 5 year outer limit would preclude the majority of people from any recourse as the average time it takes to investigate and bring a post-conviction claim to court is a minimum of 8-10 years. Defendants would not be entitled to an attorney in post-conviction Rule 40 proceedings. The defendant would have to do all the work on their own pro se-an almost impossible task. Science is always advancing and defendants should be able to bring forth claims against evidence that is found to be invalid at any time. These are only a few of the reasons this bill should be defeated.

Thank you for your time and allowing me to submit testimony in opposition of this bill.

sanbuenaventura2 - Kevin

LATE

From: Craig Washofsky <craig.washofsky@servco.com>
Sent: Wednesday, March 27, 2019 12:03 PM
To: JUDtestimony
Subject: Opposition to SB 1082 HD1

Aloha,

I'm Craig Washofsky, President of Servco Home and Commercial Products and I am writing to oppose S.B. 1082 HD1, as it would unreasonably and unfairly burden general contractors. This bill is bad for the construction industry and bad for business, especially smaller companies.

I've worked with contractors for my entire career and I understand S.B. 1082 HD1 would make a general contractor entering into private, non-public contracts in Hawaii for work on buildings or structures liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and the owner. In other words, if the GC's sub doesn't pay it's people, then that GC is liable for that sub's payroll. Furthermore, if the GC's sub hires another sub, that GC would also be liable for those wages the sub's sub doesn't pay.

This bill would impact many small general contractors who do not have the financial capacity to be responsible for all of the liabilities of the various sub-contractors and sub-sub-contractors on their projects. They also have no control over the financial stability or condition of the sub-contractors' business operations. The bill would impose an extreme financial burden on all general contractors, small or big, and have a negative impact on our industry.

While it is unfair to the employee who does not get paid, it is more unfair to place that entire burden on the general contractor, who has no control over how a sub may conduct its business or may not even have a contractual relationship with their sub's sub. Insurance and bonds offer remedy in these types of situations.
While S.B. 1082 is intended to remedy the wrong-doing of one bad general contractor, the repercussions and unintended consequences will resonate industry-wide.

Thank you for the opportunity to submit my testimony in opposition.

Sincerely,

Craig

Craig Washofsky
Sent from my iPhone
Sorry for any typos

sanbuenaventura2 - Kevin

From: Dawn Dural <mrsdural22@gmail.com>
Sent: Wednesday, March 27, 2019 1:57 PM
To: JUDtestimony
Subject: Opposition to SB 2 HD 1

My name is Dawn D.

I oppose SB 2 HD 1 for the following reasons:

Setting a limit to the number of years an individual has to bring forward his or her innocence creates an additional injustice to individuals that have been wrongly convicted, allows the actual perpetrators to continue committing crimes, and does not show a system that is about true justice. No person should have to spend a day, an hour, a minute longer in prison for a crime he or she did not commit. Our prison system is to be for individuals who actually committed crimes, not individuals who are innocent but have not had the chance to work with attorneys and organizations that are in position to help them due to the incarceration limiting their access to outside help. These individuals are limited to phone calls, leaving them close to no time to even reach out to an attorney. Some do not have family who are able to help them. They were served an injustice and are crippled by the wrongful conviction and this will just impose upon them a fate that is not justice by any means.

As a person who has witnessed this and lived it personally with my loved one, I know how bad wrongful convictions are and what they do to the individual and family. I also know how long it takes to get help. It is going on 17 years and we are STILL fighting my husband's wrongful conviction. It took more than five years just to get things moving in his case. And with over zealous prosecutors working hard to hold wrongful convictions in place because they are not seeking justice, they just want an increase in conviction wins, this does not give an innocent person a fair chance of proving that he or she is actually innocent. It takes years to gather evidence, etc. to bring the case forward. If Hawaii enforces such a terrible idea of a bill, the state is just showing that true justice does not matter to this state and gives Hawaii a bad name which right now we are already getting from the corruption with the Kealoha's, Keith Kaneshiro, and anyone else involved in that case. Is our judicial system about justice or refusing it?

In our case, the prosecution office has the fact of innocence staring them right in their face, but prefer to allow two self-admitted sex offenders go, rather than bring true justice and set the innocent man free. How is that justice Hawaii? It's not. And now you want to cripple these individuals by limiting them to how long they have to bring their innocence out? This is shameful.

Thank you for your time and allowing me to submit testimony in opposition of this bill.