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**A BILL FOR AN ACT**

RELATING TO POST CONVICTION PROCEEDINGS.

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

1           SECTION 1. Chapter 660, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately designated  
3 and to read as follows:

4           "§660-     Time limitation. (a) Any complaint filed under  
5 this chapter or any post-conviction judicial proceedings filed  
6 under rule 40 of the Hawaii rules of penal procedure shall be filed  
7 within five years of the latest of the following:

8           (1) The date on which the judgment became final by the  
9           conclusion of direct review or the expiration of the  
10           time for seeking such review;

11           (2) The date on which an impediment to filing a complaint  
12           that was created by a governmental action, in  
13           violation of the Constitution of the State of Hawaii  
14           or the Constitution of the United States, was  
15           removed;

16           (3) The date on which a newly created constitutional rule  
17           under the Constitution of the State of Hawaii or the  
18           Constitution of the United States was initially

1 recognized and made retroactively applicable to cases  
2 on collateral review by the supreme court of the  
3 State of Hawaii or the Supreme Court of the United  
4 States; or

5 (4) The date on which the factual predicate of the claim  
6 or the claims presented could have been discovered  
7 through the exercise of due diligence; and the newly  
8 discovered evidence, if proven and viewed in light of  
9 the evidence as a whole, would be sufficient to  
10 establish by a preponderance of the evidence that no  
11 reasonable fact finder would have found the applicant  
12 guilty of the offense.

13 (b) This section shall not apply to any motion, petition,  
14 or appeal filed pursuant to part XI of chapter 844D.

15 **§660- Successive petitions.** A claim presented in a second  
16 or successive complaint filed under this chapter that was not  
17 presented in a prior complaint shall be dismissed unless:

18 (1) The petitioner shows that the claim relies on a  
19 previously unavailable new rule of constitutional law  
20 under the Constitution of the State of Hawaii or the  
21 Constitution of the United States, made retroactive to  
22 cases on collateral review by the supreme court of the



**Report Title:**

Post Conviction Proceedings; Procedure

**Description:**

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO POST CONVICTION PROCEEDINGS.

PURPOSE: To establish a statute of limitations for the filing of habeas corpus actions challenging convictions, judgments, sentences, and other matters related to custody and a limitation on successive actions.

MEANS: Add two new sections to chapter 660, Hawaii Revised Statutes.

JUSTIFICATION: 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 other matters related to custody by filing in state courts petitions for post-conviction relief pursuant to Hawaii Rules of Penal Procedure Rule 40 and chapter 660, Hawaii Revised Statutes. Currently, there is no statute of limitations on petitions for post-conviction relief. 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. Some file numerous and redundant challenges. 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, there is a one-year statute of limitations on the filing of a federal

writ of habeas corpus, with numerous tolling periods for various reasons. The Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules recently proposed amending Rule 40 of the Hawaii Rules of Penal Procedure to add a statute of limitations as in this bill, but the Hawaii Supreme Court rejected the proposal, indicating, in part, that this was a matter for the Legislature.

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

Impact on the department and other agencies: The department, the various county prosecuting attorney(s) offices and the Judiciary should benefit from an anticipated drop in the filing of petitions for post-conviction relief and a focusing of resources on current relevant issues.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: Judiciary and the various county prosecuting attorney(s) offices.

EFFECTIVE DATE: Upon approval.