

S.B. NO. 846

JAN 26 2009

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

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State of Hawaii or the Supreme Court of the United States; or

(2) The factual basis for the claim could not have been discovered previously through the exercise of due diligence, and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____
BY REQUEST

Report Title:

Post Conviction Proceedings; Procedure

Description:

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

SB 846

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.