



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:
H.B. NO. 1985, RELATING TO INNOCENCE REDRESS .

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 2, 2012 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Mark Nomura, Deputy Attorney General or
Caron M. Inagaki, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (“the Department”) appreciates the intent of H. B. No. 1985 to provide prompt and certain compensation to innocent persons who have been wrongfully convicted of crimes and imprisoned. The Department, however, opposes the bill because it makes the State, in effect, the insurer of any errors in the criminal justice system.

The purpose section of the bill cites no data or anecdotal evidence demonstrating the need for the legislation. As a result, this committee is being asked to approve a comprehensive compensation bill absent any information showing the need for it. If appropriate, the Department recommends the appointment of a group to study the need for innocence redress legislation in the State, and if so, to propose carefully circumscribed legislation to meet that need. The group should consist of judges, prosecuting attorneys, public defenders, a representative of the private defense bar, a representative of the Department, and experts on DNA and other scientific testing.

In addition, the term “not inconsistent with innocence” is vague and open to multiple interpretations. The intended scope of the bill is to require compensation for “innocent” persons, i.e., persons who did not commit criminal acts, but who were nevertheless convicted and imprisoned. However, the bill appears to allow claims to be brought by persons who committed crimes and were convicted, and therefore not “innocent,” but were later pardoned. Pardons almost always involve persons who actually committed the crime for which they were convicted. Therefore, pardons are inconsistent with a claim of innocence.

In addition, this bill does not preclude claims for convictions that were vacated or reversed due to a legal deficiency. For example, a claim could be brought by a person who had drugs in his possession and was convicted for a drug possession offense, but the conviction was later overturned because of the failure to obtain a search warrant before searching and recovering the drugs. As another example, a claim could be brought by a person who committed the crime for which he was convicted, but whose conviction was overturned because of the failure to read him his Miranda rights after he had been placed in custody.

Moreover, the bill fails to specify the type of evidence required to prove one's "innocence." Will DNA testing exclusively be required? Will other types of scientific evidence, such as the results of a polygraph test, or other tests of varying degrees of scientific acceptance, be sufficient? Will a "new" witness or a witness who changes or recants their former testimony be sufficient to prove one's innocence? Without further clarification, an unintended consequence of the bill may be to provide financial incentive for persons convicted of crimes to challenge their convictions, when they might not otherwise do so, because if they succeed, they will be entitled to compensation for the reasons, and in the amounts, set out in the bill.

Finally, the bill allows the court no discretion in awarding compensation, even where the court may find the amount to be inappropriate. For example, on page 5 of the bill, lines 8-11, the court must award the claimant no less than \$50,000 for each year of incarceration for any "physical injury," no matter how minor. There is also no provision to prorate this amount for partial years of incarceration. The court must further award \$25,000 for each year served on parole or probation. (Page 6, lines 4-7.) The court must also award compensation to the claimant for child support payments owed by the claimant, which accrued during the claimant's incarceration, plus interest, even if the claimant had refused to pay child support prior to or after claimant's incarceration. (Page 7, lines 1-4.)

We respectfully request that this bill be held.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 ALAKEA STREET, GROUND FLOOR
Honolulu, Hawaii 96813

BERT Y. MATSUOKA
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MEMBER

MICHAEL A. TOWN
MEMBER

TOMMY JOHNSON
ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 1985
RELATING TO INNOCENCE REDRESS

BY

HAWAII PAROLING AUTHORITY
Bert Y. Matsuoka, Chairman

House Committee on Judiciary
Representative Gilbert S. C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Thursday, February 2, 2012; 2:00 p.m.
State Capitol, Conference Room 325

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Hawaii Paroling Authority (HPA) appreciates the legislature's interest in the various areas discussed in House Bill 1985.

The HPA has no concern with respect to Section 4 of this measure, which would require the HPA to provide information to those offenders granted a pardon by the Governor. HPA will maintain records of the pardoned individuals' acknowledgement of receipt of the information. Comments on the remaining portions of this measure are deferred to the affected agencies.

Thank you for this opportunity to provide testimony on this matter.

**TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY
ON
HOUSE BILL NO. 1985**

February 2, 2012

RELATING TO INNOCENCE REDRESS

House Bill No. 1985 provides compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned. Compensation and services include \$50,000 for each year of incarceration, \$25,000 for each year served on parole or probation, physical and mental health care for life, tuition and fees for claimants' children, and certain other legal fees and costs.

The Department of Budget and Finance has concerns regarding the fiscal impact this bill may have in light of the State's continued challenges in funding the multitude of competing statewide needs. Of particular concern is the impact to the Employer-Union Benefit Trust Fund (EUTF) if claimants were added to the EUTF's plans.

Although the Department has not determined the cost of adding claimants to the EUTF plans since the additional population that would be added to the program can only be guesstimated based on an assumption of future claimants, we at least know that there would be additional administrative cost for computer programming and additional cost for the premiums. Additionally, such an expansion in the population of the EUTF would most certainly increase the unfunded liability of the plan. This would directly affect Other Post-Employment Benefits (OPEB) liability as well as an increase in the cost of insurance in the event any of the claimants added to the EUTF plans were to have some extraordinary medical needs. Such increases will be passed onto the employers as well as to their existing and future employees.

TESTIMONY BY BARBARA CORIELL
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY
ON
HOUSE BILL NO. 1985

February 2, 2012

RELATING TO INNOCENCE REDRESS

Chairpersons Keith-Agaran and Members of the Committee:

My name is Barbara Coriell and I am the Administrator for the State of Hawaii's Employer's Union Trust Fund (EUTF) which is responsible for administering the employer-provided medical insurance coverage for over 52,000 currently active government employees and dependents as well as over 40,000 government retirees and their dependents. The EUTF Board has not had an opportunity to meet and review HB 1985 and therefore has not taken a position. My testimony today is not in representation of the EUTF Board. I offer my testimony as an insurance plan professional with over 35 years of experience in the group insurance field having managed a number of government-sponsored fund plans.

This testimony addresses only that part of the HB 1985 which awards a wrongfully convicted and imprisoned claimant "physical and mental health care for the life of the claimant through the Hawaii employer-union health benefits trust fund under chapter 87A of the Hawaii Revised Statutes, to be offset by any amount provided through the claimant's employers." This provision presents several concerns.

First, coverage under the EUTF per HRS-87A is provided for employees of the State and Counties. Since these individuals would not be employees, they would not fall under the definition of an eligible person. This would raise tax issues, as the value of employer provided health benefits are not taxable income to those who meet the definition of a covered person under the plan. Therefore, the value of the coverage would be taxable income to them.

Second, we would not be able to state that this plan would be secondary to an employer's plan . The EUTF coverage would be effective before any post incarceration employer plan and therefore would by plan rules be the primary plan and be responsible to pay full benefits for claims.

Third, our medical plans are insurance contracts in which we define the insured as an employee of the State or Counties. As such, the insurance carriers accept the risk of these covered employees' claims. HB 1985 would introduce new members to the group who would not be covered by our existing contracts. Additionally, the legislation does not address the question of how the premium cost of the coverage would be paid. The cost to provide coverage for a claimant would be 100% of the full monthly rate.

Finally, assuming the individual would have 100% State paid premium, they would be in a totally unique enrollment class which would require thousands of dollars of programming cost to add them to the EUTF Benefits Administration System. Even though there would be only a small number of individuals in this category, the programming cost relates to the creation of new fields, not how many individuals go into those fields.

We recognize that the cost of medical care and access to care are important economic issues and are a significant concern for someone covered by this legislation. However, there may be other ways to accomplish the intent of this bill. In 2013 the Hawaii Health Care Exchange should start offering plans to the uninsured for a 2014 effective date. An uninsured individual would be eligible for coverage under the plans offered by the Exchange and the premium cost could be funded by the State as one of the compensation items. This would meet the objectives of the Bill and provide the best selection of coverage for the individual working with a system that is already set up to handle individual coverage.

Thank you for the opportunity to provide testimony on HB 1985, I'd be happy to answer any questions you may have.



HB1985
RELATING TO INNOCENCE REDRESS
House Committee on Judiciary

February 2, 2012

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB1985, which is a bill in OHA's 2012 Legislative Package. The bill would create a compensation system for innocent persons who served time in prison after being wrongfully convicted of crimes.

While drafting OHA's 2010 report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," OHA also partially funded the Hawai'i Innocence Project. This project is part of a national effort to free innocent persons who have been wrongly convicted. Alvin Jardine, the first success story from the Hawai'i Innocence Project, is an OHA beneficiary. Unfortunately, after proving his wrongful conviction and having his freedom restored, Mr. Jardine was left to fight a second protracted battle to receive compensation for his wrongful imprisonment.

To prevent wrongfully convicted innocents like Mr. Jardine from having to suffer the secondary injustice of having to fight for compensation after being released, a majority of states now offer a compensation statute for those who are wrongfully convicted. Based on the National Innocence Project's model compensation law, HB1985 creates an efficient process that allows both the innocent and the state to avoid the long and costly process of litigation to provide those wrongfully convicted with the compensation they are morally due from society.

Simply put, this bill is about justice. The conviction and imprisonment of an innocent person represents a failure of our society. As such, the burden rests on all to help the innocent recover from their loss of freedom.

Therefore, OHA urges the committee to PASS HB1985. Mahalo for the opportunity to testify on this important measure.

Re: HB 2700, Relating to Campaign Spending. Committee on Judiciary Hearing: Thursday, February 02, 2012, 2:00 PM, Conference Room 325.

Dear Chair Keith-Agaran, Vice-Chair Rhoads, and Judiciary Committee members:

Thank you for the opportunity to submit testimony regarding HB 2700.

I strongly **support** this bill.

The amendments proposed in HB 2700 will help to ensure that the Big Island public funding pilot remains viable and relevant.

Public awareness of and concern about the influence of special interest money upon their democracy continues to grow. A functional public funding option is important to maintain public trust in our democratic form of government--now more than ever, under the shadow of the Supreme Court opinion in Citizens United v. FEC.

Please vote for this critical bill.

Thank you.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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COMMITTEE ON JUDICIARY

Rep. Gilbert Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Thursday, February 2, 2012

2:00 p.m.

Room 325

STRONG SUPPORT for HB 1985 - INNOCENCE REDRESS

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered, always being mindful that 6,000 Hawai'i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 1985 provides compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

How does someone get wrongfully convicted?

Well, nobody claims our criminal justice system is perfect. A 2005 study¹ by Samuel Gross and his colleagues counted 340 exonerations between 1989 and 2003 and notes that these exonerees "spent more than 3400 years in prison for crimes for which they should never have been convicted - an average of more than ten years each." There are lots of reasons for wrongful convictions, but the Innocence Project, the famed clinic at New York's Cardozo Law School that specializes in exonerations via DNA evidence, names seven major causes:

1. *Eyewitness identifications.*
2. *Unreliable scientific evidence.*
3. *False confessions.*
4. *Misconduct by forensic scientists.*
5. *Government misconduct.*
6. *Perjury by informants and snitches.*
7. *Bad lawyering.*

¹ EXONERATIONS IN THE UNITED STATES 1989 THROUGH 2003, SAMUEL R. GROSS, KRISTEN JACOBY, DANIEL J. MATHESON, NICHOLAS MONTGOMERY & SUJATA PATIL, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=753084

And, of course, the innocent don't all get exonerated. Common sense suggests that exculpatory evidence won't be uncovered to free every wrongly convicted prisoner. Professor Gross runs some numbers:

If we managed to identify and release 75% of innocent death-row inmates before they were put to death, then we also executed twenty-five innocent defendants from 1989 through 2003. If, somehow, we have caught 90% of false capital convictions . . . we only executed eight innocent defendants in that fifteen-year period.

So how do exonerees get compensated?

The sad news is most probably don't. According to the Innocence Project's Web site, **22 states currently have statutes under which innocent convicts are ensured some restitution: Alabama, California, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin, plus the District of Columbia.** In other words, less than half the states offer any form of guaranteed redress for the wrongly convicted. U.S. jurist Edwin Borchard was arguing for laws like this back in 1913 – he believed that principles of eminent domain required states to provide such compensation, and pointed out that most European countries already did so.

How can someone ever be compensated for a wrongful conviction?

Of course, no law or system can ever replace the years lost, the families destroyed, and the hopes and dreams of an individual. But just compensation and support services can help an individual start to rebuild a life.

Just as we hold people convicted of crimes accountable, we must hold the state and justice system to that same accountability. Providing redress for wrongful convictions will build confidence in our justice system and bringing the person who actually committed the crime to justice will aid the healing of the victim and the community harmed.

We urge passage of this important justice bill.

Mahalo for the opportunity to testify.



Committee: Committee on Judiciary
Hearing Date/Time: Thursday, February 2, 2012, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1985, Relating to Innocence Redress

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee on Judiciary:

The ACLU of Hawaii supports the creation of an optional, non-judicial system by which wrongfully imprisoned individuals may be compensated. Such a system can help to save resources by eliminating litigation costs. Our understanding is that twenty-seven other states, the District of Columbia, and the federal government currently have compensation statutes, and we support a similar system here in Hawaii.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii 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 Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawai'i
P.O. Box 3410
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Dedicated to safe, responsible, humane and effective drug policies since 1993

February 2, 2012

To: Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Executive Director

RE: HB 1985 Relating to Innocence Redress
Hearing: Thursday, February 02, 2012, 2:00 PM, Conference Room 325

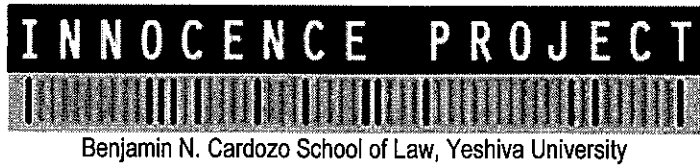
Position: **STRONG SUPPORT**

The Drug Policy Forum of Hawai'i writes in strong support of HB 1985 Relating to Innocence Redress. Currently, wrongly imprisoned people later found to be innocent need to sue the State for compensation for the harm of wrongful imprisonment. Suing the state is very expensive and can take a long time for a person who has no resources and is in immediate need.

This bill implements a baseline for compensation to those found innocent. Litigating the matter wastes time and resources of both the State and the innocent. This measure is based on a model statute from the Innocence Project that has been refined over the past few years. 27 other states, the District of Columbia, and the federal government currently have compensation statutes.

The innocent can sue for additional compensation. This bill just sets a baseline. If the innocent seeks further compensation, like suing the state, the amount will be reduced by the compensation provided in this legislation.

Please pass this measure. Thank you for the opportunity to provide testimony in support.



**TESTIMONY OF REBECCA BROWN, SENIOR POLICY ADVOCATE FOR STATE AFFAIRS,
INNOCENCE PROJECT,
BEFORE THE HAWAII COMMITTEE ON JUDICIARY**

RE: HB 1985

FEBRUARY 2, 2012

On behalf of the Innocence Project, thank you for allowing me to submit testimony before the Hawaii Committee on Judiciary.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 289 people who had been wrongly convicted of serious crimes. The Innocence Project regards each DNA exoneration as an opportunity to review where the system fell short and identify factually-supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. We also regard it as a time to consider the re-entry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the misery of prison. Not only have DNA exonerations led to a growing public awareness of the possibility of wrongful conviction, but media accounts accompanying these exonerations have brought into stark relief those issues facing individuals who are attempting to re-enter society following protracted incarceration.

This submission will describe the impacts of incarceration on the wrongfully convicted, describe their extraordinary needs upon release, and voice our support for HB 1985, which would provide a mechanism for compensation to Hawaii's wrongfully convicted.

Impacts of Incarceration on the Wrongfully Convicted: The Need for Monetary Compensation

According to a recent report written by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound: “Research shows that when people who are released from prison or jail return to the community, their job prospects are generally dim, their chances of finding their own place to live are bleak, and their health is typically poor.”¹

Psychological literature recognizing the emotional and psychological harm wrought by incarceration is also well established. Indeed, carceral trends over the past 35 years, characterized by incapacitation and containment as opposed to rehabilitation, have exacerbated the profound reentry issues facing individuals who are returning to society after long prison stays. The 1970’s marked the beginning of exponential prison population growth and a concomitant sea change in carceral policy. As the prison population began to skyrocket, there was an attendant reduction in available resources and staffing, increased prison disturbances, diminished living conditions and limited access to meaningful prison programs, leading psychologists to observe that the transition from prison life to freeworld society is today “more difficult and problematic.”²

Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing. Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or

¹ *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community.* Council of State Governments. Reentry Policy Council. New York: Council of State Governments. January 2005.

² Haney, Craig. *The Psychological Impact of Incarcerations: Implications for Post-Prison Adjustment.* Paper prepared for the Urban Institute National Policy Conference, From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities. 2002.

intimacy. As a result, the “emotional flatness” that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.³

Of course, all of these experiences are only compounded by one’s knowledge that he has been wrongfully convicted and incarcerated. A 2004 study that examined the psychological effects of wrongful conviction presented a series of clinical findings based on assessments of a sample of wrongfully convicted men. More than 75% of the sample group experienced enduring personality changes, defined as “personality change with characteristics that were not previously seen such as hostile or mistrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of threat, and estrangement.”⁴ Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder. As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and “strong and unresolved feelings of loss.”⁵

These feelings of loss are not limited to grief and mourning over loved ones -- often parents – who expired during the course of their incarceration; relationships with family members, including children, are often permanently fractured or destroyed. As well, feelings of “what might have been” extend to their professional lives. The average prison stay of individuals exonerated through DNA testing is 13 years. During the course of those years, many of the exonerated missed out on educational and workforce development opportunities. They return to their communities feeling out of step, often unable to meet even basic professional expectations.

³ Ibid.

⁴ Grounds, A. 2004, Psychological Consequences of Wrongful Conviction and Imprisonment. *Canadian Journal of Criminology and Criminal Justice*. 46(2): 165-183.

⁵ Ibid.



In addition, the exonerated typically face serious medical issues upon release. Research shows that the strain and trauma of prison life yields a higher incidence of medical problems for the incarcerated as compared to the general population. For instance, the health of fifty-year-old prisoner has been found, on average, to be similar to that of the average sixty-year-old in the freeworld.⁶ Of course, prison life also increases exposure to communicable and serious diseases, including HIV and Hepatitis B and C, many of which require longterm and comprehensive healthcare upon release. Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated. Prison rape is also prevalent, with some experts estimating that more than 40% of the prison population has been victimized.⁷ As such, the medical and mental health problems facings individuals upon release are enormous.

A New York Times expose that was recently published tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”⁸ The news story further noted a delay in the provision of monetary compensation and services, if these were to come at all: “Nearly 40 percent — got no money for their years in prison...More than half of those who did receive compensation waited two years or longer after exoneration for the first payment.”⁹

⁶ Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, 65 *Fed. Probation* 3, 5 (2001).

⁷ Christine A. Saum et al., *Sex in Prison: Exploring the Myths and Realities*, 75 *PRISON i.* 413, 414 (1995).

⁸ Roberts, Janet and Elizabeth Stanton. “A Long Road Back After Exoneration, and Justice is Slow to Make Amends.” *New York Times*, November 25, 2007.

⁹ *Ibid.*

Why Litigation Does Not Promise Monetary Compensation

Some speculate that the wrongly convicted who live in states that have not passed universal compensation legislation will be able to recover monetary compensation for their wrongful imprisonment under what are known as “1983 claims.” However, in order to even state such a claim, the wrongly convicted individual must demonstrate that his conviction was the result of official misconduct that directly led to a constitutional violation.

First, the wrongly convicted person must show that he was a victim of “intentional misconduct.” Next, in order to prevail under a 1983 claim, the wrongly convicted must also prove that the misconduct fit into a narrow category of established constitutional standards *and* that the standards existed at the time that the crime was committed. For instance, alleged misconduct on the part of police or forensic lab personnel must be shown to have been obviously unconstitutional at the time of the criminal investigation.

Examples of what may *not* constitute “intentional misconduct” under a 1983 claim include:

- ✓ When individuals provided false confessions
- ✓ When individuals agreed to plea agreements [Eighteen of the nation’s nearly 245 people who were later proven innocent through DNA testing agreed to a plea at the time of trial].
- ✓ When individuals were victimized by jailhouse informants, or other incentivized testimony
- ✓ When mistaken eyewitness identifications resulted from procedures or protocols that were not rendered unconstitutional at the time that the criminal investigation was undertaken

It should also be noted that even if someone successfully reaches this stage of the process, many of the official actors, including prosecutors, are often absolutely immune for their actions.



Simply put, 1983 claims do not guarantee compensation for three basic reasons:

1. The wrongly convicted plaintiff must not only prove that mistakes were made, but that there was deliberate and reckless conduct on the part of officials.
2. In most cases, qualified and absolute immunity doctrines shield official actors, such as police, crime lab personnel, and prosecutors from allegations of constitutional misconduct.
3. Even if there is a successful suit, litigation takes years and there is still no guarantee that the wrongly convicted plaintiff will recover damages even if he prevails in the years after filing. Often, small towns are not insured or do not have sufficient funds in their coffers to cover significant claims. As well, outside insurers that cover municipalities often refuse to cover the most egregious conduct carried out by official actors.

Therefore, the Innocence Project recommends that each state pass a statute that includes a fixed sum of recovery for each year spent in prison. President George W. Bush endorsed Congress's recommended amount of **up to \$50,000 per year, with up to an additional \$50,000 for each year spent on death row.** All fixed sums included in state compensation laws should, at minimum, meet the federal standard and include a provision that contemplates inflation and makes annual adjustments on that basis.

Conclusion

The victims of criminal justice system error deserve strong support from the government that harmed them - however inadvertently – to return them to where they could have been in life but for their wrongful conviction, and to compensate them for the horror they endured. Passage of HB 1985 will help ease the unimaginable transition for the wrongfully convicted from prison life to mainstream society.

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY OF PRESIDENT SOULEE STROUD

HOUSE COMMITTEE ON JUDICIARY

HB 1985 Re: to Innocence Redress

Thu; Feb 02, 2011; 2:00 p.; Room 325

Aloha Chairman Agaran, Vice Chair Rhoads and members of the House Judiciary Committee. I am Soulee Stroud, President of the Association of Hawaiian Civic Clubs, comprised of sixty clubs throughout Hawaii and eleven states on the continent. We were founded in 1918 by Prince Jonah Kuhio Kalaniana'ole and ever since our clubs have worked on behalf of the Native Hawaiian community. I am here to speak in support of this bill.

This bill, introduced by the Office of Hawaiian Affairs(OHA) addresses the issues of wrongful conviction and imprisonment and provides compensation to those who are later found to be innocent. Currently, the only avenue to compensation in Hawaii is to sue the State, but as has been found in twenty seven other states, statutes for compensation can alleviate what would otherwise be a lengthy and expensive process.

Considering the disparate numbers of Native Hawaiians in prison, and based partly on OHA's report on Native Hawaiians in the Criminal Justice System, the Association of Hawaiian Civic Clubs supports and urges the passage of this measure.

Thank you for the opportunity to testify.

Contact: jalna.keala2@hawaiiantel.net

COMMITTEE ON JUDICIARY

Honorable Representative Gilbert S.C. Keith-Agaran
Honorable Representative Karl Rhoads, Vice Chair

Thursday, February 2012
2:00 PM
Room 325

HB 1985 – RELATING TO INNOENCE REDRESS

<http://www.capitol.hawaii.gov/emailtestimony>

**STRONG SUPPORT FOR THIS MEASURE TO PROVIDE INNOCENT PEOPLE
WRONGFULLY CONVICTED AND IMPRISONED WITH SUPPORT AND
COMPENSATION**

I STRONGLY SUPPORT this measure to provide wrongly convicted and incarcerated people the right to compensation and support from the state.

The passage of this bill is absolutely necessary. It is needed not only to assist those who have suffered due to their wrongful state convictions and imprisonment by the state, but it is also needed to maintain the integrity of the state's justice system.

Our justice system seeks to hold individuals guilty of criminal behavior to be accountable for their actions, e.g., pay restitution, serve time in prison, etc. Likewise the state too must be held responsible for its wrongful criminal convictions and incarcerations.

If the state is not going to be accountable for these cases of wrongful conviction and imprisonment for any reason, how can it ethically and rationally, demand the same of individuals who violate the law?

Without a duty of the state to compensate for its mistakes, resulting from wrongful criminal convictions and incarceration, it is a hypocritical entity. This statute is required if the state's justice system is to be respected. A disrespected justice system creates an unruly and disrespectful citizenship, which is dangerous to democracy and our community.

My experience working with crime victims, imprisoned people, their families, prison staff; and as a deputy attorney general who represented the state in civil claims lawsuits and criminal fraud prosecutions; as well as a court appointed criminal defense attorney in family court, informs my support for this measure. Please see www.lorennwalker.com for more information on my research and work.

Please vote for this measure to ensure that our justice system in one due continued respect, which enhances the law abiding behavior of people and the safety of our community.



DAPHNE E. BARBEE

ATTORNEY AT LAW

**1188 BISHOP STREET, SUITE 1909, HONOLULU, HAWAII 96813
TELEPHONE (808) 533-0275**

TESIMONY IN SUPPORT OF HB 1985

COMMITTEE ON JUDICIARY

Rep. Gilbert Keith-Agaran, Chair

Rep. Karl Rhodes, Vice Chair

Thursday, February 2, 2012

2:00 pm. Room 325

Dear Chair Keith-Agaran and Vice Chair Rhoads and Members of the Committee:

I am an attorney in private practice here in Hawaii. I strongly support this Bill.

The Innocence Project has brought to light many of the injustices wrongfully convicted persons suffer.

Being locked up, having your life suddenly change to a cell behind bars for something you did not do is a living nightmare. Our society prides itself of providing justice and compensation to victims. Victims of wrongful incarceration should likewise receive compensation. Monetary Compensation for the wrongfully convicted is the least society can give as an apology for miscarriage of justice.

Many other States have similar compensation laws for the wrongfully incarceration. Please follow the trend and pass this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daphne Barbee-Wooten'. The signature is stylized and cursive.

Daphne Barbee-Wooten

Attorney at Law

HB 1985 RELATING TO INNOCENCE REDRESS

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VIRGINIA HENCH [sk8legal@prodigy.net]

Sent: Wednesday, February 01, 2012 4:52 PM

To: JUDtestimony

Cc: Karl Rhoads [rholdsk001@hawaii.rr.com]

HB 1985

Status

RELATING TO INNOCENCE REDRESS.

Provides compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

I strongly support this bill. Hawai`i is in the minority of states which fail to provide compensation for persons who have been wrongly convicted of crimes. There is ample evidence that this approach is far more effective and cost-efficient than litigation as a vehicle for assisting persons who have been wrongly convicted to re-enter society. If the state takes or destroys a person's property, even unintentionally, the state is expected to make restitution for the taking. Simple justice requires that if the state wrongfully takes a person's liberty, even unintentionally, the state should be expected to provide restitution for that taking as well.

Yours sincerely,

Virginia E. Hench,

Hawai`i Innocence Project

Testimony for HB1985 on 2/2/2012 2:00:00 PM

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mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 01, 2012 8:27 PM

To: JUDtestimony

Cc: shaglund@hotmail.com

Testimony for JUD 2/2/2012 2:00:00 PM HB1985

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Sue Haglund
Organization: Individual
E-mail: shaglund@hotmail.com
Submitted on: 2/1/2012

Comments: