



HCR120 / HR91

**REQUESTING THE ATTORNEY GENERAL TO CONVENE A TASK FORCE TO STUDY THE
NEED FOR STATE LEGISLATION ON INNOCENCE REDRESS TO PROVIDE COMPENSATION
AND SERVICES TO PERSON WHO CAN DEMONSTRATE THEY WERE WRONGFULLY
CONVICTED OF A CRIME AND IMPRISONED**

House Committee on Judiciary

April 2, 2012

2:15 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR120/HR91, which requests that the Attorney General to convene a task force to look into innocence redress.

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 wrongfully 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. The National Innocence Project has a list of various state laws and a model compensation law with which this task force can work. Hawai'i needs an efficient process that allows both the innocent and the state to avoid the long and costly process of litigation needed to provide those wrongfully convicted with the compensation they are due from society.

Simply put, this resolution 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 HCR120/HR91. Mahalo for the opportunity to testify on this important measure.



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

ON THE FOLLOWING MEASURE:

H.R. NO. 91, and H.C.R. 120, REQUESTING THE ATTORNEY GENERAL TO CONVENE A TASK FORCE TO STUDY THE NEED FOR STATE LEGISLATION ON INNOCENCE REDRESS TO PROVIDE COMPENSATION AND SERVICES TO PERSONS WHO CAN DEMONSTRATE THEY WERE WRONGFULLY CONVICTED OF A CRIME AND IMPRISONED.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, April 2, 2012

TIME: 2:15 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General, or
Mark Nomura, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

H.R. 91 and H.C.R. 120, which appear to be identical in content, request that the Attorney General convene a task force to study the need for state legislation on innocence redress to provide compensation and services to persons who were wrongfully imprisoned. The resolutions also request that the Attorney General appoint the following persons to the task force: (1) judges who adjudicate criminal cases within the State; (2) the prosecuting attorneys of each county of the State, or their designees; (3) the State Public Defender, or his designee; (4) a representative from the Criminal Justice and Corrections Section of the Hawaii State Bar Association; (5) experts on scientific testing of evidence in criminal cases; and (6) any other members that the chair of the task force deems appropriate.

The resolutions also request that the task force consider the provisions of H.B. No. 1985 (2012) and that the task force submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2013.

In its testimony opposing H.B. No. 1985, the Department of the Attorney General pointed out, among other concerns, that there was no data or evidence demonstrating a need for the legislation, that the scope of the bill was uncertain, and the wording of the bill, was vague.

If the task force determines a need for innocence redress legislation, it would be faced with a considerable undertaking that will involve the consideration of multiple complex issues and will require substantial time, effort, and resources. The logistics alone in locating and bringing together all the requested appointees, including those from the neighbor islands, will be challenging and time-consuming.

The undertaking of the task force will include, at a minimum, the following:

- Compiling data and evidence on the need for innocence redress legislation in Hawaii;
- Debating whether there is a need for such legislation based on the data and evidence compiled;
- If a need exists, determining and defining with particularity, the persons who will be entitled to redress;
- Determining what type of redress the legislation should provide (e.g., money damages, payment of education expenses, health plan coverage, or loss of earnings);
- Determining the mechanism for providing redress (e.g., a board or commission to hear claims, making claims against a reparations fund, civil action). (The National Innocence Project's model compensation law, upon which H.B. No. 1985 is based, has not been followed by any of the jurisdictions reviewed by the Department to date -- there are many different models to review and evaluate); and
- Finally, drafting legislation.

Moreover, the task force likely cannot meet the goals sought by these resolutions without substantial cost, particularly travel costs for members of the task force on the outer islands, and expert fees if the scientific expert(s) require payment for their time. Expert fees may be substantial if a suitable expert cannot be found in Hawaii.

Therefore, if this Committee is inclined to pass either or both resolutions, we respectfully request that the time for the task force to submit its report be extended to twenty days prior to the convening of the Regular Session of 2014 or later, and that sufficient funds be made available to allow the task force to meet its obligations.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Monday, April 2, 2012

2:15 p.m.

Room 325

STRONG SUPPORT HCR 120/HR 91 - TASK FORCE ON INNOCENCE REDRESS

Aloha 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 on behalf of the 6,000 Hawai'i individuals living behind bars, always mindful that almost 1,800 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HCR 120/HR91 requests the Attorney General to convene a task force to study the need for state legislation on innocence redress to provide compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

Community Alliance on Prisons is in strong support of this resolution. It is important for the state to be held accountable and take responsibility for mistakes, however inadvertent, that are made when a person is wrongfully convicted and imprisoned. Just as the state demands accountability from those convicted of crimes, so must the state take responsibility for its wrongdoing.

How can one be truly compensated for years, sometimes decades lost, families broken, and their hopes and dreams dashed by a wrongful conviction? Imagine if this happened to you. You have a life and a family - maybe like Mr. Jardine, the first man exonerated by the Hawai'i Innocence Project; you are experiencing the new joy of fatherhood.

And then, despite testimony of 11 witnesses placing you at another location, you are convicted of a crime and imprisoned for twenty years. Your claims of innocence are ignored and your 4 month old daughter loses her father.

To most of us, this is unthinkable...unimaginable...horrible beyond belief. But it happened and is still happening, as the Office of the Public Defender has testified, Hawai'i does have incarcerated people who are innocent of the crimes for which they have been convicted.

The National Innocence Project reports that of the 289 people who have been exonerated across the nation, 75% involved false eyewitness identification. What does this mean? It means that this could happen to any one of us.

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.

Back in 1913 U.S. jurist Edwin Borchard was arguing for laws like. He believed that the principles of eminent domain required states to provide such compensation, and pointed out that most European countries already did so.

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 poor¹.

A 2004 study² 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."*

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 horrors they have endured.

No law or system can ever replace the years lost, the families destroyed, and the hopes and dreams of individuals denied, however just compensation and support services *can* help innocent individuals start to rebuild their lives.

We urge the committee's support for the establishment of this task force.

Mahalo for this opportunity to testify.

¹ *Charting the Safe and Successful Return of Prisoners to the Community* - Reentry Policy Council. (January 2005)

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



Committee: Committee on Judiciary
Hearing Date/Time: Monday, April 2, 2012, 2:15 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of H.R. 91 / H.C.R. 120,
Relating to Innocence Redress

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

The ACLU of Hawaii supports a study of the creation of an optional, non-judicial system by which wrongfully imprisoned individuals may be compensated. 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. A wrongful compensation statute will go a long way towards helping individuals to put their lives back together and to compensate them and their families for their lost time. Such a system also can help to save resources by eliminating litigation costs.

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,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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