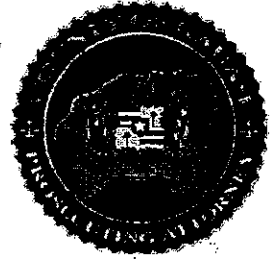


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LATE TESTIMONY

March 13, 2012

TO: CHAIR KEITH-AGARAN, VICE-CHAIR RHOADS, AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY
FR: SHAYLENE ISERI-CARVALHO, COUNTY OF KAUA'I PROSECUTING ATTORNEY
RE: S.B. 2900, SD1 A BILL FOR AN ACT RELATING TO POST CONVICTION PROCEEDINGS

Aloha,

The County of Kaua'i Office of the Prosecuting Attorney strongly supports SB 2900 SD1, which amends Chapter 660, Hawai'i Revised Statutes, by adding two new sections creating time limits for filing habeas corpus complaints and limiting successive complaints.

Judicial economy and the timely disposition of criminal cases are issues of paramount importance in our legal system. These issues are not only important to prosecutors and those who enforce the law, but they are especially important to victims of crime who seek closure after traumatic events have occurred in their lives. By limiting the timeframe in which complainants can bring habeas corpus disputes and limiting successive complaints we are protecting the finality and certainty of judicial resolutions. We are also protecting victims from having to relive portions of their lives that they would rather not remember.

Opponents to this bill may argue that the interests of judicial economy and finality can never supersede the rights of complainants to challenge their detention. This bill, however, works to protect complainants' rights. First, the bill sets the time limit at five years. This is ample time for a complainant to prepare an adequate case and protect their rights. Additionally, this bill has an equivalent in the federal system, but the federal rule sets the time limit at one year. Thus, the five year limit gives greater protection to the complainant than does the federal rule. Second, though the five year limit begins running from the date the judgment became final, the option to file a complaint reopens for a new five-year period where any of the following events occur: the removal of some impediment to filing, the creation of a new constitutional rule which is to be applied retroactively giving validity to the complainant's claim, and the discovery of evidence giving rise to the complainant's claim. Finally, though successive claims by a complainant are barred under this rule, they are however allowed where the complainant can show that his successive claim is based on a rule that was previously unavailable or based on

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LATE TESTIMONY

facts which were previously undiscoverable. These provisions within SB 2900 SD1 work to ensure that a complainant has adequate time and opportunity to exercise their constitutional rights to challenge their detention, while still serving the purposes of judicial finality and economy.

Additionally, this bill cures many problems present in the current habeas corpus process. As it stands now, because there is no time limit on habeas petitions and because successive complaints are not barred, oftentimes these complaints are filed many years after the judgment has become final. This presents a very real records issue for prosecutors. Though most prosecutorial offices have adequate record-keeping procedures and databanks, oftentimes if the habeas complaint is based on a judgment which occurred many years in the past, the prosecutorial office will not have the proper records on file to prepare an adequate opposition to the complainant's petition.

Moreover, , has an equivalent in federal courts. The federal rule, however, places a more stringent one year limit on habeas petitions. SB 2900 SD1 provides greater protection to complainants as it places a five-year limit on such petitions.

In conclusion, this bill, which has passed out of the Senate Judiciary & Labor Committee with a vote of Ayes, 25 and Nos, 0, protects the constitutional rights of those who are imprisoned while still fostering judicial economy and finality. It encourages parties to adequately investigate their complaints and raise issues early before evidence and records have gone stale. The bill also makes provision for complainants who have been unable to file their petition within the allotted time frame due to extrinsic reasons. Therefore, we ask that you pass this bill as written, and continue to support prosecutorial and judicial efforts to bring about timely and effective case resolutions.

Mahalo,



SHAYLENE ISLERI-CARVALHO
PROSECUTING ATTORNEY, COUNTY OF KAUAI

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

March 13, 2012

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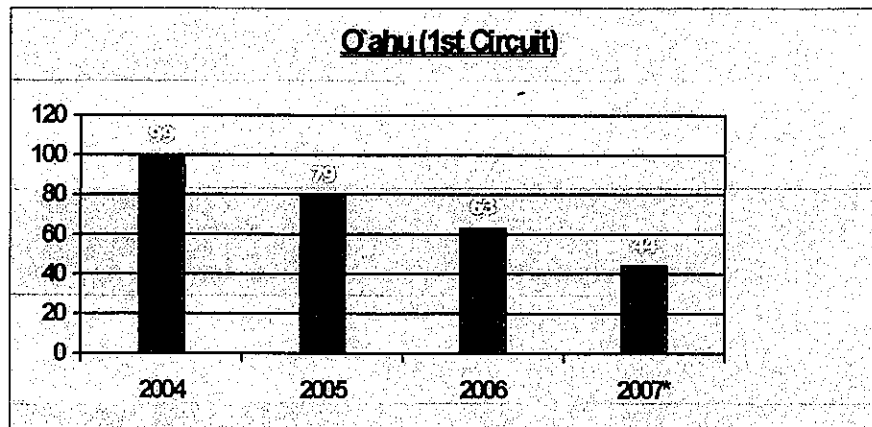
S.B. NO. 2900 SD1: RELATING TO POST CONVICTION PROCEEDINGS

Chair Keith-Agaran and Members of the Committee:

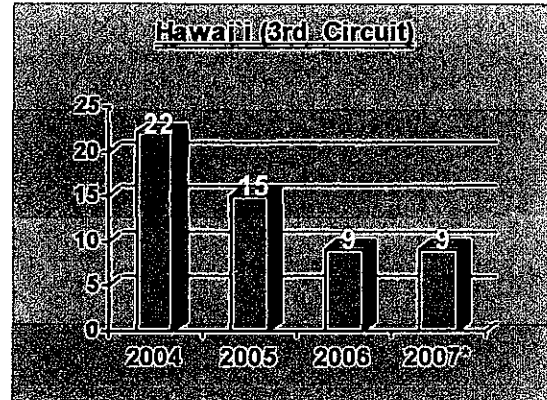
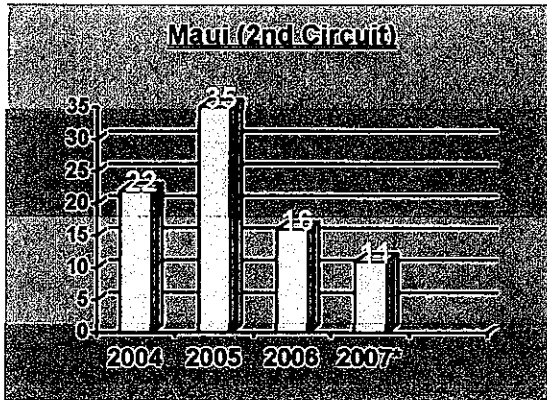
We oppose S.B. No. 2900 SD1 which seeks to impose a five-year limitation on the time in which a person who has been convicted of a crime is able to file a petition for post-conviction relief. The bill also severely limits the ability of a convicted person to file second or successive petitions. We believe that such a limitation on the ability to seek relief in the courts for a wrongful conviction is patently unfair and potentially penalizes a petitioner for circumstances which might be beyond his/her control.

The purpose of this bill appears to be to limit the number of post-conviction petitions being filed by prisoners. However, statistics compiled from actual Judiciary files illustrate that such petitions had actually been on the decrease in recent years. [See tables below]

Number of Post-Conviction Petitions Filed



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Thus, when you examine the actual caseload statistics, there is no demonstrated need for this legislation since petitions are already on the decline. Indeed, the imposition of a strict time limitation could very well have the opposite effect and increase petition filings since defendants will become concerned about the time lapse even if they are unsure about the grounds for their petitions.

The experience in the federal system portend the predicted increases in post-conviction proceedings if this measure should pass. The language in S.B. No. 2900 SD1 is very similar to limitations imposed on federal habeas corpus petitions through the Antiterrorism and Effective Death Penalty Act of 1996. Federal Bureau of Justice Statistics show that, following the passage of that act, between 2004 and 2005, state prisoner petitions filed in federal court increased nearly 5% and federal prisoner petitions filed in federal court increased by more than 15%.

The proposed changes will also increase the workload of the circuit courts and the complexity of post-conviction proceedings. Currently, the circuit court routinely summarily denies a great number of post-conviction petitions as containing no colorable claim. However, the proposed changes contain a number of exceptions to the five-year limitation period. Because of the drastic nature of the five-year limitation and the accompanying ban against successive petitions, the circuit court will inevitably be forced to conduct full hearings and the parties will have to litigate the applicability of the exceptions to the time bar and successive petition bar. These proceedings will invoke the necessity for more court time and potentially lead to more cases on appeal.

In summary, this bill ignores the fact that it is fairly commonplace these days for persons who were convicted by a court of law to be exonerated far more than five years following their convictions. Many have spent decades in state and federal prisons – even on death row. This measure could unfairly deny an innocent person the means to challenge his/her conviction by imposing an arbitrary time limitation on the filing of a habeas corpus petition and an arbitrary prohibition against the filing of a second or successive petition. The bill seeks to do this in the face of statistical evidence demonstrating that the current system is not being abused or is in need of an overhaul.

Thank you for the opportunity to comment on this bill.