SB2900

Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor

February 22, 2012

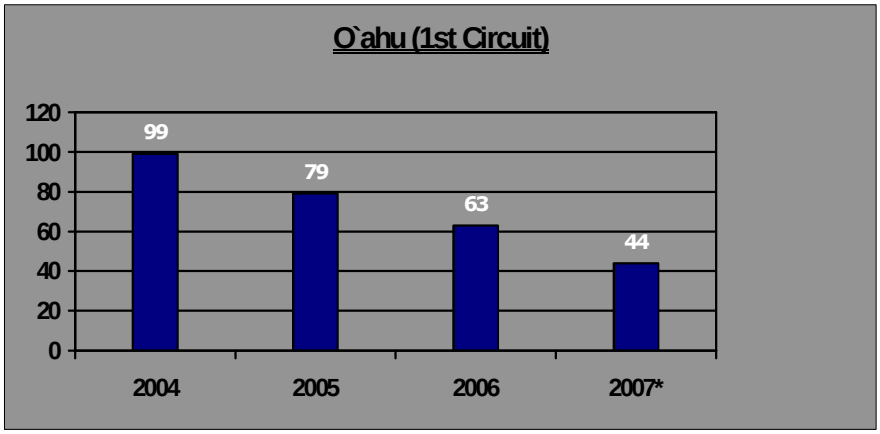
S.B. NO. 2900: RELATING TO POST CONVICTION PROCEEDINGS

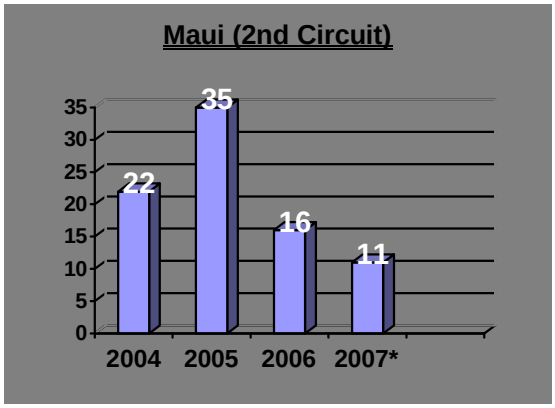
Chair Hee and Members of the Committee:

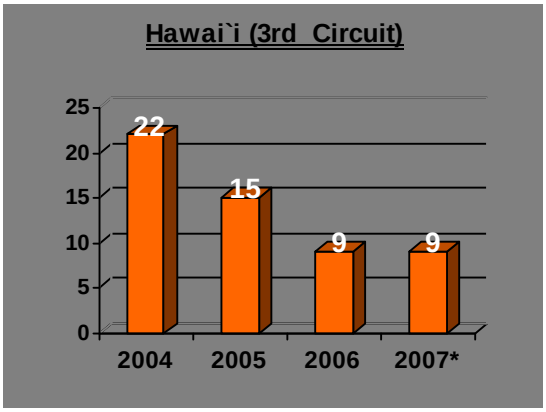
We oppose S.B. No. 2900 which seeks to impose a five-year limitation on the time in which a person who has been convicted of a crime is able to file a petition for post-conviction relief. The bill also severely limits the ability of a convicted person to file second or successive petitions. We believe 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







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 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.

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COMMITTEE ON JUDICIARYAND LABOR
Sen. Clayton Hee, Chair
Sen. Maile Shimabukuro, Vice Chair
Wednesday, February 22, 2012
9:45 a.m.
Room 016

STRONG OPPOSITION TO SB 2900 – Rule 40 - Post Conviction Proceedings

Aloha Chair Hee, Vice Chair Shimabukuro 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.

SB 2900 establishes time limits for filing habeas corpus complaints and limits successive complaints.

Community Alliance on Prisons is in strong opposition to this measure that seeks to diminish the quality of justice in Hawai`i.

Surely the committee is aware of the rising number of exonerations that the Innocence Project has proven through fall identifications and DNA testing. Just last year, the Hawai`i Innocence Project's work freed an innocent man who spent 22 years in prison for a crime he did not comment. We know of a gentleman who spent 26 years in prison for a crime he did not commit, only to be released after a DNA test proved that he was wrongfully convicted. His conviction happened before DNA testing was available. As the science is constantly emerging, denying an individual the right to present evidence that was not available at the time of conviction is not only fair, it is just.

In the House Judiciary Committee on February 3, 2012, the Office of the Public Defender submitted testimony on HB 2829 with statistics compiled from actual Judiciary files that illustrate that such petitions have actually been on the decrease in recent years.

We are confident that the committee does not intend for the wrongfully convicted to be incarcerated or to diminish the quality of justice in Hawai`i in the face of statistical evidence demonstrating that the current system is not being abused or is in need of an overhaul.

Therefore Community Alliance on Prisons respectfully asks the committee to hold this measure in the interest of justice.