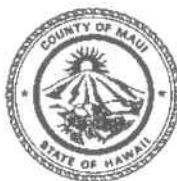


ALAN M. ARAKAWA
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LATE TESTIMONY

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TESTIMONY

ON

SB 2900- RELATING TO POST CONVICTION PROCEEDINGS

February 22, 2012

The Honorable Clayton Hee
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committees on Judiciary and Labor:

SB 2900, Relating to Post Conviction Proceedings, proposes to establish a 5-year time limitation on filing habeas corpus petitions, with exceptions, and prohibit successive petitions, with exceptions.

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. A defendant's right to file a habeas corpus case in Hawaii is provided through the State Constitution, Hawaii Revised Statutes Chapter 660 and Hawaii Rules of Penal Procedure (HRPP) Rule 40. We do not dispute this right; but we believe that limitations on time and successive petitions should be imposed in most cases.

We frequently receive HRPP Rule 40 petitions for cases that were completed over seven years prior to the filing of the petition. State law provides that records may be disposed, usually after seven years. This creates a problem, where a defendant complains about his or her case, and the records, both ours and those held by the courts, are no longer in existence. The problem

of the availability of witnesses is also an important issue. Finally, this situation also affects the peace of mind of crime victims.

Currently, federal law provides a one-year limitation for habeas corpus cases in both state and federal criminal cases, with exceptions, and provides a limitation on successive petitions. SB 2900 has basically the same provisions as federal law, with the exception that the time limitation would be five years instead of one year. The Permanent Committee on the Rules of Penal Procedure, consisting of representatives of the Judiciary, the Attorney General, the state Public Defender, the county prosecutors, and private defense counsel, approved an amendment to HRPP Rule 40 to impose a five-year limitation on such filings. However, the Hawaii Supreme Court rejected the rule amendment, holding that such a provision must be provided by the Legislature.

The limitation on successive petitions are necessary, because many defendants who are serving long sentences file numerous petitions. These petitions almost always involve issues that were previously ruled upon, waived, or are frivolous. The amount of time and resources used to address these petitions is an unnecessary burden for the county prosecutors.

We believe that SB 2900 will help ensure that review of convictions and custody issues can be done while files and witnesses are available. It also promotes the finality of judgments and sentences, while allowing defendants a reasonable time to challenge judgments and custody. We ask that the committee PASS SB 2900.

Thank you very much for the opportunity to provide testimony on this bill.

CHARLENE Y. IBOSHI
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



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TESTIMONY IN SUPPORT OF SENATE BILL 2900
A BILL FOR AN ACT RELATING TO POST CONVICTION PROCEEDINGS

Hearing before Committee on Judiciary and Labor

Wednesday February 22, 2012, 9:45 AM

State Capitol, Conference Room 016

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

LATE TESTIMONY

TO Senators Clayton Hee, Maile S.L. Shimabukuro and Members of the Committee:

Thank you for the opportunity to comment in support of SB 2900.

This bill is the culmination of nearly a decade's worth of work on the issue of reasonable time limits for post-conviction relief under Rule 40, Hawai'i Rules of Penal Procedures. The Judiciary's Permanent Committee on the Hawai'i Rules of Penal Procedures has reviewed the issue of post-conviction filings' time limits comprehensively and with much debate. The Judiciary's Permanent Committee is comprised of trial judges from all the circuits, the State Public Defender, prosecutors and private defense counsels. Both the Permanent Committee on the Hawai'i Rules of Penal Procedures and the Committee on Circuit Court Criminal Rules have approved the establishment of reasonable time limits.

The current bill, SB2900, fosters the timely disposition of issues previously known to defendants and allows for some reasonable finality, especially for victims, in the criminal justice system. Defendants' rights are protected: SB2900 specifically allows for post-conviction complaints without restriction in the event new factual evidence is discovered that could not have been known or discovered previously, or in the event of a previously unavailable new rule of constitutional law under the Constitutions of the United States or the State of Hawai'i.

In 2007 the Hawai'i Supreme Court determined that it is within the constitutional authority of this Legislature (under Article I, Section 15) to enact the proposed amendments to the habeas corpus law, HRS Chapter 660. The Supreme Court's reasoning is found in its November 27, 2007 Order, attached hereto. Thus, only the Legislature can act on this proposal, which will be of great value in the administration of justice.

During the 2008 Legislature, this issue was considered under proposed SB2967. A Justification Sheet was submitted which summarizes the key arguments. A copy of that Justification Sheet is attached hereto.

Thank you for considering our testimony and for your responsiveness in support judicial economy and finality of judgments while protecting the rights of defendants.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
HAWAI'I RULES OF PENAL PROCEDURE

CLERK OF THE SUPREME COURT
STATE OF HAWAII

2007 NOV - 7 AM 10:33

FILED

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

The Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules proposed amendments to Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP) that would add the following two sections:

(j) Time limits. A five (5) year period of limitation shall apply to a petition filed for post-conviction relief under this rule. The limitation period shall run from the last of:

(1) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(2) the date on which the impediment to filing an application created by a governmental action in violation of the Constitution of the State of Hawai'i or the Constitution of the United States that prevented the filing of the petition for post-conviction relief was removed;

(3) the date on which a newly created constitutional rule under the Constitution of the State of Hawai'i or the Constitution of the United States was initially recognized and made retroactively applicable to cases on collateral review by the Supreme Court of the State of Hawai'i or the Supreme Court of the United States; or

(4) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence; and the newly discovered evidence, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by a preponderance of the evidence that no reasonable fact finder would have found the petitioner guilty of the offense.

(k) Successive petitions. A claim presented in a second or successive post-conviction petition under this rule that was not presented in a prior petition shall be dismissed unless:

(1) the petitioner shows that the claim relies on a previously unavailable new rule of constitutional law under the Constitution of the State of Hawai'i or the Constitution of the United States, made retroactive to cases on collateral review by the Supreme Court of the State of Hawai'i 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.

After study and consideration of the comments we received, including consideration of the Legislature's authority with regard to the privilege of the writ of habeas corpus, we believe adoption of the proposal would be inappropriate. See HRPP Rule 40(a) ("The post-conviction proceeding established by this rule shall encompass all common law and statutory procedures for the same purpose, including habeas corpus and coram nobis . . ."); Article VI, Section 7 of the Hawai'i Constitution ("The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law."); and Article I, Section 15 of the Hawai'i Constitution ("The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe."). Therefore,

IT IS HEREBY ORDERED that the proposed amendments to
HRPP Rule 40 are rejected.

DATED: Honolulu, Hawai'i, November 7, 2007.

Kamea E. Sullivan

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO HABEAS CORPUS.

PURPOSE: To establish a statute of limitations for the filing of habeas corpus actions challenging convictions, judgments, sentences, and other matters related to custody.

MEANS: Add a new section 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. 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: None.

OTHER AFFECTED AGENCIES: Judiciary and the various county prosecuting attorney(s) offices.

EFFECTIVE DATE: Upon approval.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 22, 2012 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General is in strong support of this bill.

This bill would limit the time period during which inmates can seek post-conviction relief in the state courts. 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 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 in state court. 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. 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, 28 U.S.C.A. § 2244 provides for a one-year statute of limitations on the filing of a federal writ of habeas corpus by persons in

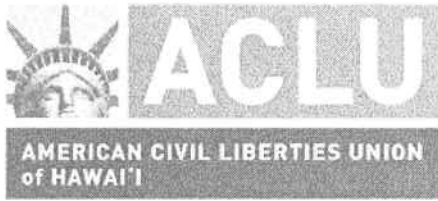
custody pursuant to judgments of state courts, with numerous tolling periods for various reasons.

The wording of this bill is similar to that federal statute.

The Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules has 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 declined to adopt the proposal, citing article I, section 15, of the Hawaii Constitution, which limits the power to suspend the privilege of the writ of habeas corpus to the Legislature.

This bill should have a positive impact on the public as it promotes finality to convictions and sentences in a more reasonable timeframe. It would also prevent the filing of numerous frivolous and repetitive petitions that cause unnecessary expenditure of resources by the Judiciary and state respondents. Further, in the event that reconsideration or retrials are found to be necessary, evidence is more likely to be intact closer to the time of the offense involved.

We respectfully request that the Committee pass this bill.



DATE TESTIMONY

Committee: Committee on Judiciary and Labor
Hearing Date/Time: Wednesday, February 22, 2012, 9:45 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2900, Relating to Post Conviction Procedures

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The ACLU of Hawaii opposes S.B. 2900 because it places in jeopardy the right to a fair trial for individuals whose liberty is at stake.

Habeas Corpus is a procedural tool that ensures the state adheres to basic constitutional standards like the right to competent counsel, a jury that is fairly composed, and that the state does not engage in conduct intended to conceal evidence or witnesses from the accused. Unfortunately, errors of constitutional magnitude affecting the fundamental fairness of trials do occur. By cutting short the time limit for the filing of habeas petitions after the imposition of a sentence, the state would be denying sentenced inmates a reasonable and realistic opportunity to seek habeas relief and ultimately deprive defendants of their constitutional rights.

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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