

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, January 21, 2013

9:00 a.m.

Room 309

STRONG SUPPORT FOR HB 273 - WRONGFUL IMPRISONMENT

Aloha Chair Aquino, Vice Chair Ing and Members of the Committee!

My name is Kat Brady and I am the Coordinator of 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 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i 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.

HB 273 provides 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 measure. In the interest of justice, it is important for the state to be held accountable and to 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 and imprisoned for a crime, 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 released for a wrongful conviction 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 more than 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 and imprisoned.

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, 100 years ago, U.S. jurist Edwin Borchard was arguing for laws like this. 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 imprisonment, 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 this bill.

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 Public Safety
Hearing Date/Time: Thursday, January, 31 2013, 9:00 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 273, Relating to Wrongful Imprisonment

Dear Chair Aquino and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B 273, which seeks to provide compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

H.B. 273 will provide much needed assistance to wrongfully convicted individuals who have served time in prison. Wrongfully convicted [persons] often have distinct problems re-entering society, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. Currently, the state provides no services to wrongfully convicted people on release and the current procedures make it difficult for wrongfully convicted people to get compensated and to clear their records.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

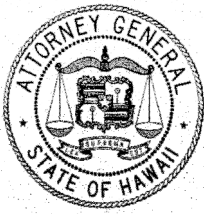
The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

American Civil Liberties Union of Hawaii
P.O. Box 3410
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Chair Aquino and PBS Committee Members
January 31, 2013
Page 2 of 2

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 273, RELATING TO WRONGFUL IMPRISONMENT.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, January 31, 2013 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309

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

Chair Aquino and Members of the Committee:

The Department of the Attorney General (“the Department”) appreciates the intent of H. B. No. 273 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.

The National Innocence Project’s model compensation law, upon which H.B. No. 273 is based, has not been followed by any of the states whose compensation laws have been reviewed by the Department to date. Moreover, the state compensation laws reviewed by the Department differed from each other in significant ways. H.B. No. 273, like the National Innocence Project’s “model” law, is problematic for reasons outlined below.

The phrase “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, and later seek a pardon based on good behavior since their conviction. 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 whose 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 the witness’ 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 a yet to be specified amount, 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 another yet to be specified amount, for each year served on parole or probation. (Page 6, lines 5-8.) 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.

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 11:01 PM
To: pbstestimony
Cc: chinooker@gmail.com
Subject: *Submitted testimony for HB273 on Jan 31, 2013 09:00AM*

HB273

Submitted on: 1/28/2013

Testimony for PBS on Jan 31, 2013 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 29, 2013

COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

VIA: email

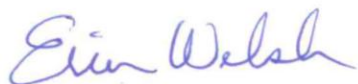
STRONG SUPPORT for HB 273 Wrongful Imprisonment

Good Morning Chair Aquino, Vice-Chair Ing and Committee Members:

I am in strong support of HB273. How can anyone not be in support of this bill. You can never give people back the time you took away from their lives, but we must be accountable in some way when we wrongfully imprison someone.

I believe passing this bill is the right thing to do.

Thank you,



Erin Welsh