



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 145, RELATING TO WRONGFUL IMPRISONMENT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 02, 2015 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
MARK M. NOMURA, Deputy Attorney General or
CARON M. INAGAKI, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (“the Department”) appreciates the intent of S.B. No. 145 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 S.B. No. 145 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. S.B. No. 145, 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 unjustified or inappropriate. For example, on page 5 of the bill, lines 13-16, 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 12-15.) 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 10-13.)

We respectfully request that this bill be held.



STATE OF HAWAII
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TESTIMONY BY SANDRA YAHIRO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL NO. 145
RELATING TO WRONGFUL IMPRISONMENT

February 2, 2015, 9:30 a.m.

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not had an opportunity to take a position on this bill. However, I think it is important for the Committee to know that this bill will have a significant financial impact on the State. While the bill is not clear what specific plans the person may enroll in, such as medical, prescription drug, dental, vision and life insurance, it is clear that the coverage would extend through the life of the individual. If an individual were to receive free EUTF self-coverage of medical, prescription drug, dental and vision, starting at age 45 and ending at age 75, for example, the estimated cost to the State for one person, using a trend rate of 5%, would be \$487,700. This figure does not include any increase to the EUTF's Other Post-Employment Benefits (OPEB) liability, which would also be negatively affected. Additionally, we believe Chapter 87A, HRS, currently does not allow for non-State and county employees/retirees to be enrolled in EUTF's plans.

Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Monday, February 2, 2015

9:30 a.m.

Room 016

STRONG SUPPORT for SB 145 - WRONGFUL CONVICTION

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro 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 almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who 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 145 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. The state imprisons people who cause harm to others. Conversely, when it is the state that causes the harm, it is the responsibility of the state owes restitution to the person they harmed. It is strange that crime victims are compensated in all 50 states, yet those who were wrongfully imprisoned are not afforded the same respect and accommodation. This is patently unfair and unjust.

Reintegration is a huge hurdle for anyone reentering the community after incarceration. It is even harder for those who were released after wrongful imprisonment.

THE REGISTRY, EXONERATIONS AND FALSE CONVICTIONS¹

The National Registry of Exonerations is the most comprehensive collection of exonerations in the United States ever assembled.

¹ THE REGISTRY, EXONERATIONS AND FALSE CONVICTIONS

<http://www.law.umich.edu/special/exoneration/Pages/learnmore.aspx>

The great majority of false convictions never result in exoneration. Exonerations are most common among defendants wrongly convicted of the most severe violent crimes – especially murder and rape – and for those sentenced to death, life in prison, or many years in custody. Even then, whether or not a falsely convicted defendant is exonerated often depends on sheer luck. The Registry was launched in May 2012 with a Report covering 873 exonerations from 1989 through February 2012. Since then, the Registry has added exonerations at a rate exceeding 200 a year.

About a third of the newly added exonerations are current cases which are posted within days or weeks of their occurrence. About two thirds are previously unknown exonerations that occurred months, years or decades before.

The previously unknown cases illustrate a central conclusion of our research: The exonerations we know about are just a fraction of those that have taken place.

As we continue to identify old exonerations that have remained unknown to us, we expect the range and diversity of the exonerations we list to continue to grow. For example, 83% of exonerations in our initial Report involved a rape or a murder, compared to only 62% of exonerations in the same period that were identified later by more painstaking research.

The National Registry of Exonerations was started by Northwestern University and has been tracking exonerations from 1989 onward. According to their January 27, 2015 report²,

*“2014 was a record breaking year for exonerations in the United States, by a large margin. The National Registry of Exonerations has recorded 125 exonerations in 2014. The previous highest total was 91 in 2012 and again in 2013, followed by 87 in 20013.² **All told, the Registry now lists 1,535 exonerations in the United States, from 1989 through January 20, 2015.**”*

HOW CAN THE STATE REPAIR THE HARM THEY CAUSED BY WRONGFUL IMPRISONMENT?

How can the state repair the harm they caused after ruining his life? In the case of Alvin Jardine, the man on Maui who served more than 20 years in prison for a crime he did not commit, the state shamefully stalled and delayed the processing of the only piece of evidence left (they had thrown out everything else), which proved that Mr. Jardine was not guilty.

Mr. Jardine went to prison when he was 20 years old and his baby daughter was only 4 months old. He was finally released **WITH NO SUPPORT OR COMPENSATION** as a middle-aged man who lost the prime earning years of his life for a misidentification by 2 eight-year old

² EXONERATIONS IN 2014, The National Registry of Exonerations, January 27, 2015

http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2014_report.pdf

² Last year we also reported a record, 87 known exonerations in 2013, at that time the highest number in a year. See: https://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2013_Report.pdf. A year later, 2012 and 2013 are tied. We learned of 4 additional exonerations in 2013, bringing the total to 91. But we also learned of 18 additional exonerations in 2012, which, together with the 83 we knew about a year ago, also totals 91. These results suggest that we have become more successful at identifying current exonerations near the time they occur.

children who identified Mr. Jardine from a high school yearbook picture. Eleven other witnesses identified Mr. Jardine at another location, yet he was convicted anyway. This could happen to any of us.

What is the state's responsibility to the person wrongfully convicted?

In the case of Mr. Jardine, who spent many years incarcerated abroad, his loss of relationship with family and friends are incalculable. I am sure that being released was a huge relief, however, how does he get his life re-started with no money and no resources? Mr. Jardine may not be in prison, but he is still, in essence, incarcerated.

The federal government, the District of Columbia and thirty (30) states offer compensation in some form for wrongful imprisonment. **HAWAII OFFERS NOTHING AND DOESN'T EVEN APOLOGIZE.**

An Innocence Project report entitled, "Making Up For Lost Time"³

State compensation statutes present a better alternative. Only state government can provide reliable, fair and immediate assistance to the exonerated. In fact, it is their responsibility to do so. Although the wrongfully convicted are especially deserving of assistance, they have historically been overlooked perhaps because they are predominately poor, minority and underrepresented in state and local government.

The recommendations are listed on page 20 of this report:

The Innocence Project is intimately familiar with the challenges exonerated people encounter after release, and has developed a series of recommendations for states to compensate the wrongfully convicted:

- *Provide a minimum of \$50,000 per year of wrongful imprisonment, untaxed, and \$100,000, untaxed, per year on death row, which is in accordance with the federal standard.*
- *Cover limited and appropriate attorney's fees associated with filing for compensation.*

Currently, only five states meet this standard: Texas, Alabama, Florida, Mississippi and North Carolina. The amount is intended to cover costs associated with lost liberty, lost wages, criminal defense, medical expenses; and losses, such as physical injuries and illness or psychological illness, suffered as a result of the time in prison. The amount should not be subject to taxation.

³ MAKING UP FOR LOST TIME: WHAT THE WRONGFULLY CONVICTED ENDURE AND HOW TO PROVIDE FAIR COMPENSATION
Benjamin N. Cardozo School Of Law, Yeshiva University, An Innocence Project Report
http://www.innocenceproject.org/docs/Innocence_Project_Compensation_Report.pdf

- *Provide immediate services including housing, transportation, education, workforce development, physical and mental health care through the state employee's health care system and other transitional services.*

The county Department of Social Services or other appropriate entity should be tasked with creating a "release plan" based on the exoneree's individual needs and work with state agencies like the Department of Health to ensure that these services will be provided free of charge. Services that aren't immediately covered by the state should be reimbursed to the exoneree as part of the compensation package. A state needn't look far to meet these immediate needs, many of its own existing programs and services can fill this role. For example, transportation vouchers for public transportation could be issued as part of the release package. Emergency slots in public housing could be made available. If the exoneree is interested in pursuing higher education, the state university system should offer free tuition. Computer classes offered to state employees should be made available to exonerees as well.

- *Issue an official acknowledgment of the wrongful conviction.*

Conceding that no system is perfect, the state government's public recognition of the harm inflicted upon the wrongfully convicted person helps to foster the healing process, while assuring the public that the state – regardless of fault – is willing to own up to its wrongs.

Pages 27-31 of this report list the statutes, support services and restrictions of the states who offer some form of compensation.

In summary, it is crucial to the integrity of our justice system and to the state that Hawai`i to improve the quality of justice in Hawai`i by providing support and compensation to those individuals who have been wrongfully convicted and imprisoned.

This is our moral obligation.

Mahalo for this opportunity to testify.

“When you are in prison for as long as I was, people either think you must be guilty or at least damaged.

It's been lonely. Very lonely.”

*Exoneree Michael Williams who was released with \$10 and a bus ticket
Wall Street Journal, October 30, 2007*

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB145 on Feb 2, 2015 09:30AM*
Date: Friday, January 30, 2015 12:27:49 AM

SB145

Submitted on: 1/30/2015

Testimony for JDL on Feb 2, 2015 09:30AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Kalawai'a Goo	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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