

## *The Judiciary, State of Hawai‘i*

### **Testimony to the Thirty-Second State Legislature, 2023 Session**

#### **House Committee on Judiciary & Hawaiian Affairs**

Representative David A. Tarnas, Chair  
Representative Gregg Takayama, Vice-Chair

February 24, 2023, 2:00 p.m.  
Conference Room 325 & Via Videoconference

by  
Thomas J. Berger  
Staff Attorney, Hawai‘i Supreme Court

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**Bill No. and Title:** House Bill No. 1325, Relating to Wrongful Convictions

**Purpose:** Sets forth requirements under which a convicted person may seek review for a criminal conviction.

#### **Judiciary’s Position:**

The Judiciary respectfully requests the measure be deferred to allow the Hawai‘i Supreme Court’s penal rules committee to evaluate the measure and determine whether the concerns motivating House Bill No. 1325 can be addressed through rule amendment.<sup>1</sup>

Under the Hawai‘i Constitution the Hawai‘i Supreme Court has the power to promulgate rules in criminal cases, which shall have the force of law.<sup>2</sup> Currently a convicted prisoner may petition the court for habeas corpus relief under the Hawai‘i Rules of Penal Procedure (“HRPP”)

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<sup>1</sup> The Permanent Committee on Rules of Penal Procedure and Circuit Court Criminal Rules includes judges from each circuit, representatives from the Department of the Attorney General, the Office of the Public Defender, prosecuting attorneys of each county, and private attorneys from the criminal defense bar.

<sup>2</sup> “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.” Haw. Const. art. VI, § 7.

Rule 40. By way of example, under HRPP Rule 40 a prisoner may petition to set aside a conviction based on “newly discovered evidence” or “any ground which is a basis for collateral attack on the judgment”.<sup>3</sup>

The Judiciary recognizes the intent of the proposed legislation to provide further guidance to courts that are reviewing habeas corpus petitions. The Judiciary is prepared to present House Bill No. 1325 to the Hawai‘i Supreme Court’s penal rules committee for review to consider whether to incorporate the criteria in the bill into HRPP Rule 40 so that the courts would have more specific guidance in evaluating habeas corpus petitions.

In conclusion, the Judiciary respectfully requests the measure be deferred.

Thank you for the opportunity to testify on this measure.

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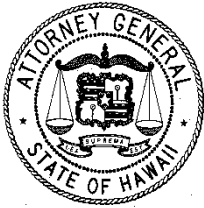
<sup>3</sup> HRPP Rule 40(a) states in relevant part:

(a) Proceedings and grounds. 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; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:

(1) From judgment. At any time but not prior to final judgment, any person may seek relief under the procedure set forth in this rule from the judgment of conviction, on the following grounds:

- (i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai‘i;
- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
- (iii) that the sentence is illegal;
- (iv) that there is newly discovered evidence; or (v) any ground which is a basis for collateral attack on the judgment.

See HRPP Rule 40(a) (emphasis added).



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1325, RELATING TO WRONGFUL CONVICTIONS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Friday, February 24, 2023 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Albert Cook, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

This bill adds a new part to chapter 641, Hawaii Revised Statutes (HRS), that would codify a post-conviction review process for any person who is imprisoned or restrained to petition for a review of the cause of the conviction.

This bill may not be necessary, because the Hawaii Rules of Penal Procedure (HRPP) Rule 40 already provides a procedure to seek relief from judgment for all post-conviction situations, including habeas corpus and coram nobis, which would cover convictions where the person is either in or out of custody.

HRPP Rule 40(a) states in relevant part,

**(a) Proceedings and grounds.** 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; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:

(1) FROM JUDGMENT. At any time but not prior to final judgment, any person may seek relief under the procedure set forth in this rule from the judgment of conviction, on the following grounds:

(i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i;

- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
  - (iii) that the sentence is illegal;
  - (iv) *that there is newly discovered evidence; or*
  - (v) *any ground which is a basis for collateral attack on the judgment.*
- (Emphasis added)

Pursuant to HRPP Rule 40, after exhausting pre-trial motions, being found guilty by an independent fact finder (a judge or jury), moving for a new trial, and exhausting the appellate process, a convicted defendant can petition the court for relief based on several reasons, including that there is ***newly discovered evidence***, or there is ***any ground which is a basis for collateral attack***.

In addition to those avenues for challenging a conviction that are already available in HRPP Rule 40, the bill adds additional bases for challenge. Section 641-(b)(1), at page 1, lines 13-16, would allow a petition for post-conviction relief based on “false evidence that is substantially material or probative on the issue of guilt or punishment” introduced against the person at a hearing or trial relating to incarceration. “False evidence” is not defined, and it is unclear who would decide if the alleged “false evidence” is, indeed false. If the intent is for “false evidence” to be evidence that is shown to be false by new evidence that has been discovered post-conviction, then that is already covered by HRPP Rule 40(a)(1)(iv). We have great concerns if the intent is to provide another avenue to challenge a conviction based on a defendant disagreeing with the conclusion of the trial fact finder. The appellate courts have traditionally paid great deference to the credibility determinations made by the triers of fact at the trial court level, whether that is a jury or a judge. The appellate courts have recognized that these fact finders had the opportunity to not only hear the live testimony and examine the evidence in the case but were also able to observe the body language of the witnesses, hear changes in tones of voice and cadence, mark changes in facial expressions, and look for other indications of truthfulness or deception. Allowing individuals to petition for review of their convictions based on the presentation of “false evidence” where an unbiased trier of fact (jury or judge) has already made determinations regarding the credibility of testimony and evidence would place the

reviewing judge in an untenable situation. While the reviewing judge may be able to examine the transcripts of the testimony, and look over the evidence that has been preserved, the reviewing judge will never be able to see and hear what the trier of fact did when the witnesses testified live and will be poorly positioned to overturn the credibility finding of the original trier of fact.

Section 641- (b)(2), at page 2, lines 1-7, would allow a petition for post-conviction relief if the opinion of “an expert” has been “repudiated” or “undermined by further scientific knowledge” and it is subsequently decided that the opinion was a “material factor directly related to a plea of guilty by the person or a conviction of the person”. It is unclear if the term “an expert” refers to an expert who testified at the defendant’s trial, or a hearing that led to a change of plea, or if “an expert” is any expert, even if not related in any way to the defendant’s case. The terms “undermined” or “repudiated” regarding an expert witness are also unclear. Generally, during trial, expert witnesses from both sides testify as to a fact or issue and often the experts for the prosecution and defense disagree. That is why a fact finder (either a judge or a jury) is given the opportunity to weigh the credibility of expert witness testimony in conjunction with all other witnesses and evidence presented. Additionally, a determination of when expert testimony is “a material factor directly related to a plea of guilty by the person or a conviction of the person” could be an issue to be decided based on HRPP Rule 40(a)(1)(iv).

Section 641- (b)(3), at page 2, lines 8-13, allows for a petition upon presentation of new evidence if “it is likely to have changed the outcome of the trial[.]” HRPP Rule 40(a)(1)(iv) already allows a hearing for presentation of newly discovered evidence without forcing a new judge to determine, without directly hearing from the original witnesses and evidence, that the new evidence would “likely to have changed the outcome of the trial”.

Section 641- (b)(4), at page 2, line 14, through page 3, line 14, permits overturning a conviction because “a significant dispute has emerged . . . regarding expert medical, scientific, or forensic testimony”. This standard could allow convictions to be reversed even though the scientific debate over the evidence is still ongoing. The

state of medicine and science is constantly evolving, and “significant dispute” is often occurring. The emergence of a “significant dispute” does not mean that the evidence presented at trial was false or invalid.

As HRPP Rule 40 already sufficiently addresses post-conviction relief, this bill is unnecessary and would allow for multiple post-conviction petitions and hearings in virtually every case. Therefore, the Department requests this bill be held.

Thank you for the opportunity to provide our comments.

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**THE HONORABLE DAVID A. TARNAS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**Thirty-Second State Legislature**  
**Regular Session of 2023**  
**State of Hawai‘i**

February 24, 2023

**RE: H.B. 1325; RELATING TO WRONGFUL CONVICTIONS.**

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong opposition** to H.B. 1325.

While H.B. 1325 is clearly well-intentioned, and the Department shares the Committee's concern in ensuring that justice—true justice—is done, this bill appears to be based on some misunderstanding or lack of information about the well-established system for post-conviction relief that already exists in Hawaii. By creating a parallel system for something that is already available under existing law, H.B. 1325 would not only invite decades of unnecessary litigation to clarify its meaning, but more alarmingly, would undermine and confuse the substantial body of caselaw and rule amendments that have evolved around the existing mechanism since 1977.

Pursuant to the Hawaii Rules of Penal Procedure ("HRPP"), Rule 40 ("Rule 40"), subsection (a)(1), states—and this is over and above all available appellate procedures—

**"At any time**...any person may seek relief...from the judgment of conviction, on the following grounds:

- (i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai‘i;
- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
- (iii) that the sentence is illegal;
- (iv) **that there is newly discovered evidence**; or
- (v) **any ground which is a basis for collateral attack on the judgment.**

**There is no limit to the number of times a Rule 40 petition may be filed, and no time limit (a.k.a. "statute of limitations") on when a Rule 40 petition may be filed.** In fact, prior attempts

to create time limitations for this mechanism have been summarily declined by the HRPP Rules Committee.

Over the years, Rule 40 has been specifically crafted by the Hawaii Supreme Court’s multi-agency HRPP Rules Committee, to ensure that our rights are protected, and include a safeguard mechanism to account for the exceedingly rare instance when completely new issues arise—above and beyond even our appellate procedures—to make such a difference in the way a case is viewed, that it could be sufficient to set aside a conviction and (most often) allow a retrial. Aside from the broad scope of issues that are eligible for a Rule 40 petition, defendants may amend<sup>1</sup> and/or appeal<sup>2</sup> their petitions, and are entitled to a public defender if warranted, so long as the defendant’s claim is not “patently frivolous and without trace of support.”<sup>3</sup>

Thus, Hawaii’s existing court rules already ensure—and are constantly evolving to ensure—that everyone who comes before the court is afforded the protections of both the state and federal constitution, including safeguards for prosecutorial misconduct, ineffective counsel, and any trial errors that could potentially deprive defendants of their right to a fair trial. While the Department does not argue with the fact that science and technology will continue to evolve over time, that does not change the fact that HRPP Rule 40 (and relevant caselaw) continues to evolve right alongside it. To create a mechanism such as that proposed by H.B. 1325 would not only be duplicative and unnecessary, it would also confuse the post-conviction relief system that has developed over the past 46 years, and question the significance of our entire trials process, with all of its voluminous checks and balances, reviews, and due process safeguards.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly opposes** the passage of H.B. 1325. Thank you for the opportunity to testify on this matter.

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<sup>1</sup> *Id.*, at Rule 40(e).

<sup>2</sup> *Id.*, at Rule 40(h).

<sup>3</sup> *Id.* See Rule 40(i), which reads:

(i) **Indigents.** If the petition alleges that the petitioner is unable to pay the costs of the proceedings or to afford counsel, the court shall refer the petition to the public defender for representation as in other penal cases; provided that no such referral need be made if the petitioner’s claim is patently frivolous and without trace of support either in the record or from other evidence submitted by the petitioner.



**Rebecca V. Like**  
Prosecuting Attorney



**Keola Siu**  
First Deputy  
Prosecuting Attorney

**OFFICE OF THE PROSECUTING ATTORNEY**

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February 23, 2023

**RE: H.B. 1325, RELATING TO WRONGFUL CONVICTIONS**

Chair Tarnas, Vice-Chair Takayama, and Members of the House Committee on Judiciary and Hawaiian Affairs, the Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in **OPPOSITION** to H.B. 1325.

While the Office of the Prosecuting Attorney for the County of Kaua'i opposes generally House Bill No. 1325, we write also to suggest reform via amendment to Rule 40, Hawai'i Rules of Penal Procedure [Post-conviction proceeding]; and request that, as soon as possible, the State of Hawai'i end its current practice of housing convicted persons on the United States mainland. This practice of housing Hawaii inmates on the mainland also hampers meaningful reentry, breaks up family bonds, and unnecessarily delays retrial due to transport logistics.

Rule 40, HRPP, has been in existence for decades (since 1983). It is the primary mechanism by which convicted persons petition our state courts for various types of post-conviction relief (based on newly discovered evidence, perceived procedural violations by the Hawai'i Paroling Authority, etc.). This Rule 40 procedural remedy is available, in addition to a defendant's ability to request a new trial (this motion is made within 10 days after the guilty verdict.) See Rule 33, HRPP.

Given the well-developed appellate decisions (a person has a right to an appeal from the denial of a Rule 40 petition) arising out of the filing of Rule 40 petitions, the Rule 40 petition remains an effective mechanism for convicted persons to petition the court for relief. There is no time limit to the filing of a Rule 40 petition. Also, where there are "extraordinary circumstances," a court must review the claims raised in the petition, even when those claims could have been made previously, such as before or during trial, and were not made. See Rule 40(a)(3), HRPP.

We oppose this bill because the specific provisions of this bill are already generally encompassed within the provisions of Rule 40, HRPP. Nevertheless, if this committee wishes to pursue post-conviction reform, we suggest amending Rule 40(i), HRPP, to provide that every person convicted of a felony offense is entitled to file one Rule 40 petition, with the assistance of counsel. In its current form, Rule 40(i)<sup>1</sup> requires a convicted person to petition the court, identifying his or her claims, and then the court decides whether he or she has raised a “colorable claim,” such that appointment of counsel is warranted. It would be a substantial reform if every person convicted of a felony is guaranteed the assistance of counsel to file one Rule 40 petition.

Related to the ability to access counsel is the State of Hawaii’s current practice of housing convicted felons on the U.S. mainland. Obviously, it is more cumbersome to access and confer with counsel when a person is incarcerated on the mainland. Therefore, we request that as soon as possible, the State of Hawaii end its current practice of housing convicted persons on the U.S. mainland.

For the above reasons, the Office of the Prosecuting Attorney for the County of Kauaʻi respectfully submits the above testimony opposing the passage of H.B. 1325. Thank you for the opportunity to testify on this matter.

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<sup>1</sup> Rule 40(i) [Indigents], HRPP, provides:

If the petition alleges that the petitioner is unable to pay the costs of the proceedings or to afford counsel, the court shall refer the petition to the public defender for representation as in other penal cases; provided that no such referral need be made if the petitioner’s claim is patently frivolous and without trace of support either in the record or from other evidence submitted by the petitioner.



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H.B. No. 1325  
Relating to Wrongful Convictions  
House Committee on Judiciary & Hawaiian Affairs  
Public Hearing – Friday, February 24, 2023  
2:00 PM, State Capital, Conference Room 325  
by  
Senator David A. Tarnas, Chair  
Senator Gregg Takayama, Vice Chair

February 23, 2023

H.B. No. 1325 seeks to statutorily protect individuals who are seeking post-conviction relief due to a wrongful conviction. Hawaii Innocence Project submits this testimony in **strong support** of this bill for the reasons set forth below.

Hawaii Innocence Project is a non-profit legal clinic with the goals of exonerating the those who are factually innocent but who have been wrongfully convicted, reforming the criminal justice system which failed the innocent, and ultimately seeking justice for the victim by identifying the real perpetrator of the crime. Hawaii Innocence Project strongly supports the intent of this bill to establish a law which would give those seeking post-conviction review of their case because of a wrongful conviction, similar what is afforded individuals for state habeas corpus relief under the current court rule H.R.P.P. Rule 40.<sup>1</sup> This bill also permits a wrongfully convicted individual to seek relief from the courts when there is new evidence found post-conviction which would likely have had changed the outcome of the original trial had the new evidence existed at the time of the conviction, similar to new evidence standard established in *State v. McNulty*.<sup>2</sup> We strongly support this bill as it goes beyond H.R.P.P. Rule 40 and *State v. McNulty* by providing further clarity for the courts in reviewing a wrongful conviction that was based on misapplication or dispute as to the expert medical, scientific, or forensic testimony that was used at trial. We fully support the intent of this bill as it would comply with the current scientific and social science

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<sup>1</sup> See H.R.P.P. Rule 40 [https://www.courts.state.hi.us/docs/court\\_rules/rules/hrpp.htm#Rule%2040](https://www.courts.state.hi.us/docs/court_rules/rules/hrpp.htm#Rule%2040)

<sup>2</sup> “To be entitled to a new trial based on newly discovered evidence, the defendant must prove: (1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial.” *State v. Ruis*, No. CAAP-12-0001115, 2014 WL 1621780, at \*1 (Haw. Ct. App. April 22, 2014) (SDO) (citing *State v. McNulty*, 60 Haw. 259, 588 P.2d 438 (1978)).

research on wrongful convictions, nationwide successful reform policies, and the practical experience of the many attorneys and experts who work to overturn wrongful convictions.

Wrongful convictions occur in every jurisdiction and Hawai‘i is not immune. Hawai‘i Innocence Project client Albert Ian Schweitzer was exonerated on January 24, 2023 after serving over 24 years for murder and rape he did not commit.<sup>3</sup> One of the causes of Mr. Schweitzer’s wrongful conviction was due to bitemark analysis, which is now discredited and invalidated forensic science. Mr. Schweitzer’s case is not unique in the fact that misapplication or discredited forensic science is one of the leading cause of wrongful convictions. Of the 3,387 exonerations recognized to date in the United States, misapplication or invalidated forensic science has contributed to 772 wrongful convictions and also accounts for 44% of the wrongful convictions overturned by DNA testing.<sup>4</sup>

Due in large part because of the prevalence of wrongful convictions based on invalidated or misapplied forensic science, in 2009 the National Academy of Sciences of the US Department of Justice released a report on the validity of forensic science admitted by the courts.<sup>5</sup> In this report, the NAS that forensic techniques that deal with comparing patterns or features have not been scientifically validated which results in experts who testify to this type of evidence cause misleading or erroneous evidence to be admitted into court. Additionally, in 2016 The President’s Council of Advisors on Science and Technology (“PCAST”) which is the sole body of advisors from outside the federal government charged with making science, technology, and innovation policy recommendations to the President, released its report on the validity of forensic science used in the courts.<sup>6</sup> Due to these reports and other extensive research on the validity of forensic science, much of what was previously accepted as valid forensic science has now been either fully discredited or only accepted with strict limitations including: microscopic hair and fiber, tire tread, bitemark, comparative bullet lead, and other toolmark analysis; arson; and shaken baby syndrome. Recognizing that invalidated or misapplied forensic science causes wrongful convictions, 7 states have also already adopted statutes that provide post-conviction relief when it is later determined that the forensic science used at the time of trial has been discredited or misapplied.<sup>7</sup> The safeguards provided in this bill, especially as it pertains to changes to scientific evidence post-conviction would provide critical protections designed to exonerate the wrongfully convicted and prevent wrongful convictions from occurring in the first place. As such, we request that this bill should be passed, and we provide additional comments and considerations for the Committee as outlined below.

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<sup>3</sup> See <https://www.hawaiiinnocenceproject.org/albert-ian-schweitzer>

<sup>4</sup> See National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>

<sup>5</sup> See *Strengthening Forensic Science in the United States: A Path Forward*, Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council (2009), <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf>

<sup>6</sup> See *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods*, by the President’s Council of Advisors on Science and Technology (PCAST), 2016, [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast\\_forensic\\_science\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf)

<sup>7</sup> California, Connecticut, Michigan, Nevada, Texas, West Virginia, and Wyoming have adopted laws allowing post-conviction relief when forensic science changes or is invalidated. See <https://www.law.umich.edu/special/exoneration/Pages/Forensics.aspx>

Hawai‘i Innocence Project requests that the Committee consider our commentary on H.B. No. 1325 as follows:

1. H.B. No. 1325 § (b)1: while the bill does not define what would constitute “false evidence”, this section should remain as if any evidence is later determined to be false but was admitted at trial should afford someone the opportunity to challenge their conviction.
2. H.B. No. 1325 § (b)2: we support this language because someone who has been convicted based on expert testimony that was either repudiated or undermined by further scientific knowledge after trial. As noted above, scientific research has found that some forensic science has been completely discredited or its validity challenged. For example, bitemark analysis has been completely discredited and forensic odontologists are not permitted to attribute a bitemark to an individual and in many cases cannot accurately determine if an injury is a bitemark. This section would allow for someone convicted on misapplied forensic science to seek post-conviction relief by either having the expert recant their testimony or by a showing of new scientific knowledge that questions or invalidates the forensic science admitted at trial. Additionally, this section is important as it also provides an avenue of relief not just for someone convicted by a jury but someone who may have plead guilty to a crime they did not commit because of faulty or misapplied forensic science.<sup>8</sup>
3. H.B. No. 1325 § (b)3: this section should remain as it codifies the standard set by the Hawai‘i Supreme Court in *State v. McNulty*.
4. H.B. No. 1325 § (b)4: this section should remain as drafted as it provides an important safeguard in ensuring that someone who was convicted of expert medical, scientific, or forensic testimony which is now in dispute to petition for post-conviction relief. Furthermore, the subsections should remain as it provides important guidance for the courts on what it can consider when looking at whether the underlying expert medical, scientific, or forensic testimony has been invalidated or misapplied. Since the judges are the gatekeepers of whether medical, scientific, or forensic testimony is admitted into evidence, this also helps to provided much needed guidance to judges on the validity of this evidence which may help to prevent wrongful convictions in the future.
5. H.B. No. 1325 § (c): this language should remain as this provides further clarity to the courts about how much weight should be given to new evidence of changes in the application or validity of expert medical, scientific, or forensic testimony.
6. H.B. No. 1325 § (d): this language should remain as it gives the Supreme Court the opportunity to amend H.R.P.P. Rule 40 or any other court rule relating to post-convictions, appeals, or habeas corpus as needed in order to be consistent with this

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<sup>8</sup> 95% of felony convictions in the United States are the result of a guilty plea and 18% of known exonerees plead guilty to a crime they did not commit. See <https://guiltypleaproblem.org>

bill. Additionally, it also provides for the right to counsel for an indigent person to be appointed from the public defender's office for someone seeking post-conviction relief. The majority of people who would be seeking relief under this bill will likely be incarcerated and indigent. This bill provides an important expansion to the current H.R.P.P. Rule 40, which currently gives the courts discretion on whether or not to appoint an attorney to an indigent petitioner.

7. H.B. No. 1325 § (e): this section should remain as H.R.P.P. Rule 40 provides additional grounds someone can petition for post-conviction relief beyond just a conviction being wrongful and as such this relief should not be limited.

Hawai'i Innocence Project believes that this bill will ensure that all criminal convictions in Hawai'i are reliable, that the factually innocent are not wrongfully convicted, and helps to promote justice for all victims by ensuring that the true perpetrator is the person convicted. Thank you for your time and the opportunity to provide our testimony in strong support of H.B. No. 1325.

With warm aloha and gratitude,

*Kenneth Lawson*

Kenneth Lawson, Co-Director, Hawai'i Innocence Project

Jennifer Brown, Associate Director, Hawai'i Innocence Project

**HB-1325**

Submitted on: 2/24/2023 3:37:36 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support