



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 151, RELATING TO REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, January 30, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lee Ying Kwok, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to make improvements to the State's wrongful imprisonment compensation law. The bill amends chapter 661B, Hawaii Revised Statutes (HRS), by:

- (1) Creating a legal duty on the part of the State to provide written notice to any person whose judgment of conviction was reversed or vacated with respect to the person's ability to file a claim under chapter 661B by the two new sections added to chapter 661B by section 2 of this bill (page 3, lines 1-14); and
- (2) Creating an advance compensation scheme whereupon the State shall pay compensation to a petitioner who files a petition under chapter 661B, supporting the conclusion that the petitioner did not commit the crime for which the person was convicted, and no new charges based on the same act have been filed. It requires the State to make payment of \$5,000 within seven days of service of the petition, as well as an additional \$5,000 on the first day of every month following the filing of that petition, until the State has paid in the aggregate an amount equal to payment for one year of imprisonment as specified in section 661B-3(c), HRS, by the new subsection

(b) added to section 661B-2, HRS, by section 3 of this bill (page 4, line 5, through page 5, line 2).

The proposed amendment to chapter 661B (page 3, lines 1-14) is problematic because there is no existing state agency that is assigned to protect and represent persons whose criminal conviction(s) are vacated. This duty is ordinarily handled by attorneys who would represent such persons. The proposed amendment would essentially create a legal duty on the part of the State, without clearly identifying which state agency or body, if any, should be charged with this legal duty.

The proposed amendment to section 661B-2 (page 4, line 5, through page 5, line 2), clearly conflicts with the provisions of section 662-11, HRS, which provides that "claims arbitrated, compromised, or settled by the attorney general for more than \$25,000 shall be paid only after funds are appropriated by legislature for the payment of those claims." A proposed award of \$5,000 a month for a successive twelve months would be in direct conflict with section 662-11.

That same proposed amendment also conflicts with section 662-13, HRS, which provides that "no award shall be made against the State except upon such legal evidence as would establish liability against an individual or corporation." A petition is not legal evidence; it is an allegation. A proposed award of \$5,000 a month for a successive twelve months without any requirement of legal evidence or other legal review of the sufficiency or truth of the petition would also be in direct conflict with section 662-11.

That same proposed amendment also conflicts with section 5 of article 7 of the Hawai'i Constitution, which provides that "no public money shall be expended except pursuant to appropriations made by law." Currently, claims made under chapter 661B are subject to legislative appropriations under section 661-11(b), HRS. Further, the proposed amendment essentially requires the State to pay a petitioner even before any determination of actual innocence is made by the court. The proposed amendment provides that "[a]ny advance compensation paid to the petitioner shall be deducted from any compensation to which the petitioner is entitled under this chapter," but it is silent about what would happen if the court ultimately finds that the petitioner has not proved

the petitioner's actual innocence, as the petitioners are required to do by a preponderance of the evidence under section 661B-3, HRS. Should a petitioner not be found to be actually innocent, there is no proposed mechanism whereupon the State can recover the preemptively distributed moneys, and the State would have to expend even more resources trying to recoup that money.

We respectfully oppose the bill due to the serious concerns we have about the proposed amendments conflicting with existing law, as well as the lack of any mechanism to recover distributed moneys in the event the petitioner is ultimately not found to be actually innocent, and ask that the Committee hold the bill. Thank you for the opportunity to voice our concerns.

JOSH GREEN, M.D.
GOVERNOR



MARK PATTERSON
CHAIR

CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

COMMISSIONERS
HON. R. MARK BROWNING (ret.)

HON. RONALD IBARRA (ret.)

MARTHA TORNEY

HON. MICHAEL A. TOWN (ret.)

STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
E HUIKALA A MA'EMA'E NŌ
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable David A. Tarnas, Chair
The Honorable Mahina Poepoe, Vice Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 151, Relating to Redress for Wrongful Conviction and Imprisonment
Hearing: Thursday, January 30, 2025; 2:00 p.m.
State Capitol, Room 325

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC) **supports** House Bill 151, Relating to Redress for Wrongful Conviction and Imprisonment, which requires the State to provide written notice to certain persons regarding the ability to file a claim for redress under applicable wrongful conviction law, requires the liberal construction of that law, provides for advance compensation for petitioners under certain circumstances, and requires reports to Legislature from the Department of the Attorney General.

Individuals who have been exonerated face numerous challenges once they are released. Unlike parolees who receive services to help them reintegrate into society, there are few programs for innocent incarcerated people to aid in their adjustment upon release. Requiring individuals to be made aware of their ability to file a claim for redress by receiving written notice ensures accountability for the State and ensures that impacted individuals know their rights when rebuilding their lives after incarceration.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

PUBLIC DEFENDER

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HONOLULU OFFICE
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STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

January 29, 2025

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HB151: RELATING TO REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT

Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee on Judiciary and Hawaiian Affairs:

The Office of the Public Defender (OPD) **supports HB151**. This bill establishes a section in Chapter 661B which requires that the State provide written notice to the defendant of their eligibility to file a claim for wrongful conviction and imprisonment where their conviction has been reversed or vacated or they have been pardoned.

Hawai'i Revised Statutes (HRS) § 661B-4 establishes time limitations for when a claim may be filed for wrongful conviction and imprisonment.

Every claim arising under this chapter shall forever be barred unless the action is commenced by filing a petition with the circuit court within two years after the conviction that is the subject of the petition is either reversed or vacated, or the petitioner is pardoned for that conviction[.]

Subsection 661B-4(2) further states that "this limitation of actions shall not be tolled for any reason."

Given the strict timeline for filing a claim for compensation under Chapter 661B, the provisions of this bill which require the State to provide written notice to persons eligible to file such a claim is critical. Many persons who are eligible to file claims may not be aware of their eligibility or the time limitations on such actions. The notice should set forth the deadline for filing such a claim (two years from the issuance of the order reversing or vacating the conviction or the pardon) and include a copy of the order reversing or vacating the conviction or the pardon to ensure that the defendant is aware of the specific date by which he must file the claim and that he has access to these documents. The notice should

also include the statutory sections in Chapter 661B which the defendant must adhere to when filing their claim.

Thank you for the opportunity to comment on this measure.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative David Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Thursday, January 30, 2025

Room 325 & VIDEOCONFERENCE

2:00 PM

STRONG SUPPORT FOR HB 151 - WRONGFUL CONVICTION

Aloha Chair Tarnas, Vice Chair Poepoe 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 in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 3,717 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on any given day. We are always mindful that 928 - 29% - of Hawai'i's imprisoned male population are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to strongly support HB 151 that requires the State to provide written notice to certain persons regarding the ability to file a claim for redress under applicable wrongful conviction law. It also requires the liberal construction of that law and provides for advance compensation for petitioners under certain circumstances as well as requiring reports to Legislature from the Department of the Attorney General.

¹ DCR Weekly Population Report, January 20, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-01-20.pdf>

Community Alliance on Prisons looked up how many wrongfully committed individuals actually were actually compensated and we were shocked to see that in the last 35 years, only 3 people have been exonerated in Hawai`i as of 2019. We have not been able to find out how many people who were exonerated were actually compensated in Hawai`i. A report entitled, “**Exonerations By State (Report): Statistics on Wrongful Convictions in the United States**”² has this graph:

| 5 States with FEWEST exonerations <i>Since 1989</i> | | | | |
|---|---|---|--|---|
|  |  |  |  |  |
| New Hampshire | Vermont | Delaware | Hawaii | Maine |
| Exonerations : 1 | Exonerations : 2 | Exonerations : 3 | Exonerations : 3 | Exonerations : 3 |

² “Exonerations By State (Report): Statistics on Wrongful Convictions in the United States”

<https://www.nealdavislaw.com/criminal-defense-guides/exonerations-by-state-2019/>

| Wrongful convictions by state & type of offense | | | | | | | | |
|---|---------------|----------------|-------------|-----|-------|---------|-------|-------|
| <i>Exonerations since 1989</i> | | | | | | | | |
| | Type of crime | | | | | | | |
| State | Murder | Sexual assault | Child abuse | sex | Drugs | Robbery | Other | Total |
| Hawaii | | 1 | | | | | 2 | 3 |

This data confirms that Hawai'i does little to exonerate individuals and the following data³ confirms that even if an individual is exonerated, there is little effort to help that person reintegrate with their community. Here is a map of states with some form of compensation and those with no compensation.

³ Id. See Footnote 2

STATES WITH SOME FORM OF COMPENSATION

STATES WITH NO COMPENSATION

WA, MT, MN, WI, MI, NY, VT, ME, NH, MA, RI, CT, NJ, DE, MD, DC, VA, WV, OH, IN, IL, IA, MO, KS, NE, CO, UT, NV, CA, HI, TX, OK, AR, MS, AL, GA, FL, NC, TN, KY, WV, OR, ID, WY, ND, SD, MN, WI, MI, NY, VT, ME, NH, MA, RI, CT, NJ, DE, MD, DC, VA, WV, OH, IN, IL, IA, MO, KS, NE, CO, UT, NV, CA, HI, TX, OK, AR, MS, AL, GA, SC, and AK.

SOURCE: THE INNOCENCE PROJECT/ABC NEWS

abc NEWS

1. Provide at least \$50,000 per year of wrongful incarceration. Federal compensation law provides \$50,000 per year of wrongful incarceration. The majority of the 38 states, and D.C., with wrongful conviction compensation laws provide \$50,000 or more (TX, CO, KS, OH, CA, CT, VT, AL, FL, HI, IN, MI, MN, MS, NJ, NV, NC, WA, ID, RI, MD, MT, UT, VA, OR).

2. Reasonable standard of proof for eligibility. Claimant should have to establish by preponderance of evidence that he or she did not commit the crime or related acts. “The claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial.”

⁴ **Key Provisions in Wrongful Conviction Compensation Laws**
<https://www.law.umich.edu/special/exoneration/Documents/IP%20-%20Key%20Provisions.pdf>

3. Straightforward process through courts to adjudicate claims: Nationally, 27 of the 37 states with compensation laws adjudicate claims through courts: the state high court, circuit courts, district courts, trial courts or state civil court. While some states designate state claims boards or commissioners, or other state commissions to adjudicate claims these entities do not have the same experience in weighing evidence and assess claims as the courts. The courts are the appropriate entities to handle these claims.

4. Offset provision with federal civil awards/settlements: To protect taxpayers, several states require exonerees who receive state compensation and later win federal civil rights lawsuits/settlements, to reimburse the state. Conversely, exonerees who first win federal civil rights lawsuits and then file for state compensation would only be entitled to an amount of state compensation that is subtracted from the civil awards.

HB 151 is all about accountability and transparency. When wrongful convictions are proven according to law, it must be the state's responsibility to acknowledge the harm and then facilitate the process for the individual to return home with proper compensation to get their life back. It is known that incarceration is a social determinant of health, therefore, the state must do what is absolutely necessary to bring justice to those wrongly incarcerated.

Mahalo for this opportunity to weigh in on this important justice issue. We thank the committee for their commitment to justice and the rule of law.

HB-151

Submitted on: 1/29/2025 6:01:15 PM

Testimony for JHA on 1/30/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|----------------|------------------------|--------------------|------------------------|
| Laurie Tomchak | League of Women Voters | Support | Written Testimony Only |

Comments:

Committee on Judiciary and Hawaiian Affairs

Chair David A.Tarnas Vice Chair Mahina Poepoe

January 30, 2025, 2:00 325 Conference Room

HB151 TESTIMONY

Laurie Tomchak, PhD, Legislative Committee, League of Women Voters of Hawai'i

Chair Tarnas Vice Chair Poepoe and Committee Members:

The League of Women Voters of Hawai'i supports HB151 Wrongful Convictions, Civil Remedies, Redress, Compensation

Requires the State to provide written notice to certain persons regarding the ability to file a claim for redress under applicable wrongful conviction law. Requires the liberal construction of that law. Provides for advance compensation for petitioners under certain circumstances. Requires reports to Legislature from the Department of the Attorney General.

We support the provision of written notice to accused or wrongly convicted persons so that they may file a claim for redress. Those who have been wrongly convicted see their lives disrupted, and are unable to work to hire representation or pay for application fees, so we also support the advance compensation for certain persons who may have been held prior to trial.

While there is no way to compensate those who have been wrongfully incarcerated, they can be assisted in seeking redress and resuming their lives outside prison.

Recently the case of Dana Ireland resulted in exoneration for the two brothers accused of her murder after decades in prison. Not all cases are this dramatic, but the state should assist those who are victims of legal errors and need help in finding redress.

Thank you for the opportunity to submit testimony.

L. Tomchak

HB-151

Submitted on: 1/27/2025 11:59:36 AM

Testimony for JHA on 1/30/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|--------------|--------------------|---------------------------|
| Carla Allison | Individual | Support | Written Testimony Only |

Comments:

My name is Carla Allison, a 28 year resident of Honolulu, and I strongly support HB151.

HB-151

Submitted on: 1/28/2025 11:28:02 AM

Testimony for JHA on 1/30/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|--------------|--------------------|------------------------|
| Carolyn Eaton | Individual | Support | Written Testimony Only |

Comments:

Aloha, Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

My name is Carolyn Eaton. I am a resident of Makiki and I strongly support this measure.

Since the work of Bryan Stevenson and his Equal Justice Initiative have become well known, one might assume wrongful conviction and incarceration of individuals results in exoneration occasionally, and that such exonerated individuals leave prison to take up their lives with compensation for state harm. In Hawai'i such compensation has rarely been recorded. (I refer to research detailed in the testimony submitted in support of this bill by Community Alliance on Prisons.)

This bill provides a starting point for the process, in cases of exoneration. HB151 requires the state to provide written notice relating to the ability to file claim for redress to such individuals. Its other provisions specify "liberal construction" of the law relating to wrongful conviction, possibility of advance compensation for petitioners in certain cases, and reports to the Legislature from the Attorney General when wrongful conviction has been proved.

Hawai'i must step into the present in matters of State fallibility, in my opinion.

Mahalo for your consideration of this matter. I appreciate your steady work toward justice in our State.