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**TESTIMONY OF REBECCA BROWN,
DIRECTOR OF POLICY, INNOCENCE PROJECT,
BEFORE THE HAWAII WAYS & MEANS COMMITTEE**

RE: HB 148

APRIL 6, 2015

On behalf of the Innocence Project, thank you for allowing me to submit testimony before the Hawaii Ways & Means Committee.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 329 people who had been wrongly convicted of serious crimes. The Innocence Project regards each DNA exoneration as an opportunity to review where the system fell short and identify factually-supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. We also regard it as a time to consider the re-entry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the misery of prison. Not only have DNA exonerations led to a growing public awareness of the possibility of wrongful conviction, but media accounts accompanying these exonerations have brought into stark relief those issues facing individuals who are attempting to re-enter society following protracted incarceration.

This submission will describe the impacts of incarceration on the wrongfully convicted, describe their extraordinary needs upon release, and voice our support for HB 148, which would provide a mechanism for compensation to Hawaii's wrongfully convicted.

Impacts of Incarceration on the Wrongfully Convicted: The Need for Monetary Compensation

According to a recent report written by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound: “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 poor.”¹

Psychological literature recognizing the emotional and psychological harm wrought by incarceration is also well established. Indeed, carceral trends over the past 35 years, characterized by incapacitation and containment as opposed to rehabilitation, have exacerbated the profound reentry issues facing individuals who are returning to society after long prison stays. The 1970’s marked the beginning of exponential prison population growth and a concomitant seachange in carceral policy. As the prison population began to skyrocket, there was an attendant reduction in available resources and staffing, increased prison disturbances, diminished living conditions and limited access to meaningful prison programs, leading psychologists to observe that the transition from prison life to freeworld society is today “more difficult and problematic.”²

Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing. Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or

¹ *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community.* Council of State Governments. Reentry Policy Council. New York: Council of State Governments. January 2005.

² Haney, Craig. *The Psychological Impact of Incarcerations: Implications for Post-Prison Adjustment.* Paper prepared for the Urban Institute National Policy Conference, From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities. 2002.

intimacy. As a result, the “emotional flatness” that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.³

Of course, all of these experiences are only compounded by one’s knowledge that he has been wrongfully convicted and incarcerated. A 2004 study 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.”⁴ Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder. As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and “strong and unresolved feelings of loss.”⁵

These feelings of loss are not limited to grief and mourning over loved ones -- often parents -- who expired during the course of their incarceration; relationships with family members, including children, are often permanently fractured or destroyed. As well, feelings of “what might have been” extend to their professional lives. The average prison stay of individuals exonerated through DNA testing is 13 years. During the course of those years, many of the exonerated missed out on educational and workforce development opportunities. They return to their communities feeling out of step, often unable to meet even basic professional expectations.

³ Ibid.

⁴ Grounds, A. 2004, Psychological Consequences of Wrongful Conviction and Imprisonment. *Canadian Journal of Criminology and Criminal Justice*. 46(2): 165-183.

⁵ Ibid.

In addition, the exonerated typically face serious medical issues upon release. Research shows that the strain and trauma of prison life yields a higher incidence of medical problems for the incarcerated as compared to the general population. For instance, the health of fifty-year-old prisoner has been found, on average, to be similar to that of the average sixty-year-old in the freeworld.⁶ Of course, prison life also increases exposure to communicable and serious diseases, including HIV and Hepatitis B and C, many of which require longterm and comprehensive healthcare upon release. Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated. Prison rape is also prevalent, with some experts estimating that more than 40% of the prison population has been victimized.⁷ As such, the medical and mental health problems facings individuals upon release are enormous.

A New York Times expose that was recently published tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”⁸ The news story further noted a delay in the provision of monetary compensation and services, if these were to come at all: “Nearly 40 percent — got no money for their years in prison...More than half of those who did receive compensation waited two years or longer after exoneration for the first payment.”⁹

⁶ Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, 65 *Fed. Probation* 3, 5 (2001).

⁷ Christine A. Saum et al., *Sex in Prison: Exploring the Myths and Realities*, 75 *PRISON i.* 413, 414 (1995).

⁸ Roberts, Janet and Elizabeth Stanton. “A Long Road Back After Exoneration, and Justice is Slow to Make Amends.” *New York Times*, November 25, 2007.

⁹ *Ibid.*

Why Litigation Does Not Promise Monetary Compensation

Some speculate that the wrongly convicted who live in states that have not passed universal compensation legislation will be able to recover monetary compensation for their wrongful imprisonment under what are known as “1983 claims.” However, in order to even state such a claim, the wrongly convicted individual must demonstrate that his conviction was the result of official misconduct that directly led to a constitutional violation.

First, the wrongly convicted person must show that he was a victim of “intentional misconduct.” Next, in order to prevail under a 1983 claim, the wrongly convicted must also prove that the misconduct fit into a narrow category of established constitutional standards *and* that the standards existed at the time that the crime was committed. For instance, alleged misconduct on the part of police or forensic lab personnel must be shown to have been obviously unconstitutional at the time of the criminal investigation.

Examples of what may *not* constitute “intentional misconduct” under a 1983 claim include:

- ✓ When individuals provided false confessions
- ✓ When individuals agreed to plea agreements [Eighteen of the nation’s nearly 245 people who were later proven innocent through DNA testing agreed to a plea at the time of trial].
- ✓ When individuals were victimized by jailhouse informants, or other incentivized testimony
- ✓ When mistaken eyewitness identifications resulted from procedures or protocols that were not rendered unconstitutional at the time that the criminal investigation was undertaken

It should also be noted that even if someone successfully reaches this stage of the process, many of the official actors, including prosecutors, are often absolutely immune for their actions.



Simply put, 1983 claims do not guarantee compensation for three basic reasons:

1. The wrongly convicted plaintiff must not only prove that mistakes were made, but that there was deliberate and reckless conduct on the part of officials.
2. In most cases, qualified and absolute immunity doctrines shield official actors, such as police, crime lab personnel, and prosecutors from allegations of constitutional misconduct.
3. Even if there is a successful suit, litigation takes years and there is still no guarantee that the wrongly convicted plaintiff will recover damages even if he prevails in the years after filing. Often, small towns are not insured or do not have sufficient funds in their coffers to cover significant claims. As well, outside insurers that cover municipalities often refuse to cover the most egregious conduct carried out by official actors.

Therefore, the Innocence Project recommends that each state pass a statute that includes a fixed sum of recovery for each year spent in prison. President George W. Bush endorsed Congress's recommended amount of **up to \$50,000 per year, with up to an additional \$50,000 for each year spent on death row.** All fixed sums included in state compensation laws should, at minimum, meet the federal standard and include a provision that contemplates inflation and makes annual adjustments on that basis. We are also pleased to see that HB 148, in addition to contemplating monetary compensation, has included a number of critically important social services to assist the wrongfully convicted upon release and to assure smoother reentry.

Conclusion

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 to compensate them for the horror they endured. Passage of HB 148 will help ease the unimaginable transition for the wrongfully convicted from prison life to mainstream society.



wam3 - Nicolas

From: mailinglist@capitol.hawaii.gov
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Subject: *Submitted testimony for HB148 on Apr 6, 2015 09:05AM*

HB148

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Submitted By	Organization	Testifier Position	Present at Hearing
Lezlie Kiaha	Individual	Support	No

Comments:

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