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GOVERNOR



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
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No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 148,HD2  
RELATED TO WRONGFUL IMPRISONMENT**

By  
Bert Y. Matsuoka, Chairman  
Hawaii Paroling Authority

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 18, 2015; 9:00 a.m.  
State Capitol, Conference Room 016

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

The Hawaii Paroling Authority (HPA) opposes House Bill 148, HD2 Relating to Wrongful Imprisonment which seeks to provide compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

Specifically, the HPA opposes all sections of this measure which seek to provide any level of compensation to offenders and/or the offender's family members following the granting of a gubernatorial pardon.

As written, this measure does not consider the fact that a pardon does not erase the crime(s), criminal history of the offender, or the loss suffered by the victim(s). The granting of pardon forgives the offender for the offense(s) previously committed and in no way proclaims an offender's innocence. The granting of a pardon is normally based on the demonstrated changes in behavior and life style of an offender over a substantial period of time following the offender's involvement in the criminal justice system. Also, this measure does not consider the fact that some offenders are multi-state offenders, who often have several convictions in other jurisdictions similar to and/or the same as their offense(s) in Hawaii.

Implementation of this measure as written, to provide compensation for offenders granted a pardon would be very inappropriate and costly for the State.

Thank you for the opportunity to provide testimony on HB 148, HD2.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Wednesday, March 18, 2015

1:30 p.m.

Room 414

## SUPPORT for HB 148 HD2 WRONGFUL IMPRISONMENT

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.

HB 148 HD2 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 moral responsibility of the state to compensate the person who suffered that harm.

Committee members, we want you to understand that this could happen to any one of us. How many times have you been mistaken for another person? What if you looked like someone who committed a crime and no one believed that you were innocent? What would you want the state to do when you were found innocent after spending years in prison? **Please understand that this is happening as we speak.** People are serving time for crimes they did not commit.

It is perplexing 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. We can only infer from this that the Aloha state will demand restitution on the victim's behalf for crime, but will ignore the pain and suffering of a person the state has caused. This hurts and heaps even more pain and suffering on the wrongfully imprisoned.

The state continues to put up barriers to ignore/deny/delay their own responsibility. The message this sends to our communities is so wrong. It is the opposite of what we teach our keiki about being responsible citizens: **You take responsibility for your actions; You clean up your mess; and You take whatever steps necessary to correct the wrong you have caused.**

## HOW DOES THE STATE TAKE RESPONSIBILITY FOR RUINING SOMEONE'S LIFE?

How can such an egregious wrong be made right? Currently 30 states have compensation statutes for the wrongfully convicted. **It is embarrassing to say that Hawai'i doesn't even apologize or take any responsibility for the harm they have caused.**

The Innocence Project released a report<sup>1</sup> in 2009 with recommendations for compensation. Applicants must have documentation that demonstrates actual innocence, and a small number of people qualify.

### **The Innocence Project's Recommendations**

For those few qualified applicants, the state should readily and generously offer assistance. No amount of money can make up for the lost years, the trauma of prison life, or the horrible experience of being falsely branded a murderer, rapist or thief. But compassionate state assistance can at least help bring the exoneree's struggle to an end by providing him with the finances to find a home, see a doctor, get job training and counseling, and attempt to make a new life for himself.

These recommendations for state compensation laws have been developed by the Innocence Project after years of working with exonerees and their families, legislators, social workers and psychologists:

- Provide a minimum of \$50,000, untaxed, per year of wrongful imprisonment and \$100,000, untaxed, per year on death row. This amount is based on the federal government's standard created through the Innocence Protection Act of 2004.
- Cover limited and appropriate attorney's fees associated with filing for compensation.
- 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.
- Issue an official acknowledgment of the wrongful conviction.

By fairly compensating those who have suffered under the criminal justice system, the state reassures its citizens that the government will attempt to rectify a wrong – whether the state is at fault or not. In short, it's the right thing to do.

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 improves the quality of justice by first apologizing and then providing support and compensation to those individuals who have been wrongfully convicted and imprisoned because of the state's error. **JUSTICE DEMANDS THIS.**

Mahalo for this opportunity to testify.

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<sup>1</sup> **Making up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation**, December 2009. <http://www.innocenceproject.org/news-events-exonerations/executive-summary-making-up-for-lost-time-what-the-wrongfully-convicted-endure-and-how-to-provide-fair-compensation#sthash.ohjbgKpt.dpuf>

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March 17, 2015

Senator Gilbert S.C. Keith-Agaran  
Chairman, Committee on Judiciary & Labor  
Hawaii Senate  
State Capitol, Room 221  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: House Bill No. 148 (HD 2),  
"Relating To Wrongful Imprisonment"

Dear Chairman Keith-Agaran and Committee Members:

I am a private practice attorney based in Honolulu and concentrating in criminal defense law. I have been a member of the Hawaii bar since 1968. Additionally, I have served as a Lecturer in Law at the William S. Richardson School of Law since 2005, co-teaching (as a founding member) the Hawaii Innocence Project courses, along with William Harrison, Esq., Susan Arnett, Esq., and Professor Virginia Hench.

This letter constitutes my written testimony (which is also submitted on behalf of the Hawaii Innocence Project) in strong support of House Bill No. 148 (HD 2). That bill is scheduled to receive a hearing by the Senate Committee on Judiciary and Labor at 9:00 a.m. on Wednesday, March 18, 2015, in Conference Room 016. The original bill was introduced by the Speaker of the Hawaii House of Representatives, Rep. Joseph Souki, and several versions of the bill subsequently passed the House Judiciary Committee, the House Finance Committee and the full House of Representatives, with no legislators voting in opposition at any point in the process. In the House of Representatives, this important legislation was supported by the written testimony of the Hawaii Innocence Project, the national Innocence Project, the Community Alliance on Prisons, and William Harrison, Esq., in addition

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Chairman, Committee on Judiciary & Labor  
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to my own written testimony and that of seven other concerned individuals.

The legislative report of the House Judiciary Committee (House Standing Committee Report No. 397) correctly recognized "that wrongful convictions and the subsequent incarceration may be the result of many causes, including eyewitness misidentification, false confessions, improper forensic science, and government misconduct." [Underlining added.] The legislative report of the House Finance Committee (House Standing Committee Report No. 813) emphasized that the "purpose of this measure is to: (1) Establish a process for wrongly convicted and incarcerated individuals to be compensated by the State; and (2) Provide for immediate services for qualifying individuals upon release."

A "fundamental value determination of our society [is] that it is far worse to convict an innocent man than to let a guilty man go free." In re Winship, 397 U.S. 358, 372 (1970) (Harlan, J., concurring). "The oft-quoted principle that it is better to let guilty men go free than to punish an innocent man is axiomatic in Anglo-American criminal law and has deep roots. Besides reflecting the fundamental value our legal system places on personal liberty and the high burden required to deprive someone of that liberty, the principle also embodies a basic admission - that the single most egregious error a justice system can commit is to punish the innocent." Note, *Re-Punishing The Innocent: False Confession As An Unjust Obstacle To Compensation For The Wrongfully Convicted*, 63 Case Western Reserve Law Review 1393, 1394 (2013) (underlining added; footnote omitted). "The natural corollary to this principle is that society has a special responsibility to make efforts toward righting the wrong when it occurs. A majority of U.S. states, along with the District of Columbia and the federal government, have recognized that responsibility by passing statutes that provide compensation for exonerees after their release." Id. (underlining added). It is now definitely time for Hawaii to join the majority of American states and the federal government in enacting a statute such as the statute proposed in House Bill No. 148 (HD 2).

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That is especially true because of the scientific advancement of DNA testing, which has generated a "revolution in the criminal justice system." Id. at 1395 (footnote omitted). It is now "possible in certain cases to produce conclusive scientific evidence of a wrongful conviction years or even decades after the crime." Id. Indeed, DNA testing "has taught us that there are more innocent people in jail than we ever thought." Id. (footnote omitted).

Notably, "scholars and exoneree advocates generally agree that statutory compensation is the 'only reliable and fair response to the inevitable mistakes that occur as a byproduct of the operation of a criminal justice system as large as ours.' The powerful social-justice rationale for a uniform compensation regime funded with public money was eloquently stated by Yale University Professor Edwin Borchard in 1941: 'Where the common interest is joined for a common end - maintaining the public peace by the prosecution of crime - each individual member being subject to the same danger (erroneous conviction), the loss when it occurs should be borne by the community as a whole and not by the injured individual alone.'" Id. at 1396 (parentheses in original; footnotes omitted).

In his written testimony submitted to the House Judiciary Committee, Bert Matsuoka, the Chairman of the Hawaii Paroling Authority, opposed the original version of House Bill No. 148 so far as it would provide compensation "following the granting of a gubernatorial pardon." He claimed that the "granting of a pardon forgives the offender for the offense(s) previously committed and in no way proclaims an offender's innocence." However, the current House Bill No. 148 (HD 2) is differently worded than the original version of House Bill No. 148. The current bill requires that to qualify the defendant for compensation and services, a pardon be based on "grounds consistent with innocence and supported by findings that clearly state the consistency." House Bill No. 148 (HD 2), page 3, lines 7 to 11 (underlining added).

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Chairman, Committee on Judiciary & Labor  
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In its written testimony on House Bill No. 148 submitted to the House Judiciary Committee, the State Department of the Attorney General declared that it "opposes the bill because it makes the State, in effect, the insurer of any errors in the criminal justice system," and the Department of the Prosecuting Attorney for the County of Maui subsequently agreed. Yet, that is rightfully so. The government prosecutes the cases in which wrongful convictions are obtained, the government operates the courts in which wrongful convictions occur, and it is the government that wrongfully incarcerates the defendants who are wrongfully convicted. Defendants who are wrongfully convicted do not voluntarily consent to their wrongful convictions. There is no other appropriate "insurer" of egregious errors in the criminal justice system than the government itself. That has been recognized by the federal government, the District of Columbia, and the thirty states that have enacted laws providing government compensation for wrongful convictions and incarceration.

In its written testimony on House Bill No. 148 submitted to the House Judiciary Committee, the State Department of the Attorney General "recommend[ed] the appointment of a group to study the need for innocence redress legislation" in Hawaii. Of course, the appointment of a study group would just be an expedient way to delay and derail this vitally necessary legislation. The ineffectiveness of study groups is well illustrated on even the national level by the "Review Group on Intelligence and Communications Technologies" (the NSA review group) in 2013, the "National Commission on Terrorist Attacks Upon the United States" (the 9-11 commission) from 2002 to 2004, and the "National Commission on Fiscal Responsibility and Reform" (the Simpson-Bowles commission) in 2010.

In its written testimony on the original version of House Bill No. 148 submitted to the House Judiciary Committee, the State Department of the Attorney General complained: "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

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Chairman, Committee on Judiciary & Labor  
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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." Yet, the current House Bill No. 148 (HD 2) has deleted the term "not inconsistent with innocence," and, as pointed out above, requires that a pardon be based on "grounds consistent with innocence and supported by findings that clearly state the consistency."

The written testimony of the State Department of the Attorney General submitted to the House Judiciary Committee on the original version of House Bill No. 148 further alleged: "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." However, the current House Bill No. 148 (HD 2) specifically mandates: "Any person convicted and subsequently imprisoned for one or more crimes that the person did not commit or for actions that did not constitute a crime, may petition for a claim for damages ...." House Bill No. 148 (HD 2), page 2, lines 17 to 20 (underlining added). Thus, convictions reversed merely on the basis of an unlawful warrantless search or a Miranda rights violation would not qualify.

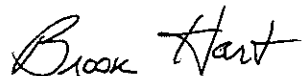
In conclusion, I and the Hawaii Innocence Project strongly urge the Senate Committee on Judiciary and Labor to approve House Bill No. 148 (HD 2).



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Chairman, Committee on Judiciary & Labor  
March 17, 2015  
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Very truly yours,

LAW OFFICES OF BROOK HART  
A Law Corporation

A handwritten signature in cursive script that reads "Brook Hart".

BROOK HART  
Hawaii Innocence Project,  
William S. Richardson School of Law

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**HB148**

Submitted on: 3/13/2015

Testimony for JDL on Mar 18, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

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**HB148**

Submitted on: 3/13/2015

Testimony for JDL on Mar 18, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Emily Kandagawa	Individual	Support	No

Comments:

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**HB148**

Submitted on: 3/16/2015

Testimony for JDL on Mar 18, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Timothy Sean Payne Hills	Individual	Oppose	No

Comments:

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