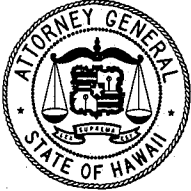


HB1756

HD1



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1756, H.D. 1, RELATING TO CRIMINAL PROCEDURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Tuesday, March 16, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General strongly opposes this bill.

This bill would require a court to order expungement of criminal conviction records, upon application made at least five years after the completion of sentence, for all offenses that are not specifically excluded from eligibility for deferred pleas under section 853-4, Hawaii Revised Statutes, provided that the court finds that the applicant is not likely to engage again in a criminal course of conduct, and that the ends of justice and the welfare of society do not require that the conviction remain on the applicant's record.

This bill would drastically alter Hawaii's current expungement law, to the detriment of public safety, by allowing convicted offenders to hide their history of criminal conduct. There is no reasonable justification for this change.

It should be noted that by the time an offender obtains a record of conviction, the offender often has had a significant history in the criminal justice system. Hawaii's criminal laws allow offenders many opportunities to face the criminal justice system without obtaining a record of conviction. Offenders have opportunities such as deferred pleas under chapter 853, Hawaii

Revised Statutes, condition discharges under section 712-1255, and drug court, all of which may not result in convictions, and could be expunged under our current law.

Section 831-3.2, Hawaii Revised Statutes, sets out Hawaii's current law on expungements. It limits expungements to arrest records in matters that have not resulted in convictions. The current system allows citizens to clear such arrest information from their records, to avoid misunderstanding or confusion by potential employers or others who might have an interest in their criminal history.

In contrast, this bill would allow the expungement of conviction records. Expungement of conviction records would undermine one of the most fundamental principles of the criminal justice system - that is, repeat offenders should be treated differently than first-time offenders. This bill would allow the expungement of an unlimited number of convictions. Thus, a repeat or habitual offender, or a career criminal, could appear to have a clean record. The resulting incompleteness and inaccuracy of conviction records would impede the ability of courts to make appropriate decisions regarding sentencing, bail, protective orders, and treatment programs.

Moreover, the provisions in this bill would conflict with many important state and national systems and programs that require accurate and comprehensive criminal history records - for example, homeland security programs, immigration and deportation systems, sex offender registration programs, DNA database programs, criminal justice and corrections programs, and national criminal history records systems.

Government agencies, nonprofit organizations, private businesses, and individual citizens rely on criminal history records to make important decisions that may have a profound

effect on safety and security. Complete and accurate criminal history information is essential to schools, hospitals, financial institutions, industries that employ drivers and operators of dangerous equipment, social service and adoption agencies, and caregivers for children, the elderly, and the disabled - as well as other employers, business and professional licensing agencies, and parents.

Although this bill precludes expungement for certain offenses, in reality all conviction records may be significant and relevant for some purpose and, therefore, none should be expunged. This bill would allow expungement of convictions for offenses often associated with organized crime, such as B felony robbery, burglary, theft, forgery, credit card fraud, money laundering, gambling, car theft, and drug dealing; offenses often associated with human trafficking, such as extortion, B felony kidnapping, unlawful imprisonment, and terroristic threatening; and offenses legislated to protect children and families, such as concealing the corpse of an infant, abandonment of a child, persistent nonsupport, endangering the welfare of minor, and custodial interference. This bill would also allow expungement of convictions for arson, criminal property damage, all forms of computer crime offenses; environmental crimes involving the dumping of wastes and contaminants on land and in water, which threaten public health; and importation, propagation, and distribution of illegal animals and pests, some of which are prohibited because of their potential to cause widespread damage to the activities that sustain Hawaii's economy. This bill would allow the expungement of many offenses against public administration, such as false reporting to law enforcement authorities, impersonating a public servant, impersonating a law enforcement officer, obtaining a

government-issued identification document under false pretenses, tampering with government records, hindering prosecution, perjury, false swearing, tampering with a witness, tampering with evidence, and contempt of court. It would allow for the expungement of the offenses involving cruelty to animals and the violation of privacy.

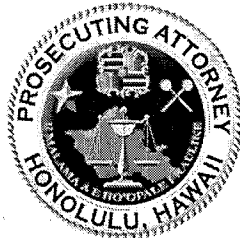
We respectfully ask that this bill be held.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010
STATE OF HAWAII**

March 16, 2010

RE: HOUSE BILL 1756, H.D. 1; RELATING TO CRIMINAL PROCEDURE

Chair Taniguchi and members of the Senate Judiciary and Government Operations Committee, the Department of the Prosecuting Attorney provides the following testimony **in strong opposition to H.B. 1756 H.D. 1.**

The purpose of this bill is to allow the expungement of convictions of those offenses which do not fall under Hawaii Revised Statutes (HRS) section 853-4 when the applicant is not likely to engage again in a criminal course of conduct and the ends of justice and the welfare of society do not require that the conviction remain on the applicant's record. In addition, the completion of the sentencing or probation must have occurred no less than five years prior to the date of the application and during the five years the person cannot have been convicted of any crime.

While we are uncertain of the motivating factors behind the introduction of this bill, we are very certain that it is a bad idea. Currently Hawaii law only permits expungement of arrest records for offenses that do not result in a conviction. In addition, expungement is not permitted where the lack of a conviction is the result of a bail forfeiture or flight from the jurisdiction to avoid prosecution. It is also not permitted in cases where the defendant has been acquitted based on a mental or physical defect under H.R.S. Chapter 704, or granted a deferred acceptance of a guilty or no contest plea.

The proposal in this bill would open up the floodgates of expungement to many felony and misdemeanor offenses. While appearing to exempt many "violent" offenses the measure neglects to exclude many serious offenses such as Violation of Privacy (HRS sections 711-1110.9 and 711-1111) and Harassment by Stalking (HRS sections 711-1106.4 and 711-1106.6).

Furthermore, if this bill is intended to give a person, "one free bite at the apple" by expunging a conviction, it goes much further than its intention since all the offenses which can be expunged under this bill are also deferred plea eligible under HRS chapter 853. Thus, a person can commit an offense, get a deferred plea under chapter 853 and not have a conviction, then on a subsequent offense, they can apply for an expungement of the subsequent conviction under the provisions of this bill. Moreover, this bill does not seem to restrict the number of times a person applies for expungements of qualifying convictions so long as the applicable time frames are met.

We also note that passage of this bill will undercut the application of sentencing schemes which require proof of prior convictions for application of an enhanced offense or an enhanced sentence. For example, the repeat offender sentencing statute (HRS section 706-606.5 and the Habitual Property Crime offense (HRS 708-803) require prior convictions to either obtain the enhanced sentence or to be able to charge the offense. By permitting the expungement of convictions for the underlying offenses, the application of these statutes will be greatly weakened.

For these reasons, we urge you to hold H.B. 1756 H.D. 1 and thank you for your time and consideration.