

HB1756

HD1

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**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary and Government Operations**

March 16, 2010

H.B. 1756, HD1: Relating to Criminal Procedure.

Senator Taniguchi and Members of the Committee:

This bill proposes to create a statute allowing expungement of some criminal convictions under certain specified conditions. We support allowing expungement of a criminal record under appropriate circumstances because it recognizes that people often deserve and can benefit from a second chance.

Currently, if a defendant in Hawaii is convicted of an offense, any offense, that person will carry the stigma of a criminal conviction on his or her record for the rest of their life. Every time that person applies for a job or a mortgage, for example, he or she will have to disclose a felony conviction. Any person with access to the internet is able to learn of a misdemeanor or felony conviction. It affects the ability of persons to enter the military, for example, and other aspects of life that can significantly affect an entire lifetime. Essentially, the conviction becomes a sort of scarlet letter that must be borne for life.

To receive an expungement under the original bill, the conviction has to be over 5 years old, the person has to have had no convictions in the 5 years before the application for expungement and the conviction for which expungement is sought cannot be on a list of enumerated offenses. While the list of enumerated offenses can be discussed further, we prefer the original bill to that of HD1 on the issue of the timing of when someone can seek expungement.

The original bill measured the five year period that one would have to wait before being eligible to seek expungement from the date of conviction. HD1 proposes that the five year period be measured from the completion of sentencing or probation, whichever is later. In other words, the HD1 requires that the person would have to serve a five year period of probation, for example, and then wait an additional ten years before being eligible to seek expungement. Creating a minimum ten year period before someone could seek expungement of a felony offense significantly negates the purpose of an expungement law.

Additionally, the language that HD1 proposes which mirrors the Deferred Acceptance of Plea statute (Chapter 853) seems to treat the expungement process as if it was a Deferral process. We do not think that it is advisable. The Deferral statute essentially provides someone with a clean record for the future based upon factors that

are set out in the statute. An expungement statute recognizes someone who has lived with a conviction for a period of years in a law-abiding manner and rewards those efforts with a second chance at opportunities in life that would be unavailable to someone with a felony conviction.

We believe that most offenses should not be automatically ineligible for expungement. We propose that there be a discretionary provision in the law to allow a court to review the circumstances of certain cases (other than class "A" crimes or any offenses under §707, Part V (Sexual Offenses) and §707, Part VI (Child Abuse) so that a judge could decide if expungement was warranted.

We support H.B. 1756, HD1 with the suggestions noted above. Thank you for the opportunity to comment on this bill.