



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Thursday, February 23, 2012, 2:00 p.m.
State Capitol, Conference Room 325

by Calvin Ching
Acting Deputy Chief Court Administrator
District Court of the First Circuit

Bill No. and Title: House Bill No. 2636, Relating to Traffic Violation Records

Purpose: Beginning on December 1, 2012, requires removal from abstracts of traffic records alleged moving violations for which the disposition was "dismissed with prejudice" or "not guilty," or that occurred more than ten years prior to the date of the request for the abstract, with exceptions. Also requires a social security number or driver's license number for all traffic record searches and makes traffic records confidential if the disposition was "dismissed with prejudice" or "not guilty," or if the violation occurred more than ten years prior to the date of the request.

Judiciary's Position:

The Judiciary supports the intent to increase privacy protections in House Bill No. 2636, but, respectfully submits concerns and recommendations. In summary, Section 1 does not address lifetime revocations or violations where there is no satisfaction of judgment. For Section 2, there are concerns that the use of the social security number would contribute to identity theft, impact the Judiciary's efforts to increase public access to records, and significantly reduce the number of people that could pay their traffic tickets electronically.

The Judiciary requests clarification in Section 1, which provides an exception for commercial driver license holders but not for drivers who are subject to a lifetime license revocation under chapter 291E, part III and chapter 286, part XIV, as it was in effect on or before December 31, 2001. We ask for language to clarify that lifetime license revocations should not be removed from the abstract. The second request for clarification relates to the age calculation of alleged moving violations that occurred more than 10 years prior to the date of the request. The Judiciary maintains records for cases which are pending until resolution, e.g., traffic cases where the defendant never appeared for court and there is an outstanding bench warrant, cases where the fine has never been paid in full, and administrative license revocations where the respondent has not yet qualified for relicensing. We respectfully request language to clarify that cases should not be removed from the abstract until 10 years after satisfaction of judgment.



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The Judiciary has concerns about Section 2 because it significantly changes the availability of traffic case information in ways that undermine both transparency goals and privacy interests. The Judiciary recognizes the need to balance privacy interests against the desire for greater transparency and access to government records. In keeping with these goals, current public online searches do not reveal personal identifiers that match a given name search and efforts over the years have been towards decreasing the usage of the social security number wherever possible. House Bill No. 2636, Section 2 prohibits access to any traffic violation record, including an electronic traffic violation record available through a website, “unless the person requesting the information provides the state driver’s license number or social security number of the person for whom the traffic violation record is sought.” (page 2, lines 16-19) The Judiciary is concerned about the potential for identity theft because searching on a driver’s license number or social security number will reveal the name of that person and will provide verification that a driver’s license number or social security number matches a particular name.

Requiring the use of the social security number or driver’s license number also poses an impediment to citizens who are seeking to pay for traffic tickets. One of the Judiciary’s most successful online services has been eTraffic, which allows people to pay for their traffic tickets online with a credit or debit card. Since its inception in 2005, eTraffic and Interactive Voice Recognition (IVR) payments have collected over \$15.2 million in traffic fines, with current monthly collections ranging between \$250,000 and \$350,000. eTraffic payments have been on the rise and this option would have to be removed should Section 2 pass since a social security number and driver’s license number are not currently required to make payment via eTraffic/IVR.

Many traffic records do not have an associated driver’s license number or social security number for many reasons, including: 1) the majority of parking cases reference vehicle information only and are not associated to a particular person, 2) pedestrian and bicycle cases often do not include this information, and 3) tickets issued to foreign tourists will also not include this information. Requiring that a traffic case search be limited to only the state driver’s license number or the driver’s social security number will effectively prevent the public from being able to review – and pay – these types of citations on the Judiciary’s website. Parking tickets alone represent a large number of traffic cases every year (144,391 parking cases in 2011, almost 400 tickets a day statewide).

The Judiciary recognizes the public’s growing expectation that more government services be available online and already provides access to public court records for traffic and appellate cases via the Judiciary website. The Judiciary also has plans to provide online access to district court public criminal case information in the near future. The news media in particular has come



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to expect 24/7 online access to public court records in these areas. The Judiciary anticipates complaints and criticism upon significant restriction to these services should Section 2 pass.

An alternative to the significant changes proposed in Section 2 would be to tailor the electronic traffic record availability through the Judiciary's website to match the time period for case information displayed in the certified traffic abstract, as well as the content, as set forth in Sections 1 and 3. In this manner, both the ease and convenience of using the website by the public and news media would be preserved, while addressing the concerns about the scope of the current display of information. Also, programming changes to the Judiciary's website to prohibit display of 10-year-old records and dismissed cases would be less costly and have less impact on the continued development of the Judiciary's information management system.

Another alternative would be to retain the current searches based on case number (ticket/citation number) and vehicle license plate number. This would allow the Judiciary to continue to offer eTraffic/IVR payment options to the public and continue access for people to review their parking tickets, not to mention search for tickets on vehicles people are considering to purchase. These alternatives help provide access to public records based on legitimate reasons and would help cut back on random searches.

If the primary privacy concern seeks to prevent random searches on names associated to traffic records, the Judiciary suggests another alternative. Online access to court records is currently free of charge and requires no input from the requestor to identify himself or herself. The website could be changed to require the requestor to certify that the search is for legitimate purposes, and the Judiciary could charge a small fee and require the requester to provide name and credit/debit card information.

Should this bill be approved, Section 2 and Section 3 are effective upon approval, making it necessary for the Judiciary to disable eTraffic/IVR and the website immediately in order to be compliant. To minimize any inconvenience to the public, the Judiciary requests a January 1, 2013 effective date to allow adequate time for programming changes.

Thank you for the opportunity to provide comments on this measure.

HB2636 / companion SB2517 SD1

Traffic Violation Records

Section 1-Traffic abstract change: support intent, ask for clarification

Section 2-Traffic violation record access: privacy risk, propose new language

Section 3-Traffic violation record confidential: support intent


SB2517 SD1-HB2636
Section 1-Traffic Abstract

Current (since Nov 2005): HRS 287-3 abstract shows all alleged moving violations and any convictions, including any ADLRO cases.

History: Prior to Nov 2005, policy interpreted abstract content to display cases for only 3 years/10 years. Judiciary proposed similar bills in 2006 and 2007, so we support the intent.

▲ **Proposed change -effective Dec 1, 2012:** abstract will show all alleged moving violations and convictions except...

- 1) Cases “dismissed with prejudice” or “not guilty”
- 2) Violation which “occurred” more than 10 years before request date
- 3) Unless driver has a CDL (all cases regardless of age or disposition)



- Possible decrease in complaints
- Possible increase in abstract sales
- Changes will be communicated to staff

Operations

- Time/resources
- JIMS/vendor mini-project to change abstract by Dec 1, 2012

System

- Abstract will not show cases where the violation occurred more than 10 years ago, but which may still be adjudicated or unpaid? Ask for clarification.
- ADLRO lifetime revocation cases will display for 10 years only? Ask for clarification.
- CCR changes to website info, possible press release or other communication

Public/Media

SB2517 SD1-HB2636

Section 2-Traffic Violation Record

Current: District Court staff provide ALL public traffic case info to anyone requesting at the counter. Process and fee may differ depending on whether the person requests certified copies.

Current: eCourt Kokua provides ALL adult public traffic case information via the website.

- This includes:**
- 1) Parking cases
 - 2) Equipment cases (seatbelt, safety check)
 - 3) Jaywalking and other pedestrian cases



**Proposed change -effective upon approval:
traffic violation records may only be accessed with**

- 1) Driver's SSN or**
- 2) Driver license number**

- Time/resources
- Future modules
- eCourt Kokua -traffic and eTraffic online payments will have to be taken down immediately until changes made
- JIMS/vendor mini-project

System

- eTraffic online payments will be discontinued, increasing in person and mail payments, possible increase in late payments
- Staff will have to deal with questions, complaints, calls, etc.
- New procedures will be created to require SSN/DL when requesting any case info in person

Operations

- 24/7 online access will effectively end for public and news media
- Vehicle search feature will end
- Online search may be misleading if a case does not have the SSN/DL
- Less than half of traffic cases have SSN/DL, thereby making thousands of cases inaccessible to the public
- People without an SSN or drivers license will not be able to access their traffic records
- CCR changes to website info, possible press release or other communication

Public/Media

Judiciary anticipates complaints like these...

Why is it so hard to get information now?



I called, and I had to wait a long time to talk to someone. I was used to looking up my parking tickets online and now I can't.

I tried to pay online, but I lost my ticket and it was too hard to look it up.

Why do I have a stopper? I thought my case was dismissed when I didn't see it online.

I got a parking ticket and a no seatbelt ticket last year. I didn't pay and forgot all about it. When I heard I could check my cases online, I thought I better check for that old parking and seatbelt ticket.

I looked up my SSN online and it showed no traffic cases in Hawaii. I thought everything was clear.

I just got a letter from MSB. My credit report is wrecked. Why is a collection agency calling me? And why couldn't I find those tickets earlier?



SB2517 SD1-HB2636

Section 3-Traffic Violation Record Confidential

Current: District Court staff provide ALL public traffic case info to anyone requesting at the counter. Only JUVENILE records are confidential (as of Jan 1, 2008 juvenile INFRACTIONS are no longer confidential [Act 85]).

Current: eCourt Kokua provides ALL adult public traffic case information via the website. No juvenile cases are shown online (as of July 2010).

**▲ Proposed change -effective upon approval:
traffic violation records will be confidential if...**

- 1) Cases “dismissed with prejudice” or “not guilty”**
- 2) Violation “occurred” more than 10 years before current date**
- 3) Unless driver has a CDL (all cases regardless of age or disposition)**

- Staff will have to deal with questions, calls, etc.
- New procedures will be created for confidential adult record requests

Operations

- Courts take payments on cases well past the 10 year mark, ex. cases with bench warrants. Making a case confidential may make it more difficult for drivers to access their old cases and make payment.
- CCR possible press release or communication about change

Public/Media

- Time/resources
- Future modules: Increasing security for these cases may impact other JIMS modules, ie. family, criminal and civil.
- Online appellate cases and circuit court cases will still be available, resulting in non-standard access
- eCourt Kokua -traffic will have to be taken down immediately until changes made
- JIMS/vendor mini-project

System



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2636, RELATING TO TRAFFIC VIOLATION RECORDS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 23, 2012 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Robyn B. Chun, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the "Department") has comments and suggested amendments for this bill.

With respect to moving violations for non-commercial drivers, this bill provides that where the moving violations: (a) were dismissed with prejudice; (b) the alleged violator was found not guilty; or (c) occurred more than ten years prior to the date of the request, those violations shall be confidential and shall not be included in a certified traffic abstract. This bill also provides that an electronic traffic violation record shall be available to a person who provides a state driver's license number or social security number for the person for whom the traffic violation record is sought. In addition, this bill provides that the disclosure of confidential information shall be subject to a fine and gives investigation and enforcement responsibility for alleged violations to the Department.

As noted in testimony previously submitted by the Judiciary Information Management System Program Manager, section 2 of this bill allows or facilitates identify theft through the use of randomly selected driver's license numbers or social security numbers. Accordingly, we recommend that this bill be amended to conform to the current practice of granting access to an electronic traffic violation record where a person's name, vehicle license number, or traffic citation number is provided.

With respect to sections 2 and 3, if those provisions are intended to be permanent law, those provisions should be added to the Hawaii Revised Statutes either as new sections or as amendments to existing sections.

In subsection (b) of section 3, this bill provides that the action to enforce and collect the fine for the disclosure of confidential information shall be a civil action. We recommend that this bill be amended to clarify whether the civil action is one that is to be brought in court or in an administrative hearing.

We also recommend that wording be added to identify a source of funding or to appropriate funds to be expended by the Department to carry out the investigation and enforcement responsibilities imposed by this bill. At present the Department lacks the resources to take on these additional responsibilities.

We respectfully ask that, if the Committee passes this bill, amendments be made to address these concerns. We are available to work with the committee's staff to draft wording to address our concerns.