

HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 · FAX: 586-8655 · TDD: 568-8692

February 11, 2020
Rm. 309, 9:10 a.m.

To: The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
Members of the House Committee on Labor and Public Employment

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1782

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports H.B. No. 1782.

H.B. No. 1782 amends HRS § 378-2.5(c) to reduce the “look back” limitation on employer consideration of convictions that bear a rational relationship to the job *from ten years from time of conviction to five years for felonies and three years for misdemeanors*, excluding periods of incarceration.

Under HRS § 378-2, it is unlawful to discriminate in employment on the basis of arrest and court record – this includes refusing to hire, barring from employment, discharging, or otherwise discriminating in compensation, terms, conditions, or privileges of employment.

HRS § 378-2.5 and HRS §§ 378-3 (8) and (9) provide several exceptions to the arrest and court record protection which allow Hawai‘i employers and Hawai‘i employment agencies to engage in limited inquiry or consideration of a current employee or applicant’s conviction. Under these exceptions, an employer may **only** inquire about or consider a conviction of a

current employee or of an applicant for employment who has already received a conditional offer of employment, *that occurred no more than ten years before the date of application, excluding any period of incarceration*. A conviction can only be considered if it has a rational relationship to the core duties and responsibilities of the job.

Any category of Hawai'i employer expressly listed in HRS § 378-2.5(d) as permitted to inquire into and consider an applicant's conviction record may do so to the extent allowed by the statutory exemption.

If enacted, H.B. No. 1782 would only change the look back window from ten years to *five years for felonies and three years for misdemeanors*, excluding periods of incarceration. This change is meant to reduce employment barriers and improve likelihood of successful reentry for workers who have records of criminal conviction(s) and have served their time and paid their debt to society.

The HCRC supports H.B. No. 1782.

ATTACHMENT: Legislative History of Hawai'i Arrest & Court Record Law

History of Hawai'i Arrest & Court Record Law

1973 Act 54

The Hawai'i fair employment statute was first amended to prohibit discrimination on the basis of arrest and court record in 1973, when House Bill No. 656 was enacted as Act 54.

Act 54 amended the prohibited discriminatory practices section of our fair employment law, HRS § 378-2, to prohibit an employer from discriminating on the basis of arrest and court record in hiring, discharge, term and conditions, and advertising or publication, and also prohibited labor organizations from discriminating on that new protected basis.

Act 54 expressly excluded records of conviction from the definition of “arrest and court records”, in HRS § 378-1(6):

“Arrest and court records” include any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant and tried, pursuant to any law or military authority. **Convictions are not included in this definition.**

The 1973 law did not protect against inquiries into and consideration of records of conviction in employment. The House position was to include convictions within the scope of the definition and protection, but the Senate position excluding convictions prevailed.

1974 Act 205

The statute was amended the following year to expressly add protection against discrimination on the basis of record of conviction. House Bill No. 2485 was enacted in 1974 as Act 205.

Act 205 amended the HRS § 378-1(6) definition of “arrest and court records” to include conviction records:

“Arrest and court records” include any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant, tried or **convicted pursuant to any law enforcement or military authority.**

The purpose language of Act 205 is sweeping in scope:

SECTION 1. Purpose. The purpose of this Act is to encourage and contribute to the rehabilitation of convicted persons and to assist those persons in their assumption of the responsibilities of citizenship. To this end, the legislature finds it a well-established principle of American jurisprudence that an occupation and equal access thereto is “property” within the meaning of Article 1, section 4, of the Hawaii Constitution, which guarantees that, “No person shall be deprived of life, liberty or property without due process of law ...”

[L 1974, c 205, §1]

The Senate Committee on Judiciary reported:

Correctional officers and probation and parole officials emphasize that gainful employment is essential in the process of re-socializing criminal offenders.

* * * * *

Your Committee realizes that if enacted, the bill would not provide any magical cure to the employment problems of the convicted person. He will still find difficulty when seeking jobs. Passage of this bill, however, would represent a recognition by this Legislature that persons who have been in trouble are not inherently and permanently bad and that opportunities afforded other citizens should be made available to them.

The 1974 legislative history includes committee report language to the effect that employers may disqualify or refuse employment based on a conviction record that is either rationally connected or directly related to the occupation sought, but on its face the statute did not provide for an such an exception.

1998 Act 174

In 1998, House Bill No. 2967, enacted as Act 174, created a statutory exception to the arrest and court record exception. Act 174 added express exception language allowing post-offer inquiry into and consideration of records of convictions, less than ten years from date of conviction, bearing a rational relationship to the duties and responsibilities of the job:

§378-2.5 Employer inquiries into conviction record. (a) Subject to subsection (b) an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the period for which the employer may examine the employee's conviction record shall not exceed ten years.

Note: The post-offer inquiry and consideration concept was modeled after the IRCA I-9 employment authorization verification process.

2003 Act 95

In 2003, Senate Bill No. 830, which was enacted as Act 95.

Act 95 amended the arrest and court record protection in two ways:

- Periods of incarceration were excluded from the 10 year "look back" period. The concern here was that employers would not be able to consider the convictions of murderers who served more than ten years of a prison term.

- The statute was amended to make it clear that employers who have a statutory exception can make pre-offer inquiries into conviction records. These statutory exceptions vary in their terms, and are defined by statute. In our view, this express provision clarifies and codified existing law, and did not represent a substantive change. This amendment is useful in that it consolidates a list of statutory exceptions, although the list is not exclusive.

The 2003 legislation also changed the way that state and county employers can consider arrest and court record convictions: allowing the use of arrest records as the basis for public employer investigations for “suitability”; and use of the rational relationship standard for public employers, rather than the evidence of rehabilitation standard previously required.

Enacted in 2003, Act 95 amended § 378-2.5, Hawaii Revised Statutes, to read as follows:

"[E]§378-2.5[3] **Employer inquiries into conviction record.** (a) Subject to subsection (b), an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the ~~[period for which the]~~ employer may ~~[examine]~~ consider the employee's conviction record falling within a period that shall not exceed the most recent ten years[-], excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee's or prospective employee's conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the sentence imposed for the employee's or prospective employee's conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

(1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78- ;

(2) The department of education pursuant to section 302A-A;

(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division pursuant to section 321- ;

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846- ;

- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302A-B;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-A;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I- ; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1."

Note: HRS § 378-2.5(d) has been subsequently amended since enactment of Act 95 in 2003, to add to or clarify the list of employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to federal or state law.



HB1782
RELATING TO EMPLOYMENT DISCRIMINATION
Ke Kōmike Hale o ka Limahana a me ka Hana Lehulehu

Pepeluali 11, 2020

9:10 a.m.

Lumi 309

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** HB1782, a measure in OHA's 2020 Legislative Package. This bill would amend Hawai'i's current "ban the box" law to **limit employers' allowable inquiry into applicants' conviction records from the previous ten year period (excluding periods of incarceration), to five years for felony convictions, and three years for misdemeanor convictions.** By reducing the impacts of older, less relevant convictions on people seeking to obtain or maintain legitimate employment, this measure would **discourage employment decisions that are expressly or unconsciously based on such convictions; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state.**

Hawai'i's "ban the box" law seeks to limit the impact that convictions may have on the employment prospects of those who have a criminal history, but who have paid their debt to society, by limiting how far back an employer may look into an employee's or prospective employee's conviction record.¹ While progressive when adopted,² research now shows that the law's current allowable "lookback period" may be excessively long, such that it may undermine the aims of its underlying policy. Specifically, HRS § 378-2.5 explicitly **allows employers to "inquire about and consider" their current or prospective employees' conviction records for the past ten-year period**, exclusive of time served, and to make employment decisions based on convictions with a vaguely-defined "rational relationship" to the job at hand. With studies demonstrating **that even old and minor convictions may significantly bias employers** against those seeking legitimate and gainful employment,³ **this ten-year lookback period may inhibit even those who have demonstrated years of continuous lawful behavior from obtaining or maintaining a job, preventing them from supporting themselves and their families through legitimate employment, and frustrating the state's goals of offender rehabilitation, reentry, and recidivism prevention.**

¹ See S. Stand. Comm. Rep. No. 3282, in 1998 Senate Journal at 1331; see also S. Stand. Comm. Rep. No. 862-74, in 1974 Senate Journal at 1079.

² Many jurisdictions, with Hawai'i leading the way, have since passed "ban the box" laws prohibiting employers from discriminating against current or prospective employees based on their criminal record information.

³ See Dylan Minor et al., *Criminal Background and Job Performance*, 7 J. OF LABOR POLICY 8 (2018), <https://izajolp.springeropen.com/articles/10.1186/s40173-018-0101-0> (summarizing studies indicating the diminished employment prospects of individuals with criminal records).

Notably, **the old convictions that the current “ban the box” law specifically allows employers to consider may have little bearing on an individual’s likelihood of committing a new crime, or on their overall employability.** For example, recidivism data show that former offenders who recidivate overwhelmingly do so within the first two years of release.⁴ Further, studies show that those with older conviction records (6-7 years) are about as likely to commit a new crime as those with no criminal history whatsoever.⁵ With regard to overall employability, studies show that those with conviction records tend to “have a longer tenure and are less likely to quit their jobs voluntarily than other workers,”⁶ and a significant majority of surveyed managers and human resource professionals found that the “quality of hire” of workers with conviction records was the same or better than that of those without any convictions.⁷

Accordingly, by reducing the ten-year lookback period allowed under current law, HB1782 will better serve the original intent of HRS § 378-2.5, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. This in turn may enable such individuals to better support themselves and their families, allow them to better contribute to their communities as well as the state’s economy, and encourage their continued law-abiding behavior – promoting public safety and the state’s interests in rehabilitation, reentry, and recidivism prevention over the long term.

As a final note, OHA emphasizes that this bill would not affect current exceptions to the “ban the box” law’s limitations, such as those for jobs in public safety or schools, nor would it affect current statutory provisions that otherwise allow the use of conviction or related records (i.e., sex offender registry, etc.) in making employment decisions.

Therefore, OHA respectfully urges the Committee to **PASS** HB1782. Mahalo piha for the opportunity to testify on this critical measure.

⁴ See HAWAII STATE DEPARTMENT OF HEALTH, INTERAGENCY COUNCIL ON INTERMEDIATE SANCTIONS, 2017 RECIDIVISM REPORT Fig. 2 (2018), showing that of those in the 2014 cohort of released offenders who recidivated (were arrested for a new offense or had their probation or parole revoked), 63.2% did so within the first 12 months of release and 88.9% did so within the first two years. See also Mark T. Berg and Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Quarterly 382, 397-98 (2011)).

⁵ Megan C. Kurlychek, et. al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL’Y 483, 498-500 (2006).

⁶ Dylan Minor et al., *Criminal Background and Job Performance*, 7 J. OF LABOR POLICY 8 (2018), <https://izajolp.springeropen.com/articles/10.1186/s40173-018-0101-0>.

⁷ Kathy Gurchiek, *Research: Employers Willing to Overlook a Criminal Record to Hire the Right Person*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT, May 17, 2018.

DAVID Y. IGE
GOVERNOR



RYKER WADA
DIRECTOR

ANDREW T. GARRETT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 10, 2020

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on Tuesday, February 11, 2020
9:10 a.m., Conference Room 309

BY

RYKER WADA
DIRECTOR

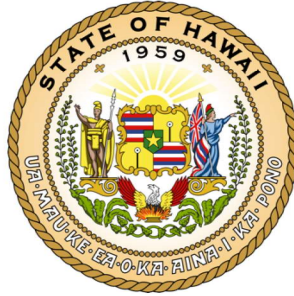
House Bill No. 1782
Relating to Employment Discrimination

TO CHAIRPERSON JOHANSON, VICE CHAIR ELI AND MEMBERS OF THE
COMMITTEE:

The purpose of House Bill No. 1782 is to limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

DHRD **supports the intent of** this measure. However, we are concerned that the 5-year and 3-year “lookback” period for felonies and misdemeanors, respectively, as proposed by this bill does not provide enough time to determine rehabilitation. The industry standard for background check companies is to “lookback” at the most recent 7-year period. As such, we respectfully request that this bill be amended to reflect a 7-year “lookback” for both felonies and misdemeanors.

Thank you very much for the opportunity to testify on this measure.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the House Committee on Labor

In support of HB1782
Tuesday, February 11, 2020, at 9:10 a.m. in Room 309

Dear Chair Johanson, Vice Chair Eli, and Honorable Members,

The Hawai‘i State Commission on the Status of Women provides the following testimony in strong **support** of HB1782, which would limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

The Commission supports shortening the current “lookback period,” or length of time that employers are able to look back into an individual’s criminal record, because this would increase access to capital and formal employment for formerly incarcerated women, including and especially transgender women. Employment discrimination based on criminal convictions can cause ramifying hardships for women, who oftentimes must rebuild their lives from scratch with little structural support. Women are at particular risk of spiraling into cycles of abuse and exploitation if unable to secure stable employment and financial independence.

This measure is an important step to remove barriers to successful recovery from incarceration and to prevent the exploitation of vulnerable people. Accordingly, the Commission respectfully urges the Committee to **pass** HB1782.

Sincerely,

Khara Jabola-Carolus

‘Ahahui o Hawai‘i
Advocates for Native Hawaiian Justice at the William S. Richardson School of Law at the
University of Hawai‘i at Mānoa
Email: ahahuiohawaii73@gmail.com

**TESTIMONY FOR HB1782
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
PEPELUALI, 2020 AT 2:45 P.M., ROOM 224**

Pepeluali 7, 2020

The ‘Ahahui o Hawai‘i Advocates for Native Hawaiian Justice at the William S. Richardson School of Law strongly supports HB1782.

The ‘Ahahui is comprised of law students that promote the discussion of issues affecting Native Hawaiians. As future members of the bar, we recognize the importance of safety for our community as well as barriers the justice system poses to many of our community members, especially in the Native Hawaiian community. The ‘Ahahui strongly supports HB1782 for its progressive intent to give a fair shot to those who have already paid their dues to society.

By reducing the ten-year lookback period allowed under current law, this bill will better serve the original intent of the “ban the box” law. HB1782 would allow employers to consider more recent criminal charges, while relieving those who were formerly incarcerated of the stigma and bias that may follow them from old convictions.

SB2193 is a just bill because it widens the opportunities for the formerly incarcerated who have accepted their punishment, have been rehabilitated by the criminal justice system, and are prepared to re-enter society with the strong promise of employment. HB1782 will ultimately empower the employer and employee to strengthen their communities through job employment.

Native Hawaiians represent a small portion of our state’s population, but represent the most incarcerated in our criminal justice system. If passed, this bill will be one of the most progressive “ban the box” laws in the country. It is crucial for our formerly incarcerated community members to be given the opportunity to reintegrate into society, which is proven to reduce recidivism; having consistent and non-discriminatory employment is an important factor to that process.

Mahalo for the opportunity to testify on this important measure.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn Eli, Vice Chair

Tuesday, February 11, 2020

9:10 AM – Room 309

STRONG SUPPORT FOR HB 1782 - EMPLOYMENT DISCRIMINATION

Aloha Chair Johanson, Vice Chair Eli 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 in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 1782 limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

Community Alliance on Prisons is in strong support of this measure. Decreasing the lookback time will open up employment opportunities for those reintegrating with their communities, help our communities by increasing the number of people contributing to the tax base, and strengthening our families and communities.

Criminal records are one of the biggest barriers to employment for those who are transitioning from incarceration to their communities because of the stigma and bias that exists in society.

Employers will still be allowed to consider recent conviction while relieving people with older convictions from the largely unjustified stigma and bias.

Community Alliance on Prisons urges the committee to pass this measure that will help so many people and communities thrive. Mahalo for this opportunity to testify.

The Thirtieth Legislature
Regular Session of 2020

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli Vice Chair
State Capitol, Conference Room 309
Tuesday, February 11, 2020; 9:10 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1782
RELATING TO EMPLOYMENT DISCRIMINATION**

The ILWU Local 142 supports H.B. 1782, which limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

The objective of most prison sentences is to focus on rehabilitation for those incarcerated. The hope is to re-educate and retrain those serving a sentence so they can meaningfully contribute to society after serving out their term. Unfortunately, prospective workers with a conviction may be discriminated against when seeking employment and could have a hard time getting hired.

H.B. 1782's intent is to help ensure rehabilitated workers are not discriminated against when seeking employment by reducing the felony conviction history from 10 year to 5 years and a misdemeanor conviction history to 3 years.

Thank you for the opportunity to offer testimony on this measure. The ILWU recommends passage of H.B. 1782.



Committees: Committee on Labor & Public Employment
Hearing Date/Time: Tuesday, February 11, 2020, 9:10am.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 1782

Dear Chair Ling Johanson and members of the Committee:

The American Civil Liberties Union of Hawai'i writes in **support** of H.B. 1782, which would limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

Denial of employment opportunities because of an individual's criminal record is a harsh collateral consequence that makes it more difficult for people to constructively build their lives. Collateral consequences are the additional penalties tied to a conviction that greatly impact an individual's capacity to engage socially and economically upon their sentence completion. Collateral consequences are different from direct consequences of convictions in that they are not factored in to the calculation of punishment or sentencing, and are triggered outside the jurisdiction of the courts.

In a recent Op Ed, ACLU of Hawaii's Smart Justice Organizer stated, "A depressing loop I hear from formerly incarcerated folks is how, despite serving their sentences, they still feel like they're serving time. The shunning from employers, neighbors and friends can sound like they are not worthy of being "out." Stigma can prevent successful reintegration of people previously incarcerated."¹

To be clear, not everyone who has a conviction has been incarcerated. If we are serious about reducing recidivism in our state, we need to remove barriers that keep people from living productive, healthy lives. Success comes when we improve post-conviction employment possibilities. This is why ACLU of Hawai'i supports H.B. 1782.

Thank you for your time and the opportunity to testify.

Sincerely,

Monica Espitia
Smart Justice Campaign Director
ACLU of Hawai'i

¹ *End Stigma Against Incarceration, 1 Ohana At a Time;*

<https://www.staradvertiser.com/2020/01/14/editorial/island-voices/end-stigma-against-incarceration-1-ohana-at-a-time/>



The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

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Jeff Nash
EXECUTIVE DIRECTOR



Vincent C. Marino
FOUNDER

Relating to Employment Discrimination HB1782

My name is Alexandria Morales I am with Habilitat, INC. Habilitat is a two-and-a-half-year substance abuse treatment program that has been saving lives for over 49 years. I strongly Support HB1782.

If we want to continue our efforts at reducing recidivism, we need to address the criminogenic needs. Criminogenic needs are characteristics and traits of an individual that directly relate to their likelihood to re-offend and commit another crime. Research shows that if these needs are not met, then a person is more likely to fall back into their old lifestyle.

One of those needs is employment. A lack of employment causes a person to become dependent and unmotivated (I speak from experience). If we continue to allow employers to make biased opinions on hiring a person, then we are only making it harder on people who have paid their dues and are trying to better themselves.

Recently, a Habilitat graduate landed a great job. She arrived to work on her first day only to find out that she was being fired because of a petty misdemeanor charge that was over 4 years old. After facing multiple rejections, our administration stepped in and helped her get an "offender friendly job". In a few short months she has received a promotion, a raise and is an excellent employee.

As a person with a criminal background, I was lucky to have an organization that hired me, no questions asked. I am told I am huge asset to the organization. HB1782 is aligned with the "ban the box" law and will support employers to make decisions based on an individual's recent actions, rather than discriminate against people who paid their dues with the law and have taken the steps necessary to not reoffend. I respectfully ask that the committee pass HB1782.

Thank you,

Allie Morales
Public Relations Manager
Habilitat, INC

Jeff Nash
EXECUTIVE DIRECTOR



HABILITAT
THE PLACE OF CHANGE

Vincent C. Marino
FOUNDER

HB1782

Relating to Employment Discrimination

My name is Jeff Nash, Executive Director for Habilitat, Inc. I strongly support HB1782.

I have been involved in offender's re-entry programming and evidenced based recidivism reduction for over 20 years. One of the biggest obstacles for successfully rehabilitated offenders is finding work at a living wage. When potential employers deny much needed jobs to people who have paid their debt to society and been successfully rehabilitated, they are directly contributing to the constant cycle of recidivism. If we truly want to integrate these people, who have often worked very hard to reform themselves, we need to remove the obstacles to success. Gainful employment is one of 8 key criminogenic need factors, proven to reduce recidivism. I respectfully urge the committee to pass HB1782.

Mahalo,

Jeff Nash
Executive Director
Habilitat, Inc

HB-1782

Submitted on: 2/7/2020 11:54:28 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride at Work - Hawaii	Pride @ Work - Hawaii	Support	No

Comments:

HB-1782

Submitted on: 2/7/2020 11:53:17 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Individual	Support	No

Comments:

ROBERT K. MERCER
2467 Aha Aina Place
Honolulu, Hawai'i 96821

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email: mercer001@hawaii.rr.com

February 9, 2020

TO: House Committee on Labor & Public Employment
RE: HB 1782
HEARING: February 11, 2020
TIME: 9:10 a.m.
ROOM: 309
POSITON: **STRONGLY SUPPORT**

Chair Johanson, Vice Chair Eli, and members of the committee:

My name is Bob Mercer. I am a retired lawyer and recently served as vice chair of the House Concurrent Resolution 85 Task Force on prison reform.

I strongly support HB 1782.

Formerly incarcerated people need employment for the same reasons as everyone else: to support themselves and their families, pursue life goals, and strengthen their communities.¹ The first ever estimate of unemployment among the 5 million formerly incarcerated people in the U.S. found that over 27% were unemployed, a number higher than the U.S. employment rate during the Great Depression.²

A large-scale study funded by the U.S. Department of Justice found that a criminal record reduced the likelihood of a callback or job offer by nearly 50 percent, and that the stigma of a criminal records affects employment prospects for many years, regardless of whether the offense was minor or the person had never been convicted at all.³

Limiting the convictions that can be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years, and misdemeanor convictions that occurred in the most recent three years, will

¹ Lucius Couloute and Daniel Kopf, *Out of Prison, Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Policy Initiative, July 2018.

² Out of Prison, *supra*.

³ Devah Pager and Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men*, National Institute of Justice (2009).

ROBERT K. MERCER
2467 Aha Aina Place
Honolulu, Hawai'i 96821

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

reduce some of the barriers to employment for formerly incarcerated individuals and in the long run will reduce recidivism and make our communities safer.

I urge you to pass HB 1872.

Thank you for allowing me to testify on this matter.

My name is Linda Rich. I STRONGLY SUPPORT HB1782.

As a social worker and substance abuse treatment professional, I have had the privilege to see so many individuals who were convicted and incarcerated because of drug related crimes turn their lives around and become contributing members of our community. I have hired recovering individuals who had previous convictions from the days of their active addiction. They were excellent and effective employees because they had found their strength in recovery. Some of them had been rejected by other employers because of their past convictions. Just a few weeks ago, here at the capitol, I ran into a woman whom I had known in treatment who originally came to treatment from WCCC. She now has 15 years clean and sober and has a master's degree in social work. What an asset she must be in reaching those still caught in the web of addiction or other disfunction. I know many others in recovery who have turned their lives around but have faced employment challenges because of their pasts.

HB1782 would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. People deserve a second chance, especially when they have demonstrated changed behavior. By reducing the ten-year look back period allowed under current law to 5 years. HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

Linda L. Rich, DCSW, LSW, CSAC

HB-1782

Submitted on: 2/8/2020 11:44:49 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacquelyn Esser	Individual	Support	Yes

Comments:

People must be able to move on with their lives in a meaningful way after they have served their debt to society. The collateral consequence of a criminal conviction can last with someone for a lifetime and relegate them to a second class citizen for the rest of their lives. Not only does it hurt the individual, but it hurts families and communities, if our citizens cannot be productively employed and part of the tax base. It also undermines public safety if you do not help people move beyond their criminal records and participate in the workforce. Without that help, the chance of people returning to the criminal justice system increases.

At some point, the concept of punishment is supposed to be finite.

HB-1782

Submitted on: 2/7/2020 11:46:57 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Individual	Support	No

Comments:

HB-1782

Submitted on: 2/7/2020 2:30:16 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kepola Dudoit	Individual	Support	No

Comments:

HB-1782

Submitted on: 2/8/2020 2:53:34 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erik Meade	Individual	Support	No

Comments:

I'm testifying in support of HB1782.

When we look back at our own lives do we see only the worst thing we have done? Or when we think of that thing do we think about what drove us to that point and how we have learned, changed, grown, and vowed to not let that thing define our lives?

Five long years is more than enough time to be shunned from employers for people who have served their debt to society and not fallen back into that same behavior. Overzealousness of punishing ex felons after they have done the time does not help them stay out of future trouble. It may be argued that depriving them of opportunities for gainful employment pushes them to more desperate attempts of survival.

Given the low employment rate, employers would benefit from a larger work force. Our historically at over-capacity jails and prisons would benefit from reductions of recidivism.

Lets help break the cycle recidivism and vote yes on HB1782.

Thank-you

HB-1782

Submitted on: 2/9/2020 11:24:07 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	No

Comments:

HB-1782

Submitted on: 2/9/2020 1:14:24 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

HB-1782

Submitted on: 2/10/2020 8:15:13 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Noalani Nakasone	Individual	Support	No

Comments:

Please PASS this needed bill. Mahalo from Kauai!

HB-1782

Submitted on: 2/10/2020 11:51:30 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments:

eli2 - Kevin

From: Manulani Aluli Meyer <manulani@hawaii.edu>
Sent: Saturday, February 8, 2020 6:10 AM
To: LABtestimony
Subject: Pass HB1782!

Aloha mai kakou:

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill.

ulu ka pono,
Dr. Manu Aluli Meyer
University of Hawaii West Oahu

eli2 - Kevin

From: Kanaka Bronson <bronsonkanaka.bb@gmail.com>
Sent: Saturday, February 8, 2020 6:04 AM
To: LABtestimony
Subject: Pass HB1782!

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

eli2 - Kevin

From: Uilani Danielson <ooowee91@gmail.com>
Sent: Saturday, February 8, 2020 7:13 PM
To: LABtestimony
Subject: Pass HB1782!

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

eli2 - Kevin

From: Kaonohi Jeremiah <imuapuna1@gmail.com>
Sent: Sunday, February 9, 2020 8:21 AM
To: LABtestimony
Subject: Pass HB1782!

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill. Sincerely, Kaonohiokalani Jeremiah

eli2 - Kevin

From: Diane Kanealii <dkanealii02@gmail.com>
Sent: Sunday, February 9, 2020 5:54 PM
To: LABtestimony
Subject: Pass HB1782!

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment.

Therefore, I respectfully urge the Committee to PASS HB1782.

Mahalo nui for the opportunity to testify in support of this bill.

Sincerely,

Diane M.kanealii

Kawaihae, Hi

eli2 - Kevin

From: Kalena Blakemore <kalena.blakemore@gmail.com>
Sent: Monday, February 10, 2020 1:57 PM
To: LABtestimony
Subject: Pass HB1782!

I strongly support HB1782, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,
Kalena Blakemore

Late Testimonies

LATE

DEMOCRATIC PARTY OF HAWAII
HAWAIIAN AFFAIRS CAUCUS

TESTIMONY IN SUPPORT OF
HB1782, RELATING TO EMPLOYMENT DISCRIMINATION
Hearing, Tuesday, Feb 11, 9:10 a.m., Conf Room 309

Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli, Vice Chair
Members, Committee on Labor & Public Employment

Aloha,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly encourages your support of HB1782, to limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

By limiting an employers' use of conviction records to a five year period for felonies and three year period for misdemeanors, this measure will allow employers to continue basing employment decisions on more recent convictions, and will reduce the stigma and other barriers faced by people with older convictions. This in turn will reduce the disproportionate impact of conviction records and our criminal justice system as a whole on Native Hawaiians, women, and marginalized groups; enable and encourage reformed individuals to obtain and maintain legitimate employment, support their families, and contribute to their communities and the overall economy; and promote public safety through reduced criminal activity over the long term.

Me Kealoha pumehana

/s/ Leimomi Khan

LEIMOMI KHAN
Chair, Hawaiian Affairs Caucus

HB-1782

Submitted on: 2/10/2020 9:09:22 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments:

LATE

HB-1782

Submitted on: 2/10/2020 10:11:18 PM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments:

Aloha,

Please support HB 1792 that would limit the look back period for non-exempt employers to consider arrest and court records when making employment decisions.

Hawai'i was the first jurisdiction in the United States to enact a "Ban-the-box" law that prohibited employment discrimination on the basis of arrest and court record. The legislative history behind the enabling statute and this measure both recognize the importance of meaningful opportunities for rehabilitation.

Research has clearly demonstrated that gainful employment is a critical factor in reducing recidivism. The current look back period of ten years is too long and is not supported by evidence based date.

Beyond that, we need to reflect on the fact that our criminal justice system has a long history of racism and bias against Native Hawaiians, other ethnic minorites and the poor.

As Vera Institute of Justice's Board of Trustees Chair Damien Dwin writes in the Entrepreneur, the business sector can change this. Hiring people who were formerly incarcerated not only creates economic opportunities for them, but "it's also smart business."

Rather than creating more barriers for justice involved individuals to obtain gainful employment, we should invest in measures that will expand employment and educational opportunities.

Please pass HB 1782.

LATE

HB-1782

Submitted on: 2/11/2020 9:20:32 AM

Testimony for LAB on 2/11/2020 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
liz anne	Individual	Support	No

Comments:

I support this bill. We need to give people employment opportunities. Felonies should not hold them back from being gainfully employed. Employment prevents recidivism and gives them hope and confidence they can be a part of society. Our prisons are full. Stop with giving felons barriers to succeed. I fully support this bill.