



HAWAI‘I CIVIL RIGHTS COMMISSION

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

June 29, 2020
Rm. 325, 2:00 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission
Members of the Senate Committee on Labor, Culture and the Arts

Re: S.B. No. 2193, H.D. 1

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 S.B. No. 2193, H.D. 1, but prefers the

S.B. No. 2193 would have amended 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. S.B. No. 2193, H.D. 1 reduces 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 seven years for felonies and five 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, S.B. No. 2193, H.D. 1 would only change the look back window from ten years to *seven years for felonies and five 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. However, we support the original version of his bill for better meeting the goals of reentry for those with conviction records who have already been incarcerated and paid their debt to society.

The HCRC supports S.B. No. 2193, H.D. 1, and asks that you return it to its original wording set forth in S.B. 2193.

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.



SB2193 HD1
RELATING TO EMPLOYMENT DISCRIMINATION
House Committee on Judiciary

June 29, 2020

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2193 HD1, a measure included in OHA’s 2020 Legislative Package. In its current form, 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 seven years for felony convictions and five years for misdemeanor convictions.** Although OHA prefers our original measure’s “lookback” period of five years for felony convictions and three years for misdemeanor convictions (excluding periods of incarceration), OHA appreciates that this measure would still reduce the potential for discrimination against people with conviction records seeking employment. By reducing the opportunity to “inquire about and consider” older, less relevant convictions, 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. **OHA does note that this measure’s effective date will need to be amended to be “upon approval,” and respectfully requests that the Committee make this change to the bill’s effective date provision.**

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. Studies demonstrate **that even old and minor convictions may significantly bias employers** against those seeking legitimate and gainful

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.

employment.³ Thus, 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.**

Notably, the very old convictions that the current “ban the box” law 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 in Hawai‘i 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 are about as likely to commit a new crime as those with no criminal history whatsoever.⁵ With regards 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

Reducing the lookback period will better serve the original intent of HRS § 378-2.5 by allowing employers to continue considering recent conviction records in their hiring and other employment decisions while relieving people with conviction records 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.

With regards to the purported seven-year “industry standard” for private consumer reporting agencies, OHA notes that this “standard” is inapplicable to the statutory provisions being proposed for amendment in this measure. Private employers typically

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).

⁴ See HAWAI‘I 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.

use consumer reporting agencies, which are subject to the Fair Credit Reporting Act (FCRA). The FCRA sets baseline limits on what information can be provided to employers by consumer reporting agencies, which includes arrest records up to seven years old, and conviction records without limit, subject to exceptions. How employers can use this information is further subject to FCRA requirements and, importantly, is also further regulated by state law – including Hawai‘i’s. Hawai‘i’s existing “ban the box” law, subject to exceptions, **already prohibits private employers from using any arrest records, not just arrests more than seven years old, for employment decisions.** Therefore, the seven year “industry standard” for private reporting agencies, which is only a reflection of what federal law allows, is not currently applicable to the instant discussion and should not be used as a basis for determining the lookback period proposed in this measure.

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** SB2193 HD1, with an effective date “upon approval.” Mahalo piha for the opportunity to testify on this critical measure.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TESTIMONY IN SUPPORT OF SB 2787, SD 1

TO: Chair Lee, Vice Chair San Buenaventura, and Members of the House Judiciary Committee

FROM: Nikos Leverenz
DPFH Board President

DATE: June 29, 2020 (2:00 PM)

Drug Policy Forum of Hawai'i (DPFH) supports SB 2193, HD 1, which limits the periods where a prospective employer may investigate an applicant's conviction record from the previous ten years to seven years for felony convictions and five years for misdemeanor convictions.

Felony and misdemeanor convictions have a range of "collateral consequences," which the US Commission on Civil Rights (USCCR) succinctly defines as "sanctions, restrictions, or disqualifications that stem from a person's criminal history." ("[Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities](#)," at p. 9.) The USCCR further notes: "Collateral consequences can be characterized as 'invisible' punishments, because they restrict freedom and opportunity for people with criminal convictions but operate outside of the formal sentencing framework and beyond the public view." (*Id.*, at p. 11.)

Hawai'i shows some level of foresight on this front as it is one of 13 states that have mandated the removal of conviction history questions from job applications for private employers. According the [National Employment Law Project](#), this is "a crucial step toward ensuring that people with records have a fair chance at employment in the majority of jobs."

That said, it makes little sense for an offense that is punishable by less than one year of incarceration to have a consequence that lasts a period five times that amount, as proposed under the current version of the bill. Further, collateral consequences remain especially

disproportionate for drug possession. Until the enactment of HB 1383, the possession of any amount of non-medical cannabis was classified as a misdemeanor, which has over 100 collateral consequences under state law. Today, possession of any amount over 3 grams, about one-tenth of an ounce, of non-medical cannabis remains a misdemeanor.

A felony conviction in Hawai'i has over 400 collateral consequences. This includes the possession of any amount of a "dangerous drug," including unusable traces and residue, which is a Class C felony punishable by five years in prison. This kind of over-criminalization is needlessly cruel, perpetuates lasting stigma, and is not a judicious use of public resources at any level.

This bill is a modest yet needed improvement upon existing law. However, the Legislature should do far more to facilitate successful re-entry and reintegration of persons who have been incarcerated. This includes substantial reforms to sentencing laws, law enforcement and prosecutorial practices, and the administration of probation and parole so that the state's criminal legal system can be re-calibrated away from over-criminalization, over-incarceration, and excessive periods of supervision.

As the HCR 85 Task Force on Prison Reform observed in its [final report](#), reform "can be done if we are committed to creating a better system and have the courage to engage (and when necessary confront) the punitive mentality that created and sustains the current failed system."

Thank you for the opportunity to testify on this measure.



TESTIMONY IN SUPPORT **WITH AMENDMENT** OF
SB2193, HD1, RELATING TO EMPLOYMENT DISCRIMINATION
Hearing, Monday, June 29, 2020, 2:00 p.m., Room 325

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Aloha, Representative Lee, Chair
Representative San Buenaventura, Vice Chair
Members, Committee on Judiciary

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly encourages your support of SB2193, HD1, however, we urge you **to return the bill to its original form** amending 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.

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

Juanita Brown Kawamoto
Luna Ho’omalua (Chair)

SB-2193-HD-1

Submitted on: 6/27/2020 10:06:46 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Chair Lee, and fellow committee members,

The LGBT Caucus of the Democratic Party of Hawai'i fully supports the passage of SB 2193.

The LGBT Caucus of the DPH asks that you support this very important bill.

Mahalo nui loa,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawai'i



TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
JUNE 29, 2020

Re: SB 2193 HD1 RELATNG TO EMPLOYMENT PRACTICES

Good afternoon Chairperson Lee and members of the House Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization committed to supporting the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii is opposed to SB 2193 HD1 Relating to Employment Discrimination. This measure 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 seven years and misdemeanor convictions that occurred in the most recent five years. Effective 7/1/2050.

We question if the reduced time is enough for rehabilitation? It is our understanding that there are limited rehabilitation facilities throughout the state. Retailers in the past have hired those who have a criminal record to fill a variety of positions. Businesses are willing to hire those with a criminal record and put the time and money into train them for the position that they are hired for. However, we are not equipped to rehabilitate them back into society. Business may be skeptical of hiring anyone who they feel may be a flight risk as time and money is invested into the employees training.

In 2018, the Department of Justice's Bureau of Justice Statistics¹ released a 9 year follow up update on prisoner recidivism from 2005-2014. The data was compiled from prisoner records reported by state departments of corrections to BJS's National Corrections Reporting Program and national criminal history records from the FBI's Interstate Identification Index and state criminal history repositories via the International Justice and Public Safety Network. The report found that:

- The 401,288 state prisoners released in 2005 had 1,994,000 arrests during the 9-year period, an average of 5 arrests per released prisoner. **Sixty percent of these arrests occurred during years 4 through 9.**
- An estimated **68% of released prisoners were arrested within 3 years, 79% within 6 years, and 83% within 9 years.**
- **Eighty-two percent of prisoners arrested during the 9-year period** were arrested within the first 3 years.
- Almost half (47%) of prisoners **who did not have an arrest within 3 years of release were arrested during years 4 through 9.**
- Forty-four percent of released prisoners were arrested during the first year following release, **while 24% were arrested during year-9.**

And recently our state correctional facilities released over 650 "non-violent" crime offenders to ease crowding and limit the exposure of COVID 19 in the prison system. As of last month, 47 were rearrested for various crimes including allegedly assaulting a 74-year old man with a golf club, attacking a woman with a sword and sexually assaulting a 14-year-old.

Now is not the time to be rolling back the conviction history for employment. We ask you to hold this measure. Mahalo for this opportunity to testify.

¹ <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

SB-2193-HD-1

Submitted on: 6/26/2020 7:03:05 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
laurel brier	Kauai women's caucus	Support	No

Comments:

Please prevent employment discrimination against those with criminal records who has served their time and already have a difficult time finding work and leading productive, fulfilling lives.

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

June 29, 2020

TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY

For Hearing on Monday, June 29, 2020 at 2 p.m.
Conference Room 325

BY

RYKER WADA
DIRECTOR

Senate Bill No. 2193 H.D. 1
Relating to Employment Discrimination

TO CHAIRPERSON LEE, VICE CHAIR BUENAVENTURA AND MEMBERS OF THE
COMMITTEE:

The purpose of Senate Bill No. 2193 H.D. 1 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 seven years and misdemeanor convictions that occurred in the most recent five years.

DHRD **supports** this measure. In previous hearings, we expressed concerns that limiting the lookback period to five years as originally proposed for both felonies and misdemeanors does not provide employers enough time to determine rehabilitation. We support the House Labor and Public Employment Committee's amendments as reflected in this H.D.1, as a 7-year lookback for felonies and a 5-year lookback for misdemeanors addresses our prior concerns.

Thank you very much for the opportunity to testify in support of this measure.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Monday, June 29, 2020
10:00 AM
State Capitol, Conference Room 325

in consideration of
SB 2193, HD1
RELATING TO EMPLOYMENT DISCRIMINATION.

Chair Lee, Vice Chair San Buenaventura, and Members of the House Judiciary Committee

Common Cause Hawaii comments in support of SB 2193, HD1, 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.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii understands that we need a democracy that guarantees a more equitable and just society. The mass criminalization and incarceration of the most vulnerable in our society disenfranchise and disempower our people and undermine the promise of a democracy that works for everyone.

SB 2193, HD1 will hopefully work to successfully transition people formerly incarcerated back into society. Employment is one of the biggest barriers for people who were formerly incarcerated. SB 2193, HD1 will reduce the stigma the formerly incarcerated face and still allow employers to consider recent, relevant convictions from the most recent five years to the most recent seven years for felony convictions and from the most recent three years to the most recent five years for misdemeanor convictions. SB 2193, SD1 is a step towards restoring people's faith in a working democracy for everyone.

Thank you for the opportunity to comment in support of SB 2193, SD1. Common Cause Hawaii still, however, suggests the original version of SB 2193, as it provides for a more just and robust re-integration of formerly incarcerated people into society while still taking into account their past. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

SB-2193-HD-1

Submitted on: 6/28/2020 4:11:37 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Hawai'i Friends of Restorative Justice	Support	No

Comments:

The Hawai'i Friends of Restorative Justice strongly supports this measure to shorten the time employers may consider criminal convictions concerning potential employment. This law would allow more people convicted of crimes to find and maintain employment. Having meaningful employment, along with relationships with law abiding others are two of the most important variables for maintaining desistance from crime and substance abuse. Please see Shadd Maruna's seminal book on rehabilitation after involvement with the criminal justice system: [Making Good How Ex-Convicts Reform and Rebuild Their Lives](#) for more information on the variables that help people desist from crime and substance abuse and remain law abiding.

Industry standards as discussed in [Best Practice Standards: The Proper Use of Criminal Records in Hiring](#) (2013) specifically state that five years is sufficient time to weigh the risks of crimes concerning serious violence and dishonesty, and that only "2 or 3 years" time is necessary for making employment decisions for less serious crimes:

"Common 'Look Back' Periods

Serious Crimes of Violence or Dishonesty:

5, 7, and/or 10 years

Less Serious Crimes: 2 or 3 years" (page 10, 2013, <https://hirenetwork.org/sites/default/files/Best-Practices-Standards-The-Proper-Use-of-Criminal-Records-in-Hiring.pdf>)

Please contact me at lorenn@hawaiiifriends.org if you have any questions about our support for this much needed law in Hawai'i.

Mahalo for your public service.

Lorenn Walker, JD, MPH, Director, Hawai'i Friends of Restorative Justice

LATE

SB-2193-HD-1

Submitted on: 6/29/2020 8:08:19 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Taylor McKenzie	ACLU Smart Justice	Support	No

Comments:

Aloha, my name is Taylor McKenzie and I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors.

We are living through unprecedented trying times that require us to reexamine how we treat each other. We need to extend grace and patience with members of our community, especially those from historically marginalized groups and those most vulnerable to the current national pandemic. Excessive policing and judgement is not the answer. Honestly assess people and their work record, understand that we live in an over policed and racist society that needs adjustment at a fundamental level. This is part of a larger change that our ohana desperately needs.

A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify.



LATE

Testimony to the House COMMITTEE ON JUDICIARY

**Representative Chris Lee, Chair
Representative Joy San Buenaventura, Vice Chair
Monday, June 29, 2020 at 2:00 P.M.
Conference Room 325, State Capitol**

RE: SB 2193 HD1, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The mission of SHRM Hawaii is to advance the Human Resource profession's capacity to drive workplace excellence within business, education, government, and communities in the State of Hawaii. We serve our professionals through building knowledge, expanding experiences, facilitating the development of innovative ideas, and exchanging best practices for success to serve human resource (HR) professionals and advance the human resource profession.

SHRM Hawaii serves nearly 800 members statewide and provides comprehensive information and tools to human resource professionals to enable them to make informed decisions on behalf of both their organization and the employees. We believe that human resource management is a critical component to the success of every business as the HR professional is responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses' most valuable asset: human capital. This is accomplished through a statewide effort to partner with and support our members, while still recognizing the individual needs of organizations on each island.

Based on SHRM Hawaii's mission, we respectfully oppose Senate Bill No. 2193 in its present form. We are guided by four principles in assessing our position on proposed legislation: 1) Is there a problem? 2) Is legislation the correct solution? 3) What will it cost business/government? And 4) Is it consistent with federal law.

First, we are not aware and have seen no evidence that the ten year look back has caused any hardship much less discrimination against Native Hawaiians or any other specific group. As professionals administering employee discrimination laws, we respect and honor all of our employees and are guided by Hawaii law which requires any conviction be "rationally related" the core job duties of the position sought as detailed by the Hawaii Supreme Court in *Shimose v. Hawaii Health Systems Corporation (Hilo Medical Center)*, (2015).



Second, SHRM Hawaii is concerned that the proposed look back periods of five years for felony convictions and three years for misdemeanor convictions does not provide enough time to determine rehabilitation. A 2018 U.S. Department of Justice report conducted research on prisoner recidivism over a nine-year period from 2005 through 2014. This report looked at 401,288 state prisoners released in 2005 across 30 states, including Hawaii. Specifically, the report found that around 83% of state prisoners that were released were arrested at least once during the nine years following their release and that around 60% of these arrests occurred during years four through nine. Finally, we'd also note that in this study, it found that nearly 1 in 4 or 24% of prisoners that were released were actually arrested during their ninth year following release.

Third, there is no comparable federal law and numerous federal laws which prohibit recipients of federal financial assistance and monies to carry out both state and federal programs from employing anyone with felony convictions related to the job. See for example, 45 CFR Section 1301.31(b)(2) and Hawaii Civil Rights Commission Declaratory Ruling No. 07-16 (4/13/07) regarding Early Head Start Program employers.

Employers have shown a willingness to hire employees who have a prior conviction, but we need to also take into account costs related to hiring and training the employees, only to see them either quit or sent back to prison.

Thank you for the opportunity to testify on SB 2193 HD1.

John Knorek, Esq.
Legislative Affairs Committee Co-Chair

Kim Ripley
Legislative Affairs Committee Co-Chair





Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Monday, June 29, 2020 at 2:00 P.M.
Conference Room 325, State Capitol**

LATE

RE: SB 2193 HD1, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has concerns with** SB 2193 HD1, 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 seven years and misdemeanor convictions that occurred in the most recent five years.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is concerned that the proposed look back periods of seven years for felony convictions and five years for misdemeanor convictions does not provide enough time to determine rehabilitation. A 2018 U.S. Department of Justice report¹ conducted research on prisoner recidivism over a nine-year period from 2005 through 2014. This report looked at 401,2888 state prisoners released in 2005 across 30 states, including Hawaii. Specifically, the report found that around 83% of state prisoners that were released were arrested at least once during the nine years following their release and that around 60% of these arrests occurred during years four through nine. We'd also like to note that in this study, it found that nearly 1 in 4 or 24% of prisoners that were released, were actually arrested during their ninth year following release.

Additionally, during the recent COVID-19 pandemic, we also saw a number of prisoners who were released to help prevent the spread of COVID-19 in the state correctional system rearrested. According to a Star Advertiser article highlighting the recent rearrests, it was said that of the approximately 500 inmates released, 47 were rearrested for crimes committed after their release.

Employers have shown a willingness to hire employees who have a prior conviction, but we need to also take into account costs related to hiring and training the employees, only to see them either quit or sent back to prison.

Thank you for the opportunity to testify on SB 2193 HD1.

¹ <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

LATE

SB-2193-HD-1

Submitted on: 6/28/2020 6:22:24 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

Strong support SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify.

www.WeAreOne.cc



LATE

Committee: Committee on Judiciary
Hearing Date/Time: Monday, June 29, 2020, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2193 H.D. 1, Relating to Employment Discrimination

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **support** of S.B. 2193 H.D. 1, 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 seven years and misdemeanor convictions that occurred in the most recent five years.

S.B. 2193 H.D. 1 would reduce employment barriers that keep people with convictions from living productive, healthy lives. We cannot use public safety as a reason to block people from making transformative steps. Studies show the opposite - removing unnecessary hurdles allows people with convictions to live fruitfully and move on from their past.¹

Reducing recidivism is imperative for public safety. Ensuring that people with convictions can move forward, forge a new path, and be welcomed in our community is how recidivism is cut. Success comes when we improve post-conviction employment possibilities and people are able to support themselves and their families.

It is especially significant that during this historic time, we participate in correcting systems that for far too long have kept people in the margins. For the above reasons, ACLU of Hawai'i urges the Committee to support S.B. 2193 H.D. 1.

Thank you for your time and the opportunity to testify.

Sincerely,

Monica Espitia
Smart Justice Campaign Director
ACLU of Hawai'i

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.

¹ [EXPUNGEMENT OF CRIMINAL CONVICTIONS: AN EMPIRICAL STUDY](#), The Harvard Law Review Association, Volume 133 Number 8, June 2020.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Chris Kalani Lee, Chair

Rep. Joy San Buenaventura, Vice Chair

Monday June 29, 2020

2:00 pm – Room 325

STRONG SUPPORT for SB 2193 – EMPLOYMENT DISCRIMINATION

Aloha Chair Lee, Vice Chair San Buenaventura 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 more than 4,300 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 1,100 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.

SB 2193 HD1 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 seven years and misdemeanor convictions that occurred in the most recent five years. Effective 7/1/2050. (HD1)

Community Alliance on Prisons is in **strong support of the original version of this measure** that has a 5-year lookback for felonies and a 3-year lookback for misdemeanors. Employment is one of the biggest barriers for people who were formerly incarcerated. There are three things that help people successfully transition back to the community: 1) positive relationships; 2) a safe place to live; 3) meaningful employment. The original bill reduces the stigma that people who were formerly incarcerated face daily. Employers will still be allowed to consider recent convictions while relieving people with older convictions from the largely unjustified stigma and bias.

Opening the door to employment for the many incredibly talented people who may have made mistakes is an important step toward community-building. Forgiveness is the only way to move our communities forward.

Marginalizing society helps no one. This bill is a good start for reducing the stigma that people who were formerly incarcerated face and will open the door to employment for the many incredibly talented people I have met over the last 25 years. Again, forgiveness is the only way to move our communities forward.

Community Alliance on Prisons urges the committee to maintain the integrity of this measure and amend it back to its original version. This is an important step that will lift up and build strong, healthy, and just communities.

Mahalo for this opportunity to share our strong support for the original version of SB 2193.

SB-2193-HD-1

Submitted on: 6/26/2020 6:08:20 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cameron Miyamoto	LGBT Student Services, UH Manoa	Support	No

Comments:

LGBT people of color experience high rates of discrimination in employment, housing, and when accessing social services based on their race and ethnicity, sexual orientation and gender identity, and criminal conviction status. Please pass this measure to ensure that stigma does not prevail over compassion.

Mahalo for your consideration.

Sincerely,

Cameron Miyamoto

SB-2193-HD-1

Submitted on: 6/27/2020 10:05:26 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride at Work - Hawaii	Pride @ Work - Hawaii	Support	Yes

Comments:

Aloha Chair Lee, and fellow committee members,

Pride at Work – Hawai'i totally supports the passage of SB 2193.

Pride at Work – Hawai'i encourages you to pass this important piece of legislation.

In Solidarity,

Pride at Work – Hawai'i



Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828

June 29, 2020
2:00 PM

TO: House Committee on Judiciary (JUD)
RE: Testimony in Support of SB2193 HD1

Aloha Chair Lee, Vice Chair San Buenaventura, Members of the House Committee on Judiciary,

My name is Jun Shin. I am a Junior at the University of Hawai‘i at Mānoa, and currently serve as an Executive Committee Member of the Young Progressives Demanding Action (YPDA). YPDA advocates for public policies that reflect the values of young people throughout the State of Hawai‘i. One of those values is the need for compassion in our criminal justice system. YPDA is in **Support of SB2193 HD1**, Relating to Employment Discrimination.

YPDA stands behind this bill that seeks to reduce the discrimination that follows former pa‘ahao (prisoners) and others with past convictions in their attempts to obtain legitimate employment and continue their ongoing rehabilitation and contributions to society.

Currently, Hawai‘i law allows employers to use records of potential employee convictions from as far back as ten years prior. This “lookback period” can negatively affect not only former pa‘ahao, but also anyone with past convictions, regardless or not they have served time. The allowable use of ten-year conviction records place such individuals at a disadvantage when seeking gainful employment, and thereby hinder their attempts at maintaining a stable and healthy life outside of the correctional system. Rather than treating these individuals as outcasts, we need to give them more opportunities to become a part of our communities again.

What is the point of rehabilitation and release if people with former convictions are continually burdened with their past mistakes for up to ten years after their debt to society has been repaid? Why bother to tell these people that they can change their lives and then withhold the very means they need to do so? If we truly wish to help these people and reduce recidivism and our prison population, then we need to actively ensure that the system is not set up for failure. This measure offers a better solution for only one component of that goal, as obtaining

employment is one of the first vital steps for former pa‘ahao and those with former convictions to begin rebuilding their lives in a positive direction.

Young Progressives Demanding Action is in **Support** of **SB2193 HD1**. We respectfully ask for you to pass this measure through your committee.

Mahalo for the opportunity to testify,

Jun Shin,
Executive Committee Member
Young Progressives Demanding Action (YPDA)
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com
CC: action@ypdahawaii.org

TESTIMONY IN SUPPORT OF SB 2193, HD 1

TO: Chair Lee, Vice-Chair San Buenaventura, and Members of the House Judiciary Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: June 29, 2020 (2:00 PM)

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** SB 2193, HD1, which strengthens Hawai'i's "ban the box" law by limiting periods where a prospective employer may look into an applicant's conviction record from the previous ten years, excluding periods of incarceration, to seven years for felony convictions and five years for misdemeanor convictions.

HHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance misuse and underlying mental health conditions. Unfortunately, those with behavioral health problems who are impoverished or unstably housed often have some level of involvement, sometimes extensive, with the criminal legal system.

HHRC also employs numerous individuals who have had criminal convictions and spent time in correctional facilities. Their lived experience is deeply valuable in working with persons who are currently struggling with a variety of health conditions and life circumstances. Their presence also demonstrates that even those who have struggled for long periods of time are able to get into a position where they can more adequately provide for themselves, maintain relative health and well-being, and contribute to the betterment of the community.

A criminal record for any offense, felony or misdemeanor, has a range of "[collateral consequences](#)" that impact a person's ability to participate in economic and civic life, including the ability to obtain employment, housing, education, and government assistance. In some

states this also extends to the removal of the constitutional right to vote. These barriers frustrate the ability of a person to effectively re-integrate into larger society by foreclosing their chances to obtain employment so that they may provide for themselves and their families.

Last year the [U.S. Sentencing Commission issued a report](#) finding that “harsh collateral consequences unrelated to public safety increase recidivism by limiting or by completely barring formerly incarcerated persons’ access to personal and family support.” The report recommends, in part, “Policymakers should avoid punitive mandatory consequences that bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society.”

Collateral consequences are especially severe and disproportionate in the enforcement and prosecution of drug possession crimes. Hawai‘i law currently provides that possession of a “dangerous drug” in any amount, including unusable traces and residue, is a Class C felony that is punishable by five years in prison. See HRS Section 712-1243. A five-year prison sentence for the possession of unusable traces or residue is a cruel absurdity. A period of incarceration is typically followed by long periods of criminal legal supervision, and extensive periods of criminal legal supervision dramatically increase the likelihood of recidivism.

HHRC strongly believes that behavioral health issues like mental illness and substance misuse are best dealt with by employing a therapeutic model and not a criminal justice framework. Severe criminal penalties deter people from seeking counseling and treatment outside of the criminal legal context. [Human Rights Watch](#) notes that over-criminalization increases the risks of violence, discrimination, and serious illness. The American Public Health Association underscores this point: *Substance misuse treatment is too often unavailable or unaffordable for the people who want it. A criminal justice response, including requiring arrest to access health services, is ineffective and leads to other public health problems.* (“[Defining and Implementing a Public Health Response to Drug Use and Misuse](#),” emphasis added.)

Thank you for the opportunity to testify on this measure.

SB-2193-HD-1

Submitted on: 6/26/2020 2:27:09 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	Individual	Support	No

Comments:

Aloha Members of the Judiciary Committee,

I'm writing in support of SB2193. This measure will reduce the length of time that a conviction can be used by most employers when hiring prospective employees, or making other employment decisions.

As a lawyer, I review a lot of cases. The patent unfairness and wrongness of the law that allowed the following to happen sticks with me. A medical center worker in Hawai`i, who had fully disclosed his past criminal record, worked so long and hard at his job that he was up for a promotion. The committee or whatever faceless entity that makes these terrible decisions possible instead noticed that his new duties would allow him access to anaesthesia and the worker had an old, old conviction for drug abuse - so instead he got fired. He desperately wanted to keep his job and turned to the courts, who gave him no relief to my knowledge.

SB2193 would have prevented the employer from using an old conviction against a person who has been working productively in our community. Please pass SB2193.

Sincerely,

Bianca Isaki

SB-2193-HD-1

Submitted on: 6/26/2020 3:34:18 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments:

Aloha,

I am writing in strong support of SB2193 HD1.

As a public health professional and concerned community membe, I know that LGBT people of color experience high rates of discrimination in employment, housing, and when accessing social services based on their race and ethnicity, sexual orientation and gender identity, and criminal conviction status. This bill will help ensure that a previous conviction will not become a barrier to becoming a productive member of society. Please pass this measure to ensure that stigma does not prevail over compassion.

With thanks,

Thaddeus Pham

SB-2193-HD-1

Submitted on: 6/26/2020 3:55:23 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian F Tapu	Individual	Support	No

Comments:

SB-2193-HD-1

Submitted on: 6/26/2020 4:01:05 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Staley	Individual	Support	No

Comments:

I am in strong support of this measure. LGBT people of color and all those released from corrections facilities experience high rates of discrimination in employment, housing, and when accessing social services, based on their race and ethnicity, sexual orientation and gender identity, in addition to criminal conviction status. This creates numerous barriers for community re-entry and such barriers increase the likelihood that those affected by our criminal system will become repeat offenders and/or experience socioeconomic struggles and homelessness. Please pass this measure to ensure that stigma does not prevail over compassion. Mahalo for this opportunity to submit testimony.

SB-2193-HD-1

Submitted on: 6/26/2020 4:40:40 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Aiko Yamashiro	Individual	Support	No

Comments:

Dear Committee,

My name is Aiko Yamashiro and I have worked as a music and literature teacher for over 10 years. The past year I have been learning more about educational opportunities within the correctional facilities, and gotten to teach classes here and there with some of our community who are incarcerated.

One of the most important lessons I have learned from them is about the power of transformation. We can better our selves, our lives, our impact on our communities, but it is not easy. Barriers to transitioning back into community life from prison are well-documented in the research. This bill will help to break down some of these barriers. It supports people seeking gainful employment and opens pathways to people rejoining the outside world as responsible and contributing society members. This bill believes in the power of transformation--that through time and commitment and community support, we can become our best selves. As educators, as incarcerated people, as impacted family members, we have to believe in the power of human transformation...otherwise, what are we doing? Thank you for the opportunity to share on this matter.

Sincerely,
Aiko Yamashiro, Kaneohe

SB-2193-HD-1

Submitted on: 6/26/2020 5:24:39 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys C Baisa	Individual	Support	No

Comments:

SB-2193-HD-1

Submitted on: 6/26/2020 6:02:56 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Hess	Individual	Support	No

Comments:

Aloha, my name is Carla Hess and I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify."

SB-2193-HD-1

Submitted on: 6/26/2020 6:56:39 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pete Wilson	Individual	Support	No

Comments:

Aloha, my name is Pete Wilson and I live in Pahoia and I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193.

SB-2193-HD-1

Submitted on: 6/26/2020 6:57:54 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong support of SB 2193!

SB-2193-HD-1

Submitted on: 6/26/2020 7:02:20 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

I support SB 2193 ." 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"

SB-2193-HD-1

Submitted on: 6/26/2020 7:02:30 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Espero	Individual	Support	No

Comments:

My name is Michelle Espero and I live at 3167 Akala Drive Kihei, HI. I have read SB2193 HDI and strongly support this bill. It is a good start against discrimination. This will help facilitate the difficult task of reintegrating back into society after incarceration.

SB-2193-HD-1

Submitted on: 6/26/2020 7:29:23 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jamie Tayar	Individual	Support	No

Comments:

Hello. My name is Dr. Jamie Tayar, and I want to speak in support of SB2193, which reduces employment discrimination against people with criminal histories. Employers, consciously or unconsciously, are less likely to hire applicants who are forced to note their criminal history. Including in that group people who made a mistake, faced the consequences of their actions, and then did not make another mistake for a decade is not right. These people deserve the opportunity to build a better life for themselves and their families, and that requires equal access to good jobs. Therefore, I encourage you to vote yes in support of SB2193. Thank you for your time.

H.B. No. 2193 S.D. 1
Relating to Employment Discrimination
Hearing – Monday, June 29, 2020

When I was addicted to painkillers, I ended up being convicted of a federal felony for fraudulently obtaining prescriptions to support my habit. When I was in prison, my biggest worry was finding a job as a disbarred convicted felon. I have been blessed to have found a job, but many of my friends in Hawaii have not. Like me, they have accepted responsibility for their conduct and have changed their lives. Yet, they can't get a job, not because of who they are today, but who they were yesterday. How long must we pay for our crimes?

I support this bill.

Mahalo,

Professor Kenneth Lawson

SB-2193-HD-1

Submitted on: 6/27/2020 8:12:41 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

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

Comments:

*Melissa Barker
6230C Hauiki Road
Kapa`a, HI 96746*

June 27, 2020

Honorable Senate Members,

I am writing in support of Senate Bill 2193 which prevents employment discrimination against citizens with a criminal history by limiting the number of years of employment decisions can be made based on a person's criminal history to 5 years for felonies and 3 years for misdemeanors.

A person's record of arrest or conviction alone does not inform us as to whether they will be a good employee. Those who are reentering society have skills, talents and expertise to lend, and often families to support just like everyone else. Those living with a criminal record should have the chance to succeed and support themselves and their families.

When people reentering society have a full, complete chance at a fresh start, it makes everyone in our community stronger and safer. Please vote YES in support of SB2193.

Thank you for your attention and courtesy.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Barker". The signature is written in dark ink and is positioned above the printed name.

Melissa Barker

SB-2193-HD-1

Submitted on: 6/27/2020 10:17:29 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
donald erway	Individual	Support	No

Comments:

Aloha, my name is [NAME] and I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify."

SB-2193-HD-1

Submitted on: 6/27/2020 11:05:05 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Francis Taelle	Individual	Support	No

Comments:

I strongly support this bill. And effective proposal date of this bill reads "7/1/50". Should read 7/1/20?

SB-2193-HD-1

Submitted on: 6/27/2020 11:27:03 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Kaio	Individual	Support	No

Comments:

Testifying in Support of **SB2193**

Aloha, my name is Malia Michelle Ka'io and I'm in **strong support** of **SB2193** which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and from 10 years to 3 years for misdemeanors. This legal restriction help to perpetuate the unceasing judgment of the person by way of more than the criminal justice system, but offers an extension to judgment after successfully completing their sentence then having employers be able to form their own unconscious bias and stereotypes for those reentering.

10 years (felonies & misdemeanors) are far too long of a collateral consequence for those who are convicted of a crime, completed their prison time and are now reentering into society on the path to a productive life. How do we expect people who are reentering and trying to make a new better life for themselves and the community at large when we are continuously holding them back by acts of discrimination hidden in current laws?

When being released from a prison sentence a person is either "maxed out" (completed their time) or receives supervision from the Hawaii Paroling Authority. Most of the releases made to/by HPA are at least 5 years (or under) till the expiration of their over all sentence. They are already living out their sentence in a community setting with numerous stipulations that signal employers as well as others a direct invitation to help criminalize and discriminate against them. To further tack on lengthy legal restrictions that continue on far after being release will only harm the over all wellness of the person as well as the community they are in.

A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families; no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer.

As a social worker and as a member of our Hawai'i nui community, I respectfully request that this committee vote **YES in support of SB2193**, and **set the limitations of 5 years for felonies and 3 years for misdemeanors**. Thank you for the opportunity to testify.

Malia Michelle Ka'io

June 27, 2020

SB-2193-HD-1

Submitted on: 6/27/2020 11:33:14 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Herndon	Individual	Support	No

Comments:

Aloha,

- I write in full and strong support of this bill # SB2193. It is a prudent measure to help people who have paid for their bad behavior, get a second chance in life, as a good, responsible citizen by being able to get non- discriminatory employment. These people have talents, skills and experience that serve the community and reducing the time that is required for reporting their criminal history, reduces the stigma of hiring them.
- It will also reduces the recidivism rate because they are able to get a better paying job, raising their self esteem and ability to support themselves and families.
- Mahalo for voting yes on this bill.

SB-2193-HD-1

Submitted on: 6/27/2020 2:32:44 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sabrina Shofner	Individual	Support	No

Comments:

SB-2193-HD-1

Submitted on: 6/27/2020 3:14:10 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley Kaono	Individual	Support	No

Comments:

Aloha Chair Lee, Vice-Chair San Buenaventura, and Honorable Members of this committee,

I appreciate the opportunity to offer my **STRONG SUPPORT** for the proposals set forth by S.B. 2193, H.D.1 in limiting the “look-back period” which employers may use to review the criminal history of potential employees.

I think we all know that discrimination can take many forms. The recent Supreme Court decision in *Bostock v. Clayton County Georgia* is just one example, among many, on how discrimination becomes pervasive over time. And, while the particular form of discrimination addressed in that case is not the same here, the underlying principle advanced by that decision is applicable: allowing any form of employment discrimination is not good public policy.

The 2018 Department of Justice report referenced by the opposition testimonies is not enough to warrant derailing the fair proposals set forth by S.B. 2193, H.D.1, and discounting their significance. It is well-known that not all laws are just and often have disproportionate effects which not only cause unfair harm to individuals but also create collective harm to entire communities. This is why reviewing how our laws operate in effect and resisting the status quo must be consistently practiced.

I respectfully ask that the members of this committee **PASS** S.B. 2193, H.D.1 in order to give those who have repaid their societal debt a fairer chance at contributing to our communities.

Respectfully,
Ashley B. Kaono

SB-2193-HD-1

Submitted on: 6/27/2020 3:23:17 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nadya Penoff	Individual	Support	No

Comments:

Please vote YES! on SB 2193. Make it easier for people who have paid their dues to put the past behind them and get the jobs they need to support their families.

Thank you for listening, sincerely, Nadya Penoff, Kauai district 14-4

SB-2193-HD-1

Submitted on: 6/27/2020 4:31:40 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Brown III	Individual	Support	No

Comments:

Aloha Chair Lee, Vice Chair San Buenaventura, and members of the committee, my name is Joey Brown and I'm in strong support of SB2193, which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies, and 3 years for misdemeanors.

There is an urgent need to reimagine our entire criminal legal system and transform it into one that promotes restorative justice, instead of our current punitive system that creates an endless cycle of crime and incarceration. This bill is an important step in that direction.

If someone has served their time and paid their debt to society, we should have as little barriers as possible to their reentry as productive and upstanding citizens. Allowing such a long period of permitted discrimination makes it impossible for formerly incarcerated persons to find employment after release, let alone employment that pays a living wage. Without employment, there is no money, and because our society has chosen to criminalize poverty instead of addressing it, too many formerly incarcerated persons are left with no choice but to return to a life of crime in order to survive.

I strongly urge the committee to pass this bill. It's not only the compassionate and morally right thing to do, but it's also the smart thing to do. Please vote yes on this critical part of criminal justice reform. Mahalo.

SB-2193-HD-1

Submitted on: 6/27/2020 4:51:24 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
pamela burrell	Individual	Support	No

Comments:

People make mistakes and do change. They should not be punished the rest of their lives! Giving a felon a second chance and an opportunity to take care of themselves and perhaps others is the next step to independence and the feeling of self worth. They can then contribute to society without the shadow of a mistake made years before..I fully support giving a second chance!

SB-2193-HD-1

Submitted on: 6/27/2020 5:02:52 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support SB2193 because employment is one of the biggest barriers for people who were formerly incarcerated. People are helped to successfully transition back to the community through positive relationships, a safe place to live & meaningful employment. This bill reduces the stigma that formerly incarcerated people face. Employers will still be allowed to consider recent convictions while relieving people with older convictions from the largely unjustified stigma and bias. This bill opens the door to employment for the many incredibly talented people who are ready to contribute to our community. We need these members of our community in the workforce and not constantly hitting barriers based on old actions. Please support SB2193. Thank you!

SB-2193-HD-1

Submitted on: 6/27/2020 9:00:35 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Olan Leimomi Fisher	Individual	Support	No

Comments:

Aloha e Chair Lee, Vice Chair San Buenaventura, and Members of the House Judiciary Committee,

I am writing to you today in strong support of SB2193 HD1. I stand behind this bill that seeks to reduce the discrimination that follows former pa'ahao and others with past convictions in their attempts to obtain legitimate employment and continue their ongoing rehabilitation and contributions to society.

Currently, Hawai'i law allows employers to use records of potential employee convictions from as far back as ten years prior. This "lookback period" can negatively affect not only former pa'ahao, but also anyone with former convictions regardless if they have served time. The allowable use of ten-year conviction records places such individuals at a disadvantage when seeking gainful employment, and thereby hinders their attempts at maintaining a stable and healthy life outside of the correctional system.

What is the point of rehabilitation and release if people with former convictions are continually burdened with their past mistakes for up to ten years after their debt to society has been repaid? Why bother to tell these people that they can change their lives and then withhold the very means they need to do so? If we truly wish to help these people and reduce recidivism and our prison population, then we need to actively ensure that the system is not set up for failure. SB2193 offers a better solution for only one component of that goal, as obtaining employment is one of the first vital steps for former pa'ahao and those with former convictions to begin rebuilding their lives in a positive direction.

Please consider supporting SB2193 which seeks to lower an unnecessarily high hurdle for those with former convictions trying to rehabilitate their lives.

Mahalo!

SB-2193-HD-1

Submitted on: 6/27/2020 11:46:30 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sally Thrasher	Individual	Support	No

Comments:

Allow this to pass. We must give Kanaka Maoli a chance to work and care for their families whether or not they have been incarcerated. Another idea is give Kanaka Maoli back their aina, because this too is a war crime, give them back their nation. America is illegally occupying the aina and using money as a weapon to control people. Conning and colonizing is hewa.

Aloha Chair Lee, Vice Chair San Buenaventura, and committee members,

My name is Samantha Keaulana and I'm in **strong support** of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors.

As a public health professional, I understand employment to be a social determinant of physical, mental, emotional, and spiritual health not just for an individual, but for their families and their communities. Health is a human right. A person's record of arrest or conviction alone does not tell you whether they will be good employees, nor should it be a deterrent of their health and well-being.

People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193.

Mahalo for the opportunity to testify,

Samantha Keaulana

SB-2193-HD-1

Submitted on: 6/28/2020 10:27:24 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Olivia Staubus	Individual	Support	No

Comments:

Aloha, my name is Olivia Staubus and I am writing to show my strong support for SB2193 which aims to prevent employment discrimination against those with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. I believe that this bill is very important for creating a better society. We are not defined by our past, we are constantly growing. Those who have made mistakes along the way are currently not getting the same chances to change. Discriminating against those who have served time for their mistakes reinforces the idea that they are bad people. When you are continually told that you are bad and that society does not want you, this can push people right back into the negativity that landed them in jail or prison. A criminal record sheds no insight into the skill set or work ethic of a person. The people reentering society have skills, dreams, goals, families. They should not have to continue to bear the burden of their past so much so that they are unable to support themselves and their family. They deserve the chance to excell at a job, better their life, and work toward their goals. When people are given a fresh start it is better for all of society. You would not want to be continually discriminated against for your biggest mistake. The beautiful thing about being human is that we are always changing and learning. I urge you to vote YES for SB2193 so that we can give people the chance to reform their lives and make our society safer. Thank you for the opportunity to testify.

SB-2193-HD-1

Submitted on: 6/28/2020 10:40:48 AM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Colleen Rost-Banik	Individual	Support	No

Comments:

Aloha, my name is Colleen Rost-Banik and I teach college-level courses at the Women's Community Correctional Center. The inmates at WCCC are some of the most diligent, hardest workers I know. I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify.

SB-2193-HD-1

Submitted on: 6/28/2020 1:26:52 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Individual	Support	No

Comments:

Aloha, my name is Barbara L. Franklin, Esq., and I strongly support of SB2193, which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. People who paid their dues and are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Everyone living with a criminal record should have the chance to succeed and support themselves and their families, no matter what crime they were convicted of or arrested for. When people reentering society have a full, complete chance at a fresh start, it makes everyone stronger and safer. It is time for our state's policies to catch up to these truths. Please vote YES in support of SB2193. Thank you for the opportunity to testify.

SB-2193-HD-1

Submitted on: 6/28/2020 3:44:22 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Donalyn Keliipuleole	Individual	Support	No

Comments:

Aloha, my name is Donalyn Keli'ipule'ole and I'm in strong support of SB2193 which would prevent employment discrimination against people with a criminal history by capping the number of years employment decisions can be made based on a person's criminal history from 10 years to 5 years for felonies and 3 years for misdemeanors. A person's record of arrest or conviction alone does not tell you whether they will be good employees. Most people want an opportunity to rebuild their lives, but they can't do so if they are discriminated against. Discrimination hinders them from being gainfully employed and hurts their efforts to support their families. Everyone living with a criminal record deserves a chance to make a new start no matter their crime. Supporting people's effort to live a safe, productive life is a move to support us all and our communities. Let's stop the perpetual punishment. Please vote YES in support of SB2193.

LATE

SB-2193-HD-1

Submitted on: 6/28/2020 4:19:23 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
david skomer	Individual	Support	No

Comments:

A previous conviction shouldn't follow someone for the rest of their life if they've already served their time and been released they should maintain the ability to reincorporate back into society. Making it hard for convicts to get jobs is a big reason why once they're out they have to turn back to crime. Do not punish these people indefinitely! Let them become supportive functional members of society again if they are truly trying to be

Jeanne Y. Ohta

LATE

June 29, 2020

To: Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair, and
Members of the Committee on Judiciary

From: Jeanne Ohta

RE: SB 2193 HD1 Relating to Employment Discrimination
Monday, June 29, 2020, 2:00 p.m.

Position: Support (preferring original bill)

I write in support of SB 2193 HD1 Relating to Employment Discrimination which shortens the “look back” period of felony and misdemeanor convictions used in employment decisions to the most recent seven years for felonies and the most recent five years for misdemeanor convictions. Although this version is an improvement from the current situation, the original bill is preferable.

Denial of employment opportunities due to an individual’s criminal record is a harsh and unproductive collateral consequence that makes it more difficult for people to build their lives. It is a barrier that prevents individuals from gainful employment to support themselves and their families; and it is a barrier to reducing recidivism.

Employment is an important part of post-conviction success and reintegration into the community.

Please pass this important measure. Thank you for this opportunity to provide testimony.

SB-2193-HD-1

Submitted on: 6/28/2020 8:18:10 PM

Testimony for JUD on 6/29/2020 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Loa	Individual	Support	No

Comments:

LATE

Aloha Chair Lee and Honorable Members of the Committee on Judiciary,

My name is Carmen Hulu Lindsey and I am writing in support of SB2193 HD1, which limits the time period an employer can “inquire into and consider” a person’s conviction records. This measure would reduce the impacts of older, less relevant convictions on formerly incarcerated individuals—who are disproportionately Native Hawaiian—seeking to obtain or maintain legitimate employment; by so doing, 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.

Employers’ current use of the ten-year time period for background checks is too long and forces people out of work when they are trying to turn their lives around post-incarceration. Research now shows that the law’s allowable “lookback period” may be excessively long, such that it may undermine the aims of its underlying policy. HRS § 378-2.5 explicitly allows employers to “inquire about and consider” 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. Studies demonstrate that old and minor convictions may significantly bias employers against those seeking legitimate and gainful employment. This ten-year lookback period may inhibit 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.

Accordingly, reducing the ten-year lookback period allowed under current law – particularly to the three- and five- year lookback periods proposed in this bill – will better serve the original intent of HRS § 378-2.5, by 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.

There are many barriers that former pa’ahao face even after they’ve “paid their debt to society.” Employment restrictions based on stigma rather than data and compassion should not be one of those barriers. A measure such as SB2193 HD1 makes it possible for former pa’ahao to thrive in the community once they return.

Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo piha for the opportunity to testify on this critical measure.

Mahalo nui loa,

Carmen Hulu Lindsey

COMMITTEE ON JUDICIARY
Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Monday, June 29, 2020
2:00pm
Conference Room 325



RE: Support. SB 2193 HD1 Relating to Employment Discrimination

Aloha Chair Lee, Vice Chair San Buenaventura and Committee Members:

I am writing in support of SB2193 HD1 to reduce employment discrimination against persons with past conviction records in Hawai'i despite best efforts to make a living for themselves and their families.

As background, I have experience working to enforce Hawai'i's fair employment laws (HRS 378), including employment discrimination complaints based on arrest and court records.

Today, however, I write to you in my personal capacity and as the former Director of Maui Economic Opportunity's Being Empowered and Safe Together (BEST) Reintegration Program. I observed firsthand the challenges that formerly incarcerated persons face when seeking gainful employment to rebuild their lives.

Formerly incarcerated people need stable jobs for the same reasons as everyone else - to support themselves and their 'ohana, pursue life goals, pay off debts, and contribute to their communities. Despite the fact that many formerly incarcerated persons seek employment, many are unemployed, underemployed or employed in low-paying jobs.

Prior research suggests that employers discriminate against those with criminal records, even if they claim not to. **Although employers express willingness to hire people with criminal records, evidence shows that having a record reduces employer callback rates by 50%.**

In 2018, Prison Policy Initiative, a national think tank on criminal justice reform, issued a report analyzing that formerly incarcerated people are unemployed at a rate of over 27% — higher than the total U.S. unemployment rate during any historical period, including the Great Depression.

"Our estimate of the unemployment rate establishes that formerly incarcerated people want to work, but face structural barriers to securing employment, particularly within the period immediately following release. For those who are Black or Hispanic — especially women — status as "formerly incarcerated" reduces their employment chances

even more. This perpetual labor market punishment creates a counterproductive system of release and poverty, hurting everyone involved: employers, the taxpayers, and certainly formerly incarcerated people looking to break the cycle.”

See [Out of Prison & Out of Work: Unemployment among formerly incarcerated people](#), Lucius Couloute and Daniel Kopf (July 2018).

As you are aware, Native Hawaiians are disparately treated in Hawaii’s criminal legal system, and are disproportionately represented at every stage of the criminal justice system. Given these criminal legal disparities, Native Hawaiians disparately face employment discrimination based on past conviction records when earnestly seeking job opportunities in Hawai’i.

Fortunately, there are policy solutions available that would create safer and more equitable communities by addressing unemployment among formerly incarcerated people. This includes strengthening protections under “ban-the-box” laws - such as decreasing the “look back” period under HRS sec. 378-2.5.

Currently, under HRS sec. 378-2.5, non-exempt employers are permitted to consider criminal background data within a “ten year” look back period. **This ten year period is arbitrary and in fact, contravenes best evidence relating to recidivism benchmarks.**

See <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/01/the-changing-state-of-recidivism-fewer-people-going-back-to-prison>

The Changing State of Recidivism: Fewer People Going Back to Prison
The share of people who return to state prison three years after being released—the most common measure of recidivism—dropped by nearly a quarter over a recent seven-year period, according to an analysis by The Pew Charitable Trusts of federal Bureau of Justice Statistics (BJS) data on prisoners released in 2005 and 2012. (August 2018)

Similarly, Hawai’i typically uses **three years** as a benchmark for recidivism rates. See <https://icis.hawaii.gov/wp-content/uploads/2018/08/Hawaii-Revidivism-2017.pdf>.

Here’s the excerpt from the Interagency Council on Intermediate Sanctions Hawaii Recidivism study.

This study examines felony probationers, prisoners released to parole, and maximum-term released (“maxed-out”) prisoners. **It tracks recidivism for each offender over a precise 36- month period.** ICIS defines recidivism as criminal arrests (most recent charge after supervision start date), revocations, technical violations, and/or criminal contempt of court. Excluded from this study (per past methodology) were probationers who were arrested within three months following their supervision start date, and did

not have a reported offense date. This is due to the reasoning that some of the offenses in question were committed prior to the supervision start date.

To be consistent with evidence-based practices within this field, please limit the look back period to three years for both felonies and misdemeanors convictions, excluding the periods of incarceration. This will increase employment opportunities for individuals who have criminal justice histories and are earnestly trying to make a living and a new life for themselves and for their families.

Please support SB2193 HD1 to ensure that our fair employment law reflects our commitment to civil rights for all people and evolving best-practices within the context of criminal justice reform.

Sincerely,

Carrie Ann Shirota, J.D.
Honolulu, Hawaii
cashirota808@gmail.com
(808) 269-3858



June 26, 2020

The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
House Judiciary Committee
415 S. Beretania Street
Honolulu, HI 96813

RE: SB 2193 HD 1 – Relating to Employment Discrimination

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the House Judiciary Committee:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which brings together the shared interests of more than 350 large, medium and small broker-dealers, investment banks and asset managers - many of whom have a strong presence in Hawaii.

We appreciate the opportunity to provide feedback on SB 2193 HD 1 relating to Employment Discrimination. Current state law prohibits most employers from asking about a prospective employee’s criminal history until after the candidate has received a conditional job offer and limits the lookback period to ten years. Exemptions exist for those employers who are expressly permitted to inquire about criminal history pursuant to federal or state law. Eighteen employers are highlighted as falling under the exemption, including financial institutions and “employers in the business of insurance.”

Securities firms, including broker-dealers, are not listed among the 18 employers but legitimately fall under the broader federal or state law exemption provision. For example, the federal Securities Exchange Act precludes persons with certain felony and misdemeanor convictions from working in the industry for 10 years² and requires firms to obtain fingerprint cards that are then processed by the U.S. Attorney General or its designee.³ The Financial Industry Regulatory Authority, the industry’s self-regulatory organization, requires in Rule 3110(e) that member firms investigate and attest to “the good character, business reputation, qualifications and experience of an applicant” – and can fine firms for inadequate background checks.

There are obvious reasons why securities firms, which are responsible for the supervision of their associated persons, need to know the criminal histories of persons they are hiring. Hard-working Americans rely on investment professionals to help them achieve substantial life goals such as buying a house, sending children to college and saving for retirement. In many cases, these professionals have direct and frequent access to clients’ life savings. As such, a hiring process which includes access to criminal history is important.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. Our principal role is to advocate on behalf of our members’ interests before policy makers, regulators, the media and the public. Our primary focus is on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. SIFMA also serves as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit www.sifma.org.

² Securities Exchange Act of 1934, Sec. 3(a)(39).

³ Securities Exchange Act of 1934, Sec. 17(f)(2).

As you are working on this bill, we encourage you to expressly exempt broker-dealers and investment advisers from both the law and the bill's purview. SB 22193 HD 1 seeks to further restrict the ability of non-exempt employers to take criminal history into account. It, among other things, would distinguish between felony and misdemeanor convictions and shorten the lookback period in both instances to unspecified time frames. If it were to be interpreted as applying to the securities industry, especially given the shortened lookback period, it would conflict with federal obligations and undermine investor protection.

To avoid this potential outcome, we would encourage you to add broker-dealers and investment advisers to the enumerated list under Section 378-2.5(d): "(19) Broker-dealers, investment advisers and federal covered investment advisers pursuant to section 485A-102." Companion legislation (HB 1782 HD 1 SD) already incorporates this change.

We appreciate your willingness to consider our concerns. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,

A handwritten signature in black ink that reads "Kim Chamberlain". The signature is written in a cursive, flowing style.

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA