



SB2193
RELATING TO EMPLOYMENT DISCRIMINATION
Ke Kōmike 'Aha Kenekoa o ka Ho'okolokolo

Pepeluali 24, 2020

12:15 p.m.

Lumi 016

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB2193, a measure in OHA's 2020 Legislative Package. This bill would amend Hawai'i's current "ban the box" law to **limit employers' allowable inquiry into applicants' conviction records from the previous ten year period (excluding periods of incarceration), to five years for felony convictions, and three years for misdemeanor convictions.** By reducing the impacts of older, less relevant convictions on people seeking to obtain or maintain legitimate employment, this measure would **discourage employment decisions that are expressly or unconsciously based on such convictions; reduce the stigma carried by former offenders; make it easier for those that have paid their debt to society obtain legitimate employment to support themselves and their 'ohana; and support the rehabilitation, reentry, and recidivism prevention goals of the state.** OHA notes that **SB2193 purposefully does not affect state and county employment processes and state and county lookback authorities.**

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

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

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

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

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 specifically allows employers to consider may have little bearing on an individual’s likelihood of committing a new crime, or on their overall employability. For example, recidivism data show that former offenders who recidivate overwhelmingly do so within the first two years of release.⁴ Further, studies show that those with older conviction records (6-7 years) are about as likely to commit a new crime as those with no criminal history whatsoever.⁵ With 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

Accordingly, by reducing the ten-year lookback period allowed under current law, SB2193 will better serve the original intent of HRS § 378-2.5, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. This in turn may enable such individuals to better support themselves and their families, allow them to better contribute to their communities as well as the state’s economy, and encourage their continued law-abiding behavior – promoting public safety and the state’s interests in rehabilitation, reentry, and recidivism prevention over the long term.

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

Therefore, OHA respectfully urges the Committee to **PASS** SB2193. Mahalo piha for the opportunity to testify on this critical measure.

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

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

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

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

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February 21, 2020

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY

For Hearing on Monday, February 24, 2020
12:15 p.m., Conference Room 016

BY

RYKER WADA
DIRECTOR

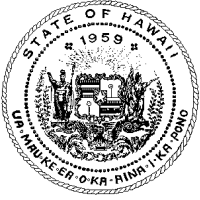
Senate Bill No. 2193
Relating to Employment Discrimination

TO CHAIRPERSON KARL RHOADS, VICE CHAIR JARRETT KEOHOKALOLE AND
MEMBERS OF THE COMMITTEE:

The purpose of Senate Bill No. 2193 is to limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

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

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



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 24, 2020
Rm. 016, 12:15 p.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the House Committee on Judiciary

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

Re: S.B. No. 2193

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.

S.B. No. 2193 amends HRS § 378-2.5(c) to reduce the “look back” limitation on employer consideration of convictions that bear a rational relationship to the job *from ten years from time of conviction to five years for felonies and three years for misdemeanors*, excluding periods of incarceration.

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

HRS § 378-2.5 and HRS §§ 378-3 (8) and (9) provide several exceptions to the arrest and court record protection which allow Hawai‘i employers and Hawai‘i employment agencies to engage in limited inquiry or consideration of a current employee or applicant’s conviction.

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

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

If enacted, S.B. No. 2193 would only change the look back window from ten years to *five years for felonies and three years for misdemeanors*, excluding periods of incarceration. This change is meant to reduce employment barriers and improve likelihood of successful reentry for workers who have records of criminal conviction(s) and have served their time and paid their debt to society.

The HCRC supports S.B. No. 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.

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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRET KEOHOKALOLE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 24, 2020

RE: S.B. 2193; RELATING TO EMPLOYMENT DISCRIMINATION.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in support of S.B. 2193.

A simple comparison of recidivism rates between formerly incarcerated people who work and those who don't indicates a strong positive correlation between unemployment and recidivism. If formerly incarcerated individuals can obtain a job with a wage that meets their basic needs, the risk of reoffending significantly decreases.¹

Hawai'i's Adult Client Probation Service recognizes that people with certain convictions do not require supervision beyond the three and five

¹ Jeremy Travis, Amy L. Solomon, Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, <https://www.urban.org/sites/default/files/publication/61571/410098-From-Prison-to-Home-The-Dimensions-andConsequences-of-Prisoner-Reentry.PDF> at 31 (2001); Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. ST. L. REV. 1, 10 (2014) ("Providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety."); Maria Duane & Nancy La Vigne et al., *Criminal Background Checks: Impact on Employment and Recidivism*, <https://www.urban.org/sites/default/files/publication/88621/criminal-background-checks-impact-on-employmentand-recidivism.pdf> at 12-13 (2017).

periods similar to this measure. Except for Class A felonies,² people with low grade felonies are typically sentenced to 4-5 years of probation.³ People with a misdemeanor are sentenced to one year of probation, and people convicted of a petty misdemeanor are sentenced to 6 months and up to a year of probation.⁴

This bill would not affect current exceptions to the general prohibition against the use of criminal record-based employment decisions (such as for jobs in public safety or the educational system), 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.

Hawai'i would set the national standard, once again, for employment protections for people with conviction records.⁵ Also, Massachusetts recently changed its five year misdemeanor lookback period to three years.⁶

Unfortunately, there is an **“industry standard”** likely from the Fair Credit Reporting Act (FCRA), which regulates most of the private sectors background check lookback periods.⁷ The FCRA limits the “lookback period” for arrests to 7 years, and there is no limit on convictions, which is why “ban the box,” and other fair chance employment laws exist.

Businesses remain protected by the five and three year period, and benefit in many ways. Hawai'i businesses can utilize a six month federal insurance program,⁸ which insures companies that employ people with conviction records for the first six months of employment. Further, employers can utilize the Work Opportunity Tax Credit offered by the State for hiring

² Notwithstanding part II; sections 706-605, 706-606, 706-606.5, 706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, or section 707-702, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. HRS §706-659

³ See HRS §706-623 (a)-(b) (2013).

⁴ See HRS §706-623 (c)-(d) (2013).

⁵ In 1998, Hawai'i was the first state to implement “ban the box,” followed by Massachusetts in 2010. See NATIONAL EMPLOYMENT LAW PROJECT, <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>.

⁶ PRINCE LOBEL, NEW LIMITATIONS ON CRIMINAL HISTORY SCREENING TO GO INTO EFFECT IN OCTOBER, <https://princelobel.com/new-limitations-on-criminal-history-screening-to-go-into-effect-in-october/>.

⁷ 15 U.S.C. § 1681(c) (1970); see, e.g., John G. Malcolm and John-Michael Seibler, Collateral Consequences: Protecting Public Safety or Encouraging Recidivism?, The Heritage Foundation, 2017, at 1-3, <http://www.heritage.org/sites/default/files/2017-03/LM-200.pdf>.

⁸ FEDERAL BONDING, <https://labor.hawaii.gov/wdd/home/employers/fedbond/>.

people with felony records.⁹ Finally, research by economists confirms that hiring people with records is simply smart business.¹⁰ Retention rates are higher, turnover is lower, and employees with criminal records are more loyal.¹¹

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.¹²

Without passing this law, or *significantly* reducing the “ban the box” lookback period, people with conviction records will unnecessarily continue to struggle to find work, which hurts our community as a whole.

S.B. 2193 would improve Hawai‘i’s “ban the box” law using recent research and would give our community members, who are trying to turn their lives around, a fair chance at employment.

For these reasons, the Office of the Prosecuting Attorney supports the passage of S.B. 2193. Thank you for this opportunity to testify.

⁹ WORK OPPORTUNITY TAX CREDIT,

<https://labor.hawaii.gov/wdd/home/employers/wotc/>.

¹⁰ ACLU, Back to Business: How Hiring Formerly Incarcerated Jobseekers Benefits Your Company, <file:///Users/jeniferjenkins/Downloads/ACLU%20Report.pdf> at 4 (2015).

¹¹ Daryl Atkinson, *The Benefits of Ban the Box* The Southern Coalition for Social Justice http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf (2014).

¹² OUT OF PRISON AND OUT OF WORK: UNEMPLOYMENT AMONG FORMERLY INCARCERATED PEOPLE, <https://www.prisonpolicy.org/reports/outofwork.html> (2018).



Committee: Committee on Judiciary
Hearing Date/Time: Monday , February 24, 2020, 12:15 p.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2193

Dear Chair Rhoads, and members of the Committee:

The American Civil Liberties Union of Hawai'i writes in **support** of S.B. 2193, which would limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

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

Without significantly reducing the "ban the box" lookback period, people with conviction records will unnecessarily continue to struggle to find work, which hurts our community as a whole. It is important to recognize that businesses not only remain protected by the five and three year period but they are also eligible for The Work Opportunity Tax Credit offered by the State for hiring people with felony records.¹ It is smart business for employers and provides positive opportunities for people who are trying to get back on their feet.

"A depressing loop I hear from formerly incarcerated folks is how, despite serving their sentences, they still feel like they're serving time. The shunning from employers, neighbors and friends can sound like they are not worthy of being "out." Stigma can prevent successful reintegration of people previously incarcerated,"² ACLU of Hawaii's Smart Justice Organizer stated in a recent Op Ed. To be clear, not everyone who has a conviction has been incarcerated.

If we are serious about reducing recidivism in our state, we need to remove barriers that keep people from living productive, healthy lives. Success comes when we improve post-conviction employment possibilities. This is why ACLU of Hawai'i supports S.B. 2193.

Thank you for your time and the opportunity to submit testimony.

Sincerely,

¹ Work Opportunity Tax Credit (WOTC), <https://labor.hawaii.gov/wdd/home/employers/wotc/>

² *End Stigma Against Incarceration, 1 Ohana At a Time*; <https://www.staradvertiser.com/2020/01/14/editorial/island-voices/end-stigma-against-incarceration-1-ohana-at-a-time/>

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

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COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Monday, February 24, 2020

12:15 PM – Room 016

STRONG SUPPORT for SB 2193 – EMPLOYMENT DISCRIMINATION

Aloha Chair Rhoads, Vice Chair Keohokalole and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE “CARE AND CUSTODY” OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2193 limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

Community Alliance on Prisons is in strong support of this measure. 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.

Data from the Department of Public Safety show that approximately 75% of all the people incarcerated by Hawai`i are serving sentences for the lowest felonies, misdemeanors, violations, petty misdemeanors, and parole or probation violations.

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. Forgiveness is the only way to move our community forward.

Community Alliance on Prisons urges the committee to support this important step in bringing our community together. Mahalo for this opportunity to share our support for SB 2193.

SB-2193

Submitted on: 2/21/2020 3:52:42 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kevin landers	Individual	Support	No

Comments:

Aloha

Let's please take this step towards lessening the undue discrimination and challenges for those trying to reintegrate after incarceration. Let's help and love the most vulnerable among us rather than expanding and extending punishment.

SB-2193

Submitted on: 2/21/2020 3:56:40 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

SB-2193

Submitted on: 2/22/2020 3:46:00 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

SB-2193

Submitted on: 2/22/2020 6:08:02 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

SB-2193

Submitted on: 2/22/2020 1:20:56 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

LATE

Aloha,

I am a probation officer with the First Circuit Court and I am voicing my support for SB 2193. I believe that this bill will be a game changer in helping people with a criminal record to obtain gainful employment and to reduce recidivism overall.

The probationers I work with at the Circuit Court are felony cases and in the majority of these cases, they are sentenced to a term of probation for four years. During this four year period of being supervised, probation officers work with these individuals to develop more prosocial behavior. These individuals are instructed to obtain substance abuse treatment, mental health treatment, pay court fees, obtain employment, and in some cases perform community service. All of this is with the intention that by the time these individuals finish their four-year term of probation they will be contributing members to society. I know that on the District Court side for misdemeanor convictions, the probationers are sentenced to a term of probation for one year. These lengths of probation are in proportion to the severity of the crime that an individual was convicted of.

If a probationer has successfully met the terms and conditions of his/her court ordered probation then that means they have paid their debt to society. Why should this record follow them around for ten plus years, if they are demonstrating continuous law abiding behavior? I believe that minimizing an employment check of convictions to the most recent five year period for felony convictions and those the most recent three year period for misdemeanor convictions is both reasonable and proportional to the offense committed.

In pulling from my experience as a probation officer, employment is fundamentally crucial to a probationer's success. The ability to obtain a good job affects whether or not a person can pay rent, provide for their family, as well as maintain good mental health. All of this impacts whether or not the individual will commit another offense. When my probationers have good jobs, they feel better about themselves and are often more motivated to do well on probation, to stay clean and sober, and to have more purpose in their lives overall. There have been countless times where my probationers have told me that they were able to maintain their sobriety because they were working and keeping themselves busy by doing something useful. Employment is such a key part to reducing recidivism. Keeping these 5 year and 3 year time periods will allow individuals more years in the workforce and a better chance at continuing to rebuild their lives after serving their time.

I'm thinking of a few probationers in particular who have expressed to me how frustrating it is to apply for jobs and to be turned down time and time again due to their criminal record. They tell me that they have worked so hard to do better, to follow the terms and conditions of probation, to

be more contributing members of society but they feel that their actions mean are for nothing. This is also disheartening as a probation officer because it is my job to assist individuals in becoming more prosocial members of society. How can this happen when we still have hiring practices that promote bias towards people with a criminal record? How can we encourage probationers to do better, if as it stands, this bias that comes with older convictions are preventing them from being gainfully employed? We need to do better and look at the research that demonstrates this. A 2017 ACLU Report entitled *Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company* did a case study of various employers such as Wal-Mart, Total Wine & More, and the US military who decided to hire ex-offenders. Across the board, these employers noted that turnover rates were lower for these employees and that motivation as well as company loyalty was higher as well.

This does not surprise me as a probation officer. As the probationers successfully meet the terms and conditions of their probation, they demonstrate an overwhelming motivation to get their life back on track. They want to do well and they can as long as measures are taken to remove the biases and the barriers that are in their way.

Recently, one of my probationers, after getting turned down for a job, frustratingly asked me "How do you expect me to do better if this is gonna follow me around for the rest of my life? It doesn't make any sense." I didn't know what to say to him because I was thinking the same thing. It doesn't make sense. If a probationer has successfully met the terms and conditions of his/her court ordered probation then they have paid their debt to society. Why should this record follow them around for such a long period of time, if they are demonstrating continuous law abiding behavior?

It doesn't make sense but I believe that this bill can help to fix that. If we are serious about reducing recidivism in this state, then we need to take the necessary measures to improve employment opportunities for ex-offenders. Reducing the employment check to 5 years for felonies and 3 years for misdemeanors is crucial. Lengthy criminal history record checks are leaving individuals who have paid their debt to society at a disadvantage and preventing a potential pool of job candidates from entering the workforce. This is why I'm asking for you to support SB 2193.

Mahalo,

Sarah Strong

LATE

SB-2193

Submitted on: 2/23/2020 5:11:47 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments:

I strongly support SB2193. Employment is one of the biggest barriers for formerly incarcerated people. Three things that help people successfully transition back to the community are positive relationships, having a safe place to live, and meaningful employment. SB2193 reduces the stigma faced by formerly incarcerated people. 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 to many incredibly talented people ready to make a new start. Please move SB2193 forward.

LATE

SB-2193

Submitted on: 2/23/2020 11:12:20 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Comments	No

Comments:

Aloha Senator Rhoads, Senator Keohokalole, and Members of the Committee,

Employment is one of the biggest barriers for people who were formerly incarcerated.

- 3 things that help people successfully transition back to the community: 1) positive relationships; 2) a safe place to live; 3) meaningful employment;
- Reduces the stigma that people who were formerly incarcerated face;
- Employers will still be allowed to consider recent convictions while relieving people with older convictions from the largely unjustified stigma and bias;
- Opens the door to employment for the many incredibly talented people;
- Forgiveness is the only way to move our community forward.

Mahalo,

Diana Bethel

LATE

SB-2193

Submitted on: 2/23/2020 11:57:53 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Testifying for Hawaii Justice Coalition	Support	No

Comments:

Aloha,

This bill would decrease the “look back” period of criminal history that employers may consider when making employment decisions. Please note that the proposed "look back" period only applies to non-exempt employers.

If we want individuals involved in the criminal justice system to eventually earn a living and become contributing members of our community, then we must reduce and eliminate legal barriers that make gainful employment more difficult and out of reach.

Please pass SB 2193.

Below is an excerpt from Prison Policy Initiative, a research think tank, on criminal justice issues.

<https://www.prisonpolicy.org/reports/outofwork.html>

Out of Prison & Out of Work: Unemployment among formerly incarcerated people

By [Lucius Couloute](#) and [Daniel Kopf](#) [Tweet this](#)
July 2018

Formerly incarcerated people need stable jobs for the same reasons as everyone else: to support themselves and their loved ones, pursue life goals, and strengthen their communities. But how many formerly incarcerated people are able to find work? Answering this fundamental question has historically been difficult, because the necessary national data weren't available — that is, until now.

Using a nationally representative dataset, we provide the first ever estimate of unemployment among the 5 million formerly incarcerated people living in the United States.

Our analysis shows 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.

Fortunately, as the [recommendations](#) presented in this report illustrate, there are policy solutions available that would create safer and more equitable communities by addressing unemployment among formerly incarcerated people.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Judiciary
Monday, February 24, 2020 at 12:15 P.M.
Conference Room 016, State Capitol**

LATE

RE: SB 2193, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has serious concerns with** SB 2193, which limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

The 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 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 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. 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.

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.

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

LATE

SB-2193

Submitted on: 2/24/2020 8:07:03 AM

Testimony for JDC on 2/24/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

LATE

SB-2193

Submitted on: 2/24/2020 10:55:35 PM

Testimony for JDC on 2/24/2020 12:15:00 PM

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

Comments: