

HAWAI‘I CIVIL RIGHTS COMMISSION

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June 22, 2020
Rm. 329, 10:00 a.m.

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

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

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;

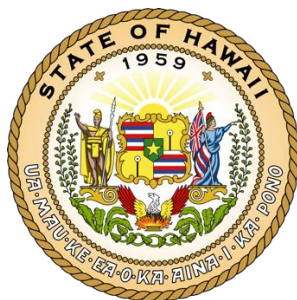
(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division pursuant to section 321- ;

(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.



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

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

Prepared for the House Committee on Labor

In Support of SB2193
Monday, June 22, 2020 at 10:00 a.m. in Room 329

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

The Hawai‘i State Commission on the Status of Women provides the following testimony in **support** of SB2193. The bill would limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

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

Women are at particular risk of spiraling into cycles of abuse and exploitation if unable to secure stable employment and financial independence. Thus, this measure is an important step to remove barriers for unemployed women with criminal records and to prevent their exploitation.

Proposals for a seven-year lookback period are deficient because would continue to pose an unnecessarily high barrier to employment. This “industry standard” traces to the Fair Credit Reporting Act, which has become “another enabling mechanism of the proliferating background

check industry” and is yet another “result of misconceptions of what it means to have a criminal record.”¹ In addition:

- Unemployment is one of the most powerful determinants of re-offense because it is a critical form of stability;
- The original draft will not impact the legally mandated discrimination, i.e., the general prohibition against the use of criminal record-based employment decisions for jobs in public safety or the educational system;
- Certain felony convictions do not require supervision beyond the three and five periods proposed by the original draft of this measure; misdemeanors are sentenced to one year of probation; petty misdemeanor are sentenced to 6 months and up to a year of probation.

Accordingly, the Commission respectfully urges the Committee to **pass** SB2193 with its current language of a five year “lookback” window for felony convictions and three years for misdemeanor convictions.

Sincerely,

Khara Jabola-Carolus

¹ See Gubernick, L., *Erasing the Mark of Cain: An Empirical Analysis of the Effect of Ban-The-Box Legislation on the Employment Outcomes of People of Color*, 44 Fordham Urb. L.J. 1153 (2017).



SB2193
RELATING TO EMPLOYMENT DISCRIMINATION
House Committee on Labor & Public Employment

June 22, 2020

10:00 a.m.

Room 329

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.** 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.**

Hawai‘i’s current “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 allowable “lookback period” may be excessively long, such that it may undermine the aims of its underlying policy. Specifically, HRS § 378-2.5 explicitly **allows employers to “inquire about and consider” their current or prospective employees’ conviction records for the past ten-year period**, exclusive of time served, and to make employment decisions based on convictions with a vaguely-defined “rational relationship” to the job at hand. With studies demonstrating **that even old and minor convictions may significantly bias employers** against those seeking legitimate and gainful employment,³ **this ten-year lookback period may inhibit even those who have demonstrated years of continuous lawful behavior from obtaining or maintaining a job, preventing them from supporting themselves and their families through legitimate employment, and frustrating the state’s goals of offender rehabilitation, reentry, and recidivism prevention.**

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

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

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

Notably, the 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, 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.

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.

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 22, 2020

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on Monday, June 22, 2020
10 a.m., Conference Room 329

BY

RYKER WADA
DIRECTOR

Senate Bill No. 2193
Relating to Employment Discrimination

TO CHAIRPERSON JOHANSON, VICE CHAIR ELI 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.

As we testified previously before this committee on the companion bill (H.B. 1782), 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 be bill amended to reflect a 7-year “lookback” for both felonies and misdemeanors.

Thank you very much for the opportunity to testify supporting the intent of this measure.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

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**THE HONORABLE AARON JOHANSEN, CHAIR
THE HONORABLE STACELYNN ELI, VICE CHAIR
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

June 22, 2020

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

Chair Johansen, Vice Chair Eli, and members of the House Committee on Labor and Employment, 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

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).

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

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>.

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 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.

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

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).

TESTIMONY IN SUPPORT OF SB 2193

TO: Chair Johanson, Vice-Chair Eli, and Members of the
House Labor and Public Employment Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: June 22, 2020 (10:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** SB 2193, 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 five years for felony convictions and three 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.



Committee: Committee on Labor and Public Employment
Hearing Date/Time: Monday, June 22, 2020, 10:00 a.m.
Place: Conference Room 329
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2193, Relating to Employment Discrimination

Dear Chair Johanson, Vice Chair Eli, and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU 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.

S.B. 2193 would remove 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 as-is.

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.

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli, Vice Chair
Monday, June 22, 2020
10:00 a.m.
Conference Room 329

RE: Support SB2193 Relating to Employment Discrimination

Aloha Chair Johanson, Vice Chair Eli and Committee Members:

I am writing to request your support in scheduling a hearing on SB2193 to reduce employment discrimination that persons with past conviction records in Hawai'i continue to experience despite 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 on behalf of the Hawai'i Justice Coalition. Hawai'i Justice Coalition is a grassroots education and advocacy coalition comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services.

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 schedule a hearing on SB2193 to ensure that our fair employment law reflects our commitment to civil rights for all people and evolving best-practices.

Sincerely,

Carrie Ann Shirota, J.D.
Hawai'i Justice Coalition
Honolulu, Hawaii
cashirota808@gmail.com
(808) 269-3858

Statement Before The
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Monday, June 22, 2020

10:00 AM

State Capitol, Conference Room 329

in consideration of

SB 2193**RELATING TO EMPLOYMENT DISCRIMINATION.**

Chair JOHANSON, Vice Chair ELI, and Members of the House Labor & Public Employment Committee

Common Cause Hawaii comments in support of 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.

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 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 will reduce the stigma the formerly incarcerated face and still allow employers to consider recent, relevant convictions. SB 2193 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. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

Monday June 22, 2020

11:00 AM – Room 309

STRONG SUPPORT for SB 2193 – EMPLOYMENT DISCRIMINATION

Aloha Chair Johanson, Vice Chair Eli and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the 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 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.

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

Community Alliance on Prisons urges the committee to maintain the integrity of this measure and support the bill as is. 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 SB 2193.

SB-2193

Submitted on: 6/19/2020 7:21:26 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Hart	Individual	Support	No

Comments:

It's so important, now more than ever, that the vast inequalities in our society be eliminated. Specifically, discrimination of people who have convict records needs to not be a reality. WE have to legislate against it; otherwise it will continue and worsen. People need to have the opportunity to change their lives! Without employment, they go right back to crime.

God does change hearts, and many find God in prison. They need another chance at life.

SB-2193

Submitted on: 6/19/2020 7:36:26 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	Yes

Comments:

June 22, 2020 10:00am

Labor & Public Employment Committee

Aloha Chair Johanson and honorable members,

I am writing to submit testimony in **STRONG SUPPORT** of SB2193, which would reduce the current 10 year background check look-back period to 5 years for felonies and 3 years for misdemeanors.

This measure is incredibly important because once you have a conviction on your record, it becomes incredibly challenging to obtain employment because of stigma. Even though people with conviction records are interested in working legitimately, laws such as the current ten year period essentially keep formerly incarcerated people trapped.

Please keep the 5 year and 3 year time period, this would be a meaningful change, and people deserve an opportunity to thrive following the carceral experience.

Mahalo for your time,

Jen J.

SB-2193

Submitted on: 6/20/2020 12:31:56 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alani Bagcal	Individual	Support	No

Comments:

With 95% of people who are incarcerated eventually returning back to society, a criminal record has become an unnecessary barrier to finding a job. A person's record of arrest or conviction alone doesn't tell you whether or not they're a good employee. These people deserve a chance to succeed and support themselves and their families. They deserve a second chance.

SB-2193

Submitted on: 6/20/2020 12:39:32 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Santana	Individual	Support	No

Comments:

SB-2193

Submitted on: 6/20/2020 12:41:35 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Channing	Individual	Support	No

Comments:

Hello,

My name is Channing and I strongly support SB2193.

People need jobs and a chance to grow if we want them to reenter society in as healthy members of the community.

SB-2193

Submitted on: 6/20/2020 12:46:06 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

Aloha, my name is Colleen Rost-Banik. I'm a resident of Waikiki 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. I teach classes at the Women's Community Correctional Center, and many of the students in my classes have told me that they have had a revolving door relationship with the prison, partly because they have not been able to secure stable employment that offers a living wage. Passage of SB 2193 would help former inmates secure a job without discrimination because of their past. A person's record of arrest or conviction alone does not tell you whether they will be good employees. In fact, former inmates are some of the hardest and smartest workers I know. 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.

Mahalo for the opportunity to testify.

SB-2193

Submitted on: 6/20/2020 1:10:54 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

Please add my name to those who support preventing 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 at 5 years for felonies and 3 years for misdemeanors. 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

SB-2193

Submitted on: 6/20/2020 1:28:27 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Young	Individual	Support	No

Comments:

I support SB2193 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.

This bill would eliminate certain barriers that prevent people with criminal records from obtaining employment, a critical component in improving living circumstances. Those who have finished serving time for a crime should not have to face a sort of 'life sentence' because employers won't hire them. They should be allowed to demonstrate their work ethic rather than their past being the thing that speaks for them.

As employers and HR professionals may be affected by implicit biases and decide against hiring a person with a criminal record who is otherwise qualified for a job, I believe this bill will help to decrease that possibility and ultimately create a fairer hiring opportunity.

I believe this bill speaks to an individual's ability to change, learn, grow, and their right to support themselves and their family.

SB-2193

Submitted on: 6/20/2020 1:30:17 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nezia Azmi	Individual	Support	No

Comments:

Aloha, my name is Nezia Azmi 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.

SB-2193

Submitted on: 6/20/2020 2:15:25 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Hammond	Individual	Support	No

Comments:

Aloha, my name is Charles Hammond, 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."

SB-2193

Submitted on: 6/20/2020 2:25:50 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ezra Levinson	Individual	Support	No

Comments:

My name is Ezra Levinson and I am in strong support of SB2193. Just as the law does not determine morality, a person's criminal history does not determine whether they would be a good employee. While it is reasonable for prospective employers to have access to immediate criminal history, a decade is an unnecessarily long amount of time for someone's past to affect their chances of being employed. People who are reentering society should be able to get jobs - in fact, making it easier for them to do so makes them less likely to end up back in the criminal legal system in the future. I believe that the change proposed in SB2193 is the right choice both ethically and logically. Please vote in favor of this piece of legislation.

SB-2193

Submitted on: 6/20/2020 2:45:27 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Haydn Huntley	Individual	Support	No

Comments:

Aloha, my name is Haydn Huntley 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.

SB-2193

Submitted on: 6/20/2020 2:54:53 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

My name is Pete Wilson 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.

SB-2193

Submitted on: 6/20/2020 4:36:26 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Luke Sarvis	Individual	Support	No

Comments:

SB-2193

Submitted on: 6/20/2020 5:23:48 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

SB-2193

Submitted on: 6/20/2020 5:27:18 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Siciliano	Individual	Support	No

Comments:

SB-2193

Submitted on: 6/20/2020 5:41:48 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Judith A Mick	Individual	Support	No

Comments:

We must allow our fellow citizens who have paid their dues to become equal members of society.

Mahalo. Judy Mick, Kailua

SB-2193

Submitted on: 6/20/2020 6:58:52 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Comments	No

Comments:

Aloha legislators,

I support reducing the number of years a criminal history appears on someone's record, except when it involves a job with vulnerable people such as children, people with disabilities, and seniors.

Mahalo!

Cory Harden

SB-2193

Submitted on: 6/20/2020 11:47:02 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diliaur Tellei	Individual	Support	No

Comments:

Dear Chair Johanson and members of the committee,

Thank you for hearing this bill, SB-2193 'Relating to Employment Discrimination'. I support this bill and urge you to pass it. I think that it's a shame that our justice system, as it stands, extends punitive action beyond the end of a prison sentence and into a decade past a person's release from prison, making it difficult or impossible for them to find gainful employment. If the person does not have money, good luck, or good connections, then what recourse is there? A ten year window is too long. I think the wording of the bill says it best -- when those with criminal records are able to find legitimate employment, and support themselves and their families, recidivism rates fall and public safety is improved over the long term. And what we need is these kinds of systemic improvements to our society to keep pushing it to be egalitarian and equitable for all. Thus I repeat, I support SB-2193 and urge you to pass it. Thank you.

SB-2193

Submitted on: 6/21/2020 7:51:51 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

SB-2193

Submitted on: 6/21/2020 8:50:25 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

Chair Ling and Vice-Chair Eli--Thank you for hearing SB2193 that limits the time period during which employers can consider prior convictions of applicants. This is a very important bill, that will give people who have been incarcerated a better chance to improve their lives. Unfortunately, we live in a country that stigmatizes people who have done something wrong, making it even harder for them to live a normal life. Ideally, employers would only be able to consider past convictions that are related to the position for which the applicant is applying. However, this bill is a big step forward, and I urge you to pass it.

Barbara Polk

SB-2193

Submitted on: 6/21/2020 9:09:09 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Vondiziano	Individual	Support	No

Comments:

Aloha mai kākou e Hawai'i State Legislators,

My name is Greg Vondiziano and I am 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 a good employee. People who are reentering society have skills, talents, and expertise to lend and families to support, just like everyone else. Every single person living with a criminal record should have the chance to succeed and support themselves and their families and loved ones, 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. But when people are denied opportunities for gainful employment because of an infraction, no matter how severe, they are more likely to resort to other means in order to make ends meet, or simply out of sheer frustration that the system consistently is working against them. Current criminal justice and incarceration practices are dehumanizing and rob people of agency, their sense self-worth, and their futures - since a criminal record makes it exceedingly difficult to qualify for not only employment, but also for housing or financial assistance of any kind. Not to mention that the State of Hawai'i's incarcerated population is disproportionately made up of Native Hawaiians and POCs. It is when people feel that everything has been taken from them and they have nothing to lose that they are more likely to engage in illegal behaviors that put our 'ohana at risk. Part of effective law enforcement, then, is to re-center the humanity of those going through these institutions and to preserve their chances at having a meaningful and full life even after having had a run-in with the law. We do not need to continue punishing people long after they have done their time and have paid for their infractions. It is time for our state's policies to catch up to these truths.

Me ke aloha pumehana,

Greg Vondiziano

SB-2193

Submitted on: 6/21/2020 9:23:47 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kimberly-ann	Individual	Support	No

Comments:

"Aloha, my name is Kimberly-ann Hatico, 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."

SB-2193

Submitted on: 6/21/2020 1:19:07 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

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

Comments:

SB-2193

Submitted on: 6/21/2020 1:20:06 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Henry boothe	Individual	Support	No

Comments:

Testimony in SUPPORT of SB2193

With 95% of people who are incarcerated eventually returning back to society, a criminal record has become an unnecessary barrier to finding a job. A person's record of arrest or conviction alone doesn't tell you whether or not they're a good employee. These people deserve a chance to succeed and support themselves and their families. They deserve a second chance. End discrimination on the poor, the systematically oppressed, and everyone who has paid their debts to society for their mistakes and wish to provide for their community, their economy and their lives.

Thank you,

Henry Boothe

Late Testimony



Testimony to the House Committee on Labor and Public Employment

Monday, June 22, 2020 at 10:00 A.M.

Conference Room 329, State Capitol

LATE

RE: SB 2193, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Johanson, Vice Chair Eli, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has 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 401,288 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. 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.

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



Thank you for the opportunity to testify on SB 2193.



LATE

**Testimony to the House COMMITTEE ON LABOR AND PUBLIC
EMPLOYMENT**

**Representative Aaron Johanson, Chair
Representative Stacelynn Eli, Vice Chair
Monday, June 22, 2020 at 10:00 A.M.
Conference Room 329, State Capitol**

RE: SB 2193. RELATING TO EMPLOYMENT DISCRIMINATION

Chair Johanson, Vice Chair Eli, 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. 12193 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.

John Knorek, Esq.
Legislative Affairs Committee Co-Chair



Kim Ripley
Legislative Affairs Committee Co-Chair

LATE

SB-2193

Submitted on: 6/21/2020 4:15:19 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Chua	Individual	Support	No

Comments:

Aloha, my name is Anna Chua and I am a resident of Honolulu. I am 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 misdemeanours. 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 and reduces the recidivism rate significantly. It is time for our state's policies to catch up to these truths.

LATE

Marcella Alohalani Boido, M. A.

Hawaii State Judiciary Certified Spanish Court Interpreter, Tier 4

Resident & Voter, Senate District 10 and Representative District 21

To: Chair Aaron Ling Johansen, Vice-chair Stacylynn K. M. Eli
Members, House Committee on Labor & Public Employment

Hearing: June 22, 2020, 10:00 a.m., Rm. 329

Re: SB 2193, **SUPPORT**

Chair Johansen, Vice-chair Eli, and all members, thank you for hearing this bill.

You are returning to your work as legislators in the midst of a difficult situation.

Thank you for doing your best to represent the best interests of Hawaii's people.

Having reviewed the bill, and the testimony previously offered, I support this bill.

It is noteworthy that it has gone through two committees in the Senate with support and without any amendments. That is remarkable, and speaks to the value of this bill. The time has come for this kind of positive change. Please continue the forward momentum.

Things are hard enough now. People will be struggling for some time to come.

Let us make it possible for people who have paid their dues to earn a living in a lawful manner. Hawaii's people need this kind of wise, compassionate change.

Please pass SB 2193. Thank you.

Jeanne Y. Ohta

LATE

June 22, 2020

To: Representative Aaron Ling Johanson, Chair
Representative Stacelynn Eli, Vice Chair, and
Members of the Committee on Labor and Public Employment

From: Jeanne Ohta

RE: SB 2193 Relating to Employment Discrimination
Monday, June 22, 2020, 10:00 a.m.

Position: Support

I write in support of SB 2193 Relating to Employment Discrimination which shortens the “look back” period of felony and misdemeanor convictions used in employment decisions to the most recent five years for felonies and the most recent three years for misdemeanor convictions.

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.

LATE

SB-2193

Submitted on: 6/21/2020 10:42:47 PM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan	Individual	Support	No

Comments:

Aloha e Chair Johanson, Vice Chair Eli, and Members of the House Labor & Public Employment Committee,

I am writing to you today in support of SB2193. 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 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.

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,

Alan K. Akao, Esq.

SB-2193

Submitted on: 6/22/2020 6:47:00 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

LATE

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

Comments:

Strong Support for SB2193!

LATE

SB-2193

Submitted on: 6/22/2020 7:47:45 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jordan Smith	Individual	Support	No

Comments:

Aloha Chair Johanson,

I am submitting testimony in **STRONG SUPPORT of SB2193** to reduce the background check look-back period to 5 years for felonies and 3 years for misdemeanors. This measure is important because often the most marginalized people have conviction records, and this would be a step in the right direction that aids in the rehabilitation of our community members. If we want our community to move forward we cannot hold our fellow citizens back.

Thank you for your time.

Best,

Jordan Smith

‘Ahahui o Hawai‘i

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

LATE

**TESTIMONY FOR SB2193
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
JUNE 22, 2020 AT 10:00 A.M., ROOM 329**

June 22, 2020

The ‘Ahahui o Hawai‘i Advocates for Native Hawaiian Justice at the William S. Richardson School of Law strongly supports SB2193.

The ‘Ahahui is comprised of law students that promote the discussion of issues affecting Native Hawaiians. As future members of the bar, we recognize the importance of safety for our community as well as barriers the justice system poses to many of our community members, especially in the Native Hawaiian community. The ‘Ahahui strongly supports SB2193 for its progressive intent to give a fair shot to those who have already paid their dues to society.

By reducing the ten-year lookback period allowed under current law, this bill will better serve the original intent of the “ban the box” law. SB2193 would allow employers to consider more recent criminal charges, while relieving those who were formerly incarcerated of the stigma and bias that may follow them from old convictions.

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

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

Mahalo for the opportunity to testify on this important measure.

LATE

SB-2193

Submitted on: 6/22/2020 8:22:32 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel J Mistak	Individual	Support	No

Comments:

*Aloha, my name is Dan Mistak 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. This bill is a good start.*

LATE

SB-2193

Submitted on: 6/22/2020 9:05:53 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Strong	Individual	Support	No

Comments:

I strongly support SB2193 in its original form of five years for felonies and three years for misdemeanors for criminal history record checks. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism reduction goals of the state. SB2193 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment.

In pulling from my experience as a probation officer, employment is fundamentally crucial to the success of our community members who have been through the criminal justice system. The ability to obtain a good job affects whether or not a person can pay rent, provide for their family, and be productive members of the community. Lengthy criminal history record checks are leaving folks who have paid their debt to society at a disadvantage and preventing a potential pool of job candidates from entering the workforce.

Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui loa for the opportunity to testify in support of this bill.

SB-2193

Submitted on: 6/22/2020 9:32:57 AM

Testimony for LAB on 6/22/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shayna	Individual	Support	No

Comments:

My name is Shayna Lonoaea-Alexander and I'm in strong support of SB2193.

I believe people should be able to live with a clean slate as soon as they have earned the chance to reenter society, not after years of waiting. Someone reentering society has already paid their debt to society and should not be forced to keep repaying it. But until the Hawaii State Legislature catches up to that principle, however, it's important to push that capping employment decisions on 3 years for misdemeanors and 5 year for felonies is still too long of a period for people to face discrimination and any more is unacceptable.

Ninety-five percent of people who are incarcerated in the U.S. will return to society. Once someone has finished their sentence and earned their chance to reenter society, we should be setting them up for success, no matter what crime they were arrested for or convicted of.

Unfortunately, people have a lot of misconceptions about the differences between felonies and misdemeanors and about what constitutes a violent offense. This can lead to some lawmakers attempting to exclude people or lengthen the number of years under nondiscrimination based solely on the type of offense on their record, without even considering how old the record was or how long they have gone without another conviction.

In reality, people who have been convicted of a felony or a violent crime can turn their lives around and be productive members of our communities, especially if they can get the right kind of help. For instance, a study of the U.S.'s largest employer, the U.S. military, found that enlistees with felony records were more likely to be promoted to sergeant. Providing people with a chance at opportunity and hope builds public safety – locking people into a permanent underclass by preventing them to reentering society perpetuates harm and makes us all less safe.

Please vote to support SB2193 so more people and their families are able to have a fair chance at thriving.