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

January 29, 2020

TESTIMONY TO THE  
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS

For Hearing on Thursday, January 30, 2020  
2:45 p.m., Conference Room 224

BY

RYKER WADA  
DIRECTOR

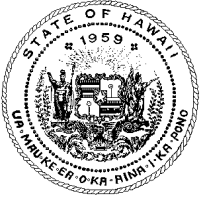
**Senate Bill No. 2193**  
**Relating to Employment Discrimination**

TO CHAIRPERSON TANIGUCHI, VICE CHAIR IHARA 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 be bill 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

January 30, 2020  
Rm. 224, 2:45 p.m.

To: The Honorable Brian Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
Members of the Senate Committee on Labor, Culture and the Arts

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.



**SB2193**  
**RELATING TO EMPLOYMENT DISCRIMINATION**  
Committee on Labor, Culture, and the Arts

January 30, 2020

2:45 p.m.

Room 224

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; and support the rehabilitation, reentry, and recidivism prevention goals of the state.**

Hawai'i's "ban the box" law seeks to limit the impact that convictions may have on the employment prospects of those who have a criminal history, but who have paid their debt to society, by limiting how far back an employer may look into an employee's or prospective employee's conviction record.<sup>1</sup> While progressive when adopted,<sup>2</sup> 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,<sup>3</sup> 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.**

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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,”<sup>6</sup> 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.<sup>7</sup>

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.

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<sup>4</sup> 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)).

<sup>5</sup> 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).

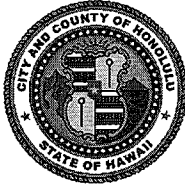
<sup>6</sup> Dylan Minor et al., *Criminal Background and Job Performance*, 7 J. OF LABOR POLICY 8 (2018), <https://izajolp.springeropen.com/articles/10.1186/s40173-018-0101-0>.

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

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR  
NOEL T. ONO  
ASSISTANT DIRECTOR

January 30, 2020

The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
and Members of the Committee on Labor, Culture and the Arts  
The Senate, Room 224  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

SUBJECT: Senate Bill No. 2193  
Relating to Employment Discrimination

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

Senate Bill No. 2193 proposes to shorten the look-back period over which an employer may consider an applicant's past criminal history. The City and County of Honolulu (City) Department of Human Resources (DHR) respectfully provides the following comments on this measure.

Hawaii already has broad employment non-discrimination protections for those with criminal convictions whose past offenses do not bear a rational relationship to the duties of their prospective employment. S.B. 2193 would amend Chapter 378-2.5, Hawaii Revised Statutes (HRS), to further and even more severely limit an employer's ability to consider a prospective employee's criminal history background, to only the most recent "five years for felony convictions and three years for misdemeanor convictions."

While subsection (d)(1) of the bill appears to exclude certain City positions via reference to HRS Sections 831-3.1 (which pertains to suitability for public employment) and 846-2.7 (which pertains to fingerprint checks), the bill notably does *not* list several other provisions of 846-2.7(b), including the following:

(6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;

The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
and Members of the Committee  
on Labor, Culture and the Arts  
January 30, 2020  
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(7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;

[ . . . ]

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;

[ . . . ]

(39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;

[ . . . ]

(43) The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;

[ . . . and . . . ]

(49) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

For these positions and any other City positions not covered by the exceptions specifically listed within the bill, it appears the City would be expected to follow the proposed five-and three-year look-back period. The City is concerned, as many other City positions might also benefit from exclusion from this bill. The City would view all public employment, by definition, as involving a degree of responsibility for public safety and a measure of public trust. As such, more City positions could benefit from more stringent background checks.

As a public employer, the City strictly complies with the already robust nondiscrimination laws, so that only those whose past records would seem to bear a

The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
and Members of the Committee  
on Labor, Culture and the Arts  
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rational relationship to a particular position are precluded from consideration. To the extent this measure would apply to the City, it could inhibit the City's ability to assess an applicant's suitability for City employment, particularly with respect to misdemeanor records. Misdemeanor convictions include violent charges such as abuse of a household member or assault in the third degree. Three years is a very short period over which an employer would be able to assess, for example, a pattern of violent behavior.

In summary, the City is concerned by this measure, to the extent it would require a change to current City pre-employment suitability practices. We would feel much more comfortable if this measure were to specifically exclude all county employment, particularly in view of the fact that county employment is already subject to strict standards precluding discrimination. Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carolee C. Kubo  
Director

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON LABOR, CULTURE AND THE ARTS

Senator Brian Taniguchi, Chair

Senator Les Ihara, Vice Chair

Thursday, January 30, 2020

2:45 PM – Room 224

### STRONG SUPPORT FOR SB 2193 – EMPLOYMENT DISCRIMINATION

Aloha Chair Taniguchi, Vice Chair Ihara 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 **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 ten people who have died in the last 5 months, as well as 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. 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.

Senate House of Representatives  
THE THIRTIETH LEGISLATURE  
REGULAR SESSION OF 2020

To: COMMITTEE ON LABOR, CULTURE, and the ARTS

Sen. Brian T. Taniguchi, Chair

Sen. Les Ihara, Vice Chair

Sen. Stanley Chang

Sen. Mike Gabbard

Sen. Kurt Fevella

HEARING: Thursday, January 30, 2020 at 2:45pm, Conference Room 224

RE: Testimony in **SUPPORT** of SB2193: RELATING TO EMPLOYMENT DISCRIMINATION

Aloha. Chair, Vice-Chair, and members of the Labor, Culture, and the Arts committee. My name is JoAnn Tuifanu, and I am writing this testimony in strong support for SB2193. I am a formerly incarcerated inmate and have completed the terms and conditions of my probation. I have experienced employment discrimination because of my felonies and continue to push through, hoping that bills like these can help those who have made the change and have become productive individuals in society.

Six years ago, I left Oahu Community Correction Center and went into an in-patient treatment center. While in the aftercare portion of my treatment, I registered at a community college. During this time, I tried to find employment, but I kept getting rejected because of my past criminal history. I continued to pursue my Associates Degree with the idea that if I have a degree, maybe I will be able to obtain employment with decent pay and adequate medical benefits. It's been six years; I now have a Bachelors' degree and face employment discrimination in applying for internships because of my criminal background.

I am currently in the last semester of the Social Work Master's program. I am concern that even with a higher-level degree, I may run into more employers that will label my lapse and criminal background than view me as an individual. Someone that is continuing with her recovery, healing, and is now encouraging others to continue to push forward. Despite the unjustified stigma and biases that we will continue to face when trying to gain legitimate employment. My deepest feelings go out to those who are trying to make a living for themselves and their families. Moreover, be able to sustain in Hawaii's economy.

**I STRONGLY SUPPORT SB2193.** This measure would support the rehabilitation, reentry, and recidivism prevention goals of the state.

If this bill does not pass, others like me will continue to face employment discrimination.

Please vote **YES** on SB 2193. to provide hope for those who are doing their best to do right by their past mistakes.

Respectfully submitted,



JoAnn Tuifanu



Committees: Committee on Labor, Culture, and the Arts  
Hearing Date/Time: Thursday, January 30, 2020, 2:45 p.m.  
Place: Conference Room 224  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2193

Dear Chair Taniguchi, and members of the Committees:

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. Collateral consequences are different from direct consequences of convictions in that they are not factored in to the calculation of punishment or sentencing, and are triggered outside the jurisdiction of the courts.

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

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 testify.

Sincerely,

Monica Espitia  
Smart Justice Campaign Director  
ACLU of Hawai'i

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<sup>1</sup> *End Stigma Against Incarceration, 1 Ohana At a Time*;

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



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

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

**TESTIMONY FOR SB2193  
COMMITTEE ON LABOR AND CULTURE AND THE ARTS  
‘IANUALI 30, 2020 AT 2:45 P.M., ROOM 224**

**‘Ianauli 28, 2019**

**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.

The Thirtieth Legislature  
Regular Session of 2020

THE SENATE

Committee on Labor, Culture and the Arts

Senator Brian T. Taniguchi, Chair

Senator Les Ihara, Jr., Vice Chair

State Capitol, Conference Room 224

Thursday, January 30, 2020; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2193  
RELATING TO EMPLOYMENT DISCRIMINATION**

The ILWU Local 142 supports S.B. 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 objective of most prison sentences is to focus on rehabilitation for those incarcerated. The hope is to re-educate and retrain those serving a sentence so they can meaningfully contribute to society after serving out their term. Unfortunately, prospective workers with a conviction may be discriminated against when seeking employment and could have a hard time getting hired.

S.B. 2193's intent is to help ensure rehabilitated workers are not discriminated against when seeking employment by reducing the felony conviction history from 10 year to 5 years and a misdemeanor conviction history to 3 years.

Thank you for the opportunity to offer testimony on this measure. The ILWU recommends passage of S.B. 2193.

**SB-2193**

Submitted on: 1/27/2020 5:25:49 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wayne	Individual	Support	No

Comments:

Dear Chair Taniguchi, Vice Chair Ihara, and members of the Senate Committee on Labor, Culture, and the Arts,

Please SUPPORT this important measure that will reduce the financial and human costs of our undeniably flawed criminal justice system.

I strongly believe that this measure will only serve to reinforce the state's recent investments in rehabilitation and recidivism prevention, by motivating continued law-abiding behavior by rehabilitated former offenders whose records will no longer haunt them when a reasonable time period has elapsed, well after their debt to society is repaid.

Mahalo nui loa for your careful consideration of this bill!

Wayne Tanaka

**SB-2193**

Submitted on: 1/28/2020 12:32:50 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nanea Lo	Individual	Support	No

Comments:

Hello,

My name is Nanea Loa. I am a lifelong resident of O‘ahu and a masters student at UH MÄ• noa in the Department of Urban and Regional Planning. I am writing in to say I strongly support this bill. The system needs to take accountability of its failure and lack of leadership when it comes to employment. Please support this bill.

me ke aloha ‘Ä• ina,

Nanea Lo

**SB-2193**

Submitted on: 1/27/2020 8:24:38 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**SB-2193**

Submitted on: 1/29/2020 12:11:07 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kama Hopkins	Individual	Support	No

Comments:

**SB-2193**

Submitted on: 1/29/2020 6:19:21 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Causha A Spellman	Individual	Support	No

Comments:

**STRONGLY SUPPORT** SB2193. 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 prevention goals of the state. By reducing the ten-year lookback period allowed under current law, 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. Mahalo.

**SB-2193**

Submitted on: 1/30/2020 7:40:28 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Zoe Malia Ozoa Loos	Individual	Support	No

Comments:

I **STRONGLY SUPPORT** SB2193. 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 prevention goals of the state. By reducing the ten-year lookback period allowed under current law, 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. Mahalo. Zoë Malia Ozoa Loos



**SB-2193**

Submitted on: 1/30/2020 8:38:44 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carrie Ann Shirota	Individual	Support	No

Comments:

Aloha,

This bill would decrease the “look back” period of criminal history that employers may consider when making employment decisions. If we want individuals involved in the criminal justice system to earn a living and become contributing members of our community, then we must change the laws that erect barriers to gainful employment.

Study after study confirms that employment plays a critical role in reducing recidivism. To build a safer and more just community for all, please pass this measure.

Mahalo.

## **taniguchi4 - Joel**

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**From:** Kimberly Kaahanui <kjuk@hawaii.edu>  
**Sent:** Wednesday, January 29, 2020 5:32 PM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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. Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui for the opportunity to testify in support of this bill.

Sincerely,  
Kimberly Ka'ahanui

\* For the past 13y, through my line of work, I have helped to find employment for the formerly incarcerated. Please help them be a part of our society as they should.

## taniguchi4 - Joel

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**From:** Kehaulani Lum <myheavenlydew@gmail.com>  
**Sent:** Wednesday, January 29, 2020 8:59 AM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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.

We have supported several women and men who have served their time and returned to society ready to become productive citizens, mothers, wives, daughters, sons and neighbors, only to find the doors to decent wage-earning jobs closed to them. They are some of the hardest and most trustworthy people that I have been blessed to know and commit themselves fully to fulfilling their highest potential. We are grateful to them for every day that they rise to serve our community.

We, as a society, must remove the barriers that prevent them from being their best selves, long after they have repaid their debt. This is the practice of Aloha.

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

Kehaulani Lum  
Ali`i Pauahi Hawaiian Civic Club

## taniguchi4 - Joel

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**From:** Diane Kanealii <dkanealii02@gmail.com>  
**Sent:** Tuesday, January 28, 2020 8:39 PM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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.

Therefore, I respectfully urge the Committee to PASS SB2193. We have to give them a chance to be able to work and go on with their lives. We have ALL made mistake in our life.

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

Sincerely,

Diane M. Kanealii

Kailapa COMMUNITY ASSOCIATION

## **taniguchi4 - Joel**

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**From:** Jen Jenkins <jjenk458@gmail.com>  
**Sent:** Tuesday, January 28, 2020 10:27 AM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Orange Category, Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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. Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui for the opportunity to testify in support of this bill.

Sincerely,

Jen Jenkins

## taniguchi4 - Joel

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**From:** Heather McVay <heathermcvay.law@gmail.com>  
**Sent:** Tuesday, January 28, 2020 9:22 AM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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. Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

## taniguchi4 - Joel

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**From:** Kimokeo Kapahulehua <honokohau@gmail.com>  
**Sent:** Tuesday, January 28, 2020 4:20 AM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Orange Category, Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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. Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

## **taniguchi4 - Joel**

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**From:** Mark Vascincellos <mark.vasconcellos85@gmail.com>  
**Sent:** Monday, January 27, 2020 9:16 PM  
**To:** LCATestimony  
**Subject:** Pass SB2193!

**Categories:** Purple Category

I strongly support SB2193, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, reentry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years. 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. Therefore, I respectfully urge the Committee to PASS SB2193. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

Sent from my iPhone