



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 1595, RELATING TO EXPUNGEMENT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 6, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department), in its capacity as the Chief Law Enforcement Officer, strongly opposes this bill and offers the following comments.

The purpose of this bill is to create a state-initiated process to expunge all records of arrests and convictions made pursuant to section 712-1249, Hawaii Revised Statutes (HRS), Promoting a Detrimental Drug in the Third Degree, at no cost to the record holder. All related records must be sealed or destroyed by every entity who might hold such records. The records would no longer be available for consideration by law enforcement, prosecutors, judiciary, or the public as it will be as though the prohibited acts never occurred.

First, Promoting a Detrimental Drug in the Third Degree under section 712-1249 is still an offense within the penal code of the HRS. Decisions on expungement and the sealing of these court records should not be made unless or until section 712-1249, HRS, no longer exists in the penal code. Otherwise, a person could theoretically be arrested or convicted pursuant to section 712-1249, HRS, one day, then the record expunged the next day. Pursuant to section 831-32, HRS, individuals who are "arrested for, or charged with but not convicted of a crime" already qualify for expungement (assuming they meet the other qualifications), regardless of the specific charge.

Second, it would be practically impossible, and potentially detrimental, for the Judiciary, prosecutors, law enforcement, and the Department to correctly identify and locate all of the individuals who qualify for these expungements, without some sort of application process. Currently, individuals who desire expungement are only required to submit a simple, one-page application form to start the expungement process, in accordance with section 831-3.2, HRS. Nevertheless, that simple form contains crucial information for processing the paperwork needed to accomplish the expungement, including a person's current legal name, any alias or past names used, date of birth, social security number, current address, phone number, and email address.

Third, our current expungement process involves the mailing of a certificate of expungement, mug photo, and fingerprints to the applicant once it has been granted. See section 831-3.2, HRS. This will be difficult, if not impossible, to fulfill without an individual's current contact information, as many people have undoubtedly moved and/or changed mailing addresses over the years. This sensitive information certainly cannot be disseminated via unconfirmed mailing addresses. Moreover, this information cannot be stored or maintained indefinitely by the Department.

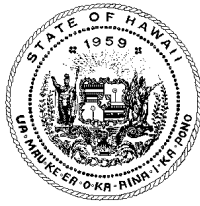
Fourth, based on section 1 of this bill, it appears the proposals are being made in response to the "decriminalization" of the possession of cannabis in the amount of 3 grams or less, yet the proposed mandate would actually involve expungement of all offenses charged under section 712-1249, HRS. Section 712-1249, HRS, currently covers possession of less than one ounce of cannabis, or any amount of a Schedule V substance. Given the intent of the bill, it seems inconsistent that all offenses under section 712-1249 should be expunged.

Based on all the issues above, the Department respectfully asks that the current expungement process, that has already been significantly simplified, not be further changed or altered. This process has already been reduced to a simple, one-page form, with a minimal fee. Those fees offset the Hawaii Criminal Justice Data Center personnel, equipment, and operational costs. Currently, approximately fifty thousand records, arrests, and convictions would potentially qualify for the expungement specified in this bill. If fees, fines, costs, assessments, or charges related to a case eligible for

expungement are waived, the Department would need adequate funding to support personnel and operational expenses. Without fiscal support, staffing will be reduced and leave the criminal data systems critical to public safety vulnerable.

The Department reiterates its strong opposition and respectfully requests that this bill be held. Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
*Ka 'Oihana Ho'omalu Kalaima
a Ho'oponopono Ola*
1177 Alakea Street
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Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL 1595 RELATING TO EXPUNGEMENT.

by

Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

House Committee on Health and Homelessness
Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

Tuesday, February 6, 2024; 2:00 p.m.
State Capitol, Conference Room 325 & via Videoconference

Chairs Tarnas and Au Belatti, Vice Chairs Takayama and Takenouchi, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) strongly opposes House Bill HB) 1595, which proposes to create a state-initiated process to expunge records of arrests and convictions pursuant to Section 712-1249, Hawai'i Revised Statutes, at no cost to the record holder. In cases where an offender receives one or more orders of resentencing, it is possible for their case to remain active beyond 7 years from the date of conviction. Additionally, in cases with multiple counts, it is possible for a misdemeanor or nonviolent class C felony to be sentenced alongside other more serious counts with longer sentences that may exceed the 5 to 7-year waiting period.

Senate Bill 1595 Relating to Expungement
House Committee on Judiciary & Hawaiian Affairs
House Committee on Health and Homelessness
February 6, 2024
Page 2

In these cases, it would not be practicable for conviction records to be expunged for some counts, but not all. Furthermore, an offender's restitution obligation may extend beyond a period of 5-7 years from the date of their conviction if the whole restitution balance has not yet been paid in full. Inmates and parolees who have been sentenced to pay restitution will be hampered in their efforts to make their legally required payments and to demonstrate accountability toward their victims.

It is for these reasons stated above that the Department strongly opposes HB 1595 and respectfully requests that it be deferred.

Thank you for the opportunity to present this testimony in opposition to HB 1595.

State of Hawai‘i
The Office of the Public Defender

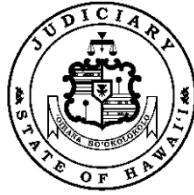
H.B. No. 1595: RELATING TO EXPUNGEMENT

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

The Office of the Public Defender **supports** this bill.

This is another positive step toward decriminalizing and normalizing cannabis use. Along the way, there have been thousands of people arrested for possessing cannabis—something that the Nation and our State now have less interest in prosecuting and punishing. And yet, the arrest records remain. These records hinder people from trying to earn a living, find a home, and move on their brush with the law.

This bill rightly puts it on the State, as the keeper of data and records, to summarily expunge an entire class of people and allow them to get a fresh start. The Office of the Public Defender supports this bill, hopes to see it become law, and encourages the Legislature to adopt similar measures to other offenses in the future.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2024 Regular Session

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, February 6, 2024, 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

by:
Thomas J. Berger
Staff Attorney for the Hawai‘i Supreme Court

Bill No. and Title: House Bill No. 1595, Relating to Expungement.

Purpose: Creates a state-initiated process to expunge records of arrests and convictions pursuant to section 712-1249, Hawai‘i Revised Statutes, at no cost to the record holder. Requires the Hawai‘i Criminal Justice Data Center to submit biannual reports to the legislature until all eligible records are expunged.

Judiciary’s Position:

We appreciate the legislative intent of the bill and most assuredly share the Committee’s concerns about simplifying the process for self-represented parties. However, we respectfully request this measure be deferred to allow time for further study and offer the following for your consideration:

1. **The Judiciary cannot support those provisions of the proposed bill which would limit judicial review and discretion.** For example, Part II of the bill provides that the attorney general shall on its own initiative enter an expungement order as to “any records of conviction.” HB 1595, p. 2-3. When a judgment of conviction is entered by the court, that judgment can only be set aside, reversed, vacated, or amended by various actions of the court (e.g., appellate action; habeas corpus relief; post-



conviction proceedings).¹ In this way, judicial review is required. Relatedly, Part VI of the bill contemplates automatic sealing of court records. The decision to seal a case file requires case-by-case review. The prosecutor, the Department of the Attorney General, the probation office, the public, and/or the press may have a position on the total sealing of a case file, and the court has the opportunity to consider these positions with case-by-case review. Moreover, on a criminal case with multiple defendants or multiple convictions, judicial discretion is needed as to the timing and scope of the sealing of those records. This is because the criminal case may still be open as to some co-defendants or offenses.

As a possible solution, the Judiciary suggests significant revisions be made to this measure to provide for judicial review and discretion consistent with the comments set forth above.

2. **The bill would cause significant operational impacts to the Judiciary.** The exact operational impacts are difficult to quantify and the Judiciary is still evaluating this measure. However, it is fair to say that the operational impacts to review motions to expunge and/or seal on these cases in the district courts would be significant, and would strain resources that would otherwise be focused on the efficient resolution of pending criminal and civil matters.
3. **Significant Costs.** The costs to the Judiciary are not addressed in the proposed bill. The Judiciary is still reviewing this measure, but at a minimum it will require many more staff to review and process the requests to expunge and/or seal court records. In addition, implementing this measure may require further technological enhancements to the Judiciary Information Management System (JIMS) with likely substantial costs. Additional study is needed to evaluate these costs and feasibility.
4. **Clarification needed on eligible offenses.** The bill appears to include all Schedule V substances, not just marijuana. Specifically, Section 1 references marijuana related arrests and convictions, but Part II, section 2 refers to HRS § 712-1249 - Promoting a Detrimental Drug in the Third Degree, which applies to marijuana *or any* Schedule V drugs. HRS § 329-22 list the Schedule V drugs which include narcotics, stimulants and depressants. If the intent is to only apply to marijuana related offenses, further study is needed to determine whether the underlying records at issue would identify what type of drug was at issue in the subject-arrest or subject-case. Accordingly, clarification is requested as to whether the legislative intent is to cover all Schedule V substances, and not just marijuana.

¹ This testimony will not discuss the Governor's power to issue pardons.



Finally, in addition to the above-concerns, the Judiciary shares with this Committee the following explanation from a report funded by the Clean Slate Initiative (CSI): “Clean Slate initiatives are often referred to as ‘automatically’ clearing criminal records for eligible cases and individuals; [however] the process is not automatic *per se*, but rather *automated* at least to some degree.”² And continuing, “Research indicates that no Clean Slate initiatives studied are issuing blanket sealing provisions. In every case, the court must identify or validate the identification of specific people, charges, cases, and adjudications that will be cleared.” This is a labor-intensive process that is deserving of thoughtful consideration before implementation. Fortunately, there are models that could be studied to determine what desired outcomes are possible in Hawai‘i. However, more time and coordination between stakeholders is needed to analyze options, assess available resources and processes, and identify challenges and possible solutions.

To this end, we respectfully note that further study is needed to analyze how other states have implemented “clean slate laws” and other record clearing measures to identify the challenges, solutions, and open issues that could guide policy in Hawai‘i.

In conclusion, as drafted the Judiciary is not able to support the provisions of House Bill No. 1595. We will, however, continue to work with the members of the Committee and the Legislature to develop solutions consistent with intent of this bill.

Thank you for the opportunity to testify on this matter.

² ROBERTS, DAVID J., ET AL., TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE: RESEARCH FINDINGS (2023), available at https://static1.squarespace.com/static/62cd94419c528e34ea4093ef/t/643580d2e1b38045c120495f/1681227986297/Tech_Op_Challenges_Clean_Slate_ResearchFindings.pdf (research by SEARCH, the National Consortium for Justice Information and Statistics); see also *Our Work*, CLEANSLATEINITIATIVE.ORG, <https://www.cleanslateinitiative.org/2023-annual-report> (last visited Feb. 3, 2024) (noting that the clean slate implementation report was a CSI-funded research project).



Committee: Judiciary & Hawaiian Affairs
Hearing Date/Time: Tuesday, February 6, 2024 at 2:00pm
Place: Conference Room 325 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1595
Relating to Expungement**

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The ACLU of Hawai'i **supports HB1595**, which creates a state-initiated process to expunge arrest and conviction records of arrests and convictions pursuant to H.R.S. section 712-1249, at no cost to the record holder. Additionally, this measure would require the Hawaii Criminal Justice Data Center to submit bi-annual reports to the Legislature until all eligible records are expunged.

Our state's ineffective prohibition policies on recreational cannabis has damaged civil liberties in many ways – searches and seizures, arresting and locking up large numbers of non-violent individuals behind bars and separating individuals from their families – for using a plant with known medicinal properties for thousands of years. In addition, the failed War on Cannabis in Hawai'i has resulted in arrest and conviction records, effectively creating a lifetime paper prison for many people in Hawai'i.

According to a recent report by the Attorney General's office, there are currently over 50,000 arrests and 10,000 convictions currently in the system for low-level cannabis related offenses.¹

The ACLU of Hawai'i believes in a society where all people, including those who have been arrested and/or convicted of a crime, and have paid their debt under the law, get an equal opportunity to contribute to society and build successful and fulfilling lives.

Research confirms that criminal records create barriers and in some cases block access to jobs, housing, education, participating in public programs and services, insurance, or participating fully in social and civil community life. These barriers have a ripple effect on families and their local communities and economies, disparately impacting Native Hawaiian and Pacific Islanders in Hawai'i.

¹ "Report Regarding the Final Draft Bill Entitled 'Relating to Cannabis.' Hawaii State Department of the Attorney General, January, 2024: <https://ag.hawaii.gov/wp-content/uploads/2024/01/REPORT-REGARDING-THE-FINAL-DRAFT-BILL-ENTITLED-RELATING-TO-CANNABIS-PREPARED-BY-THE-DEPARTMENT-OF-THE-ATTORNEY-GENERAL-dated-January-5-2024.pdf>

According to Prison Policy Initiative and the National Resource Re-entry Center, a criminal record reduces a job seeker's change of getting a callback or job offer by nearly 50%.²

In stark contrast, expungement helps people move on with their lives and get back to work. [Research from the University of Michigan](#) finds that people are 11 percent more likely to be employed and are earning 22 percent higher wages one year after a record has been cleared.

This bill creates a mechanism for state agencies that serve as repositories of arrest and conviction records to work collaboratively and harness technology to create a state-initiated record clearing process for cannabis related arrests and convictions pursuant to H.R.S. sec. 712-1249. In turn, research indicates that this will increase job opportunities and enhanced wages.

Proposed Amendment

Finally, we recommend including language that requires removal of records from screening databases. Many employers and property managers find out about criminal convictions not from government databases directly, but from their third-party criminal history screening services.

To ensure expunged convictions do not continue to serve as barriers to individuals, HB 1595 should mandate that screening services remove all expunged convictions from the next update. As highlighted by Marijuana Policy Project, Indiana Code § 35-38-9-12 or Virginia Code § 19.2-392.16 may be used as statutory language to strengthen this measure.

For the above reasons, we urge the Committee to support this measure. Thank you for the opportunity to testify in support of **H.B. 1595**.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
cshirota@acluhawaii.org

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 over 50 years.

² <https://nationalreentryresourcecenter.org/news/clearing-path-conviction-employment#:~:text=Studies%20have%20shown%20that%20the,effects%20of%20a%20criminal%20record>. See also, <https://www.prisonpolicy.org/reports/outofwork.html>



Testimony from Frank Stiefel
Senior Policy Associate
Last Prisoner Project

RE: House Bill 1595, Creating a State-Initiated Process to Expunge Cannabis Records

February 2, 2024

Dear Members of the Committee on Judiciary & Hawaiian Affairs,

The War on Drugs and the criminalization of cannabis have created a racially inequitable criminal legal system that has disproportionately impacted people of color, including Native Hawaiians. We at the Last Prisoner Project (LPP) believe that no one should suffer the collateral consequences of cannabis criminalization. We commend Representative David Tarnas for introducing [HB 1595](#), which will begin to address the injustices perpetrated during cannabis prohibition through the creation of a state-initiated expungement process for individuals with a criminal record for cannabis possession.

When an individual has a criminal record for cannabis, the collateral consequences linger for a lifetime without access to expungement. Individuals with a criminal record are often restricted from employment, housing, political participation, public assistance, education, and more. These restrictions hinder the wellbeing and safety of entire communities, particularly communities of color who have been systematically targeted by law enforcement during cannabis prohibition. A key finding from a 2018 Office of Hawaiian Affairs report on prison reform highlighted the disproportionate incarceration rate of Native Hawaiians, who constitute 37% of the adult incarcerated population while making up just 18% of the state's adult population.

The Last Prisoner Project (LPP) has worked in Hawai'i for the past two years to ensure that retroactive relief is provided for those who have been criminalized by prohibition. In 2022, LPP presented [evidence-based policy recommendations](#) that were endorsed by Hawaii's Dual Use of Cannabis Task Force. LPP's recommendations outlined state-initiated processes to provide retroactive relief for individuals with cannabis convictions and led to LPP being named in [Concurrent Resolution No. 51/House Resolution No. 53](#), which urged Governor Green to initiate a clemency program for individuals who are still under supervision for a cannabis conviction.

A key component of HB 1595, is that it does not get ahead of the state on the question of legalizing adult-use cannabis, and it does it rely on the state passing a legalization bill. Instead,

the bill intends to close the uptake gap between people who have a criminal record for cannabis possession and are already eligible for expungement under existing law but have been unable to obtain relief.

National research shows that less than 6.5% of people who are already eligible for an expungement ever have their records expunged because of the cumbersome nature of the record clearance process. Representative Tarnas' bill will address this issue by having the Attorney General's Office initiate an expungement process for individuals with a criminal record for cannabis possession, an offense that was decriminalized in 2019 and poses no threat to public safety. In fact, the creation of a state-initiated record clearance process promotes public safety by expanding access to employment, housing, and educational resources that allow for community reintegration and stability. Empirical data demonstrates that five years after benefitting from record clearance, individuals are actually less likely than members of the general public to engage in criminal conduct.

Prior to 2019, simple possession of cannabis could have landed someone in jail. Even for those lucky enough to avoid that penalty, their arrest still generated a criminal record along with numerous collateral consequences. HB 1595 ensures that individuals who continue to suffer the consequences of a penalty the state changed its mind about enforcing in 2019 are applied evenly so no one is left behind. We urge the Hawai'i State Legislature to support HB 1595 to provide retroactive relief for individuals criminalized by cannabis possession and begin to dismantle the racial injustices that the criminal legal system has perpetuated during prohibition.

We thank you for your consideration of this urgent matter.

About Last Prisoner Project

The Last Prisoner Project, 501(c)(3), is a national nonpartisan, nonprofit organization focused on the intersection of cannabis and criminal justice reform. Through policy campaigns, direct intervention, and advocacy, LPP's team of policy experts works to redress the past and continuing harms of unjust cannabis laws. We are committed to offering our technical expertise to ensure a successful and justice-informed pathway to cannabis legalization in Hawai'i.



February 5, 2024

Re: In support of HB 1595 to create a state-initiated process to expunge certain cannabis records

Aloha Chair Tarnas, Vice Chair Takayama, and distinguished members of the House Judiciary Committee:

My name is Karen O'Keefe. I am the director of state policies for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the nation. I am an attorney who has worked on cannabis policy at MPP since 2003. For the past year, I have had the pleasure of working with a coalition of Hawai'i advocates as part of the Hawai'i Alliance for Cannabis Reform.

I am writing to urge you to advance HB 1595, which would create a state-initiated process to expunge lower-level cannabis possession convictions. This would remove an economic life sentence that is inappropriate for conduct most Hawai'i voters believe should be legal.¹

Criminal records trigger thousands of collateral consequences that make it difficult to get housing, employment, and jobs.² One survey found 92% percent of employers report using criminal records checks on some or all applicants.³ Fifty-five percent of people with records report difficulties attaining a job, maintaining employment, or making a living.⁴ These barriers to legally making ends meet increase the likelihood that people will turn to the underground economy. A lifetime of stigma and collateral consequences is unduly harsh and inappropriate for cannabis possession.

The state-initiated aspect of the bill is essential because few eligible individuals complete petition-based expungement,⁵ which is costly and cumbersome.

States are increasingly including state-initiated expungement as part of legalization or companion legislation. States with state-initiated cannabis expungement include Illinois, Michigan, Minnesota, Missouri, New Mexico, Rhode Island, Vermont, and Virginia.

¹ Civiqs found 73% of Hawai'i residents support cannabis legalization as of 2023.

² See: Jamiles Lartey, "How Criminal Records Hold Back Millions of People," *The Marshall Project*, April 1, 2023.

³ Society for Human Resources Management Background Checking: Conducting Criminal Background Checks, slide 3 (Jan. 22, 2010) https://www.slideshare.net/shrm/background-check-criminal?from=share_email

⁴ Alliance for Justice national survey of people with records: <https://asj.allianceforsafetyandjustice.org/wp-content/uploads/2023/05/2023-05-15-2023-TimeDoneSurvey-Full.pdf>

⁵ J.J. Prescott and Sonja B. Starr, "Expungement of Criminal Convictions: An Empirical Study," University of Michigan Law School, 2020. (Finding, "[A]mong those legally eligible for expungement, just 6.5% obtain it within five years of eligibility.")

If possible, I also recommend you make the bill even stronger by adding the following:

1. A Ban On Workplace and Housing Discrimination for Past Cannabis Offenses

While state-initiated expungement is a crucial step forward, it will not prevent all discrimination for past arrests and convictions. Some applicants will not realize they can deny having had a conviction and will “check the box,” some employers may check criminal records database that will not have been updated (especially if the law does not mandate updates), and some Hawai’i residents may have convictions during visits to or while living in other jurisdictions.

I recommend also including in the law that:

- 1) employers, professional licensing boards, landlords, and state agencies cannot ask about or take a negative action based on prior cannabis use, including for a past arrest or conviction for cannabis possession; and
- 2) employers, professional licensing boards, landlords, and state agencies cannot ask about or take negative action on the basis of a record that has been expunged.

2. Language Requiring Removal of Records from Screening Databases

Most employers and property managers find out about criminal convictions not from government databases directly, but from their party criminal history screening services. To ensure expunged convictions do not continue to haunt individuals, HB 1595 should mandate that screening services remove all expunged convictions from the next update.

You could draw from Indiana Code § 35-38-9-12 or Virginia Code § 19.2-392.16 for language.

I urge you to report HB 1595 out of committee, ideally after making the suggested improvements. Please don’t hesitate to reach out if you have any questions or would like any additional information.

Mahalo for your time and consideration,



Karen O’Keefe
Director of State Policies
202-905-2012
kokeefe@mpp.org

HB-1595

Submitted on: 2/5/2024 4:13:28 PM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Brown	Hawai'i Innocence Project	Support	Remotely Via Zoom

Comments:

The Hawai'i Innocence Project strongly supports H.B. 1595 and would like the opportunity to submit our testimony orally at the hearing on Feb. 6, 2023 at 2PM via videoconference.

Jennifer Brown, Esq.

Associate Director, Hawai'i Innocence Project



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

FEBRUARY 6, 2024

HB 1595, RELATING TO EXPUNGEMENT

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** HB 1595, relating to expungement. Pursuant to the "Public Safety and Disaster and Emergency Preparedness" section of the official Democratic Party of Hawai'i platform, the party believes that "public safety laws should be just, equitable and enforced fairly without discrimination. We believe that true justice restores people and communities."

The war on drugs has been found to be destructive and devastating to immigrant, indigenous, and low-income individuals, families, and communities. The same findings were made about the impact of the war on drugs in Hawai'i in the 2010 "The Disparate Treatment of Native Hawaiians in the Criminal Justice System" report from the Office of Hawaiian Affairs, which found that mass incarceration for Hawaiian and other minority groups is significantly worsened by the war on drugs, including the criminalization of cannabis possession. Moreover, numerous studies have demonstrated that the prosecution of cannabis offenses has deprived people of accessing higher education, housing, employment, and individual liberty.

On October 6, 2022, President Joseph Biden pardoned 6,500 people convicted between 1992 and 2021 of federal cannabis possession, as well

as thousands more who were convicted of cannabis possession in the District of Columbia. President Biden also urged governors throughout the country to follow his lead and provide similar legal relief for those who have entered the criminal justice system for cannabis convictions. In response to President Biden's call for states to implement clemency programs for cannabis offenses, in November of 2022, Governor Kate Brown of Oregon announced her intent to pardon over 47,000 Oregonians with low-level cannabis convictions. The Oregon pardon program will eliminate barriers for thousands of people seeking employment, housing, and educational opportunities who would have otherwise been ineligible.

In 2023, Hawai'i lawmakers adopted House Concurrent Resolution 51, which urged Gov. Josh Green to initiate a clemency program for individuals who have been prosecuted for cannabis-related offenses and to seek the assistance of The Last Prisoner Project and Hawaii Innocence Project in implementing the clemency program. The Last Prisoner Project, a leading national nonprofit organization dedicated to cannabis criminal justice reform, has stated that Gov. Josh Green currently has the legal authority to undertake a targeted relief and clemency program for individuals in Hawai'i who have been prosecuted for cannabis-related offenses.

Furthermore, in enacting programs to legalize adult-use recreational cannabis, many states have instituted expungement or other forms of clemency and record clearance for individuals who have been prosecuted for cannabis-related offenses. These initiatives have delivered legal relief for thousands of people, whose civil liberties and financial security have been hampered by cannabis convictions. **Hawai'i should follow their lead and heed President Biden's call for restorative justice.**

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee

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Abby Simmons

Co-Chair, Legislative Committee

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February 5, 2024

To: Members of the House Judiciary & Hawaiian Affairs Committee

RE: Support SB 1595 (Facilitating cannabis-specific expungements)

From: Paul Armentano, Deputy Director – National Organization for the Reform of Marijuana Laws (NORML): Washington, DC (paul@norml.org)

Distinguished members of the Committee,

I have worked professionally in the field of marijuana policy for nearly 30 years, and I am currently the Deputy Director of NORML – the National Organization for the Reform of Marijuana Laws, a nationwide public interest advocacy organization based in Washington, DC.¹

During my professional career, I have authored several books on cannabis, health, and public safety and my writing is featured in over two dozen academic anthologies. In 2022, I was the lead witness before Congress at the hearing “Developments in State Cannabis Laws and Bipartisan Cannabis Reforms at the Federal Level,”² which was convened by the House Committee on Oversight and Reform, Subcommittee on Civil Rights and Civil Liberties. Earlier this year, I authored a report³ documenting the millions of state-initiated, cannabis-related expungements that have occurred nationwide since 2018.

I am providing testimony today in support of House Bill 1595, which expands and improves Hawaii’s existing cannabis expungement law. Passage of this legislation will make it so that thousands of people are no longer stigmatized and disenfranchised by the collateral consequences of an arrest record for behavior that most residents believe should no longer be a crime.⁴

Under current law, only those minority of cannabis offenders convicted of possessing fewer than three grams of cannabis may petition the courts for an expungement of their record. This is only a small fraction of those who ought to be eligible for expungement relief. Since Hawaii law defines the possession of up to one ounce of cannabis as a criminal misdemeanor, there are

¹ <https://norml.org/about-norml/staff/>

² <https://oversightdemocrats.house.gov/legislation/hearings/developments-in-state-cannabis-laws-and-bipartisan-cannabis-reforms-at-the>

³ <https://norml.org/marijuana/fact-sheets/marijuana-pardons-and-expungements-by-the-numbers/>

⁴ https://drive.google.com/file/d/1_3-0VjjsCdD7ogd4xx0cP6cTskmmkjy5/view



literally thousands of additional residents who would immediately be eligible for relief if HB 1595 were to become law.

Furthermore, the state's existing expungement law places the burden on those with previous convictions to petition the courts for legal relief. But, as we have learned from other states' experiences, many people are either unaware of their own criminal record status or are unable to navigate the legal process on their own. Some cannot afford to pay the fees necessary to hire legal representation to assist them in this process. Others remain unaware that such a process exists at all. As a result, the law is underutilized by those who could otherwise benefit from it.

That is why HB 1595 wisely calls for future expungements to be initiated by the courts. **The implementation of similar state-initiated cannabis-expungement policies in other states has resulted in the expungement of over 2 million cannabis-related convictions since 2018**, according to public records compiled by NORML earlier this year.

No one deserves to have their lives derailed because of a past, low-level cannabis conviction. **Our sense of justice and our principles of fairness demand the passage of HB 1595.**

###

***AUTHOR'S NOTE:** Paul Armentano has nearly three decades of professional experience in cannabis policy. He is the Deputy Director of NORML – The National Organization for the Reform of Marijuana Laws – the nation's oldest and only consumer-oriented cannabis reform advocacy organization.*

*His writing on cannabis and cannabis policy has appeared in over 1,000 publications, scholarly and/or peer-reviewed journals, and in over two dozen textbooks and anthologies. Mr. Armentano is the co-author of the book *Marijuana is Safer: So Why Are We Driving People to Drink?* (2009, 2013: Chelsea Green), which has been licensed and translated internationally. He is also the author of the book *Clinical Applications for Cannabis and Cannabinoids* (2021: National Organization for the Reform of Marijuana Laws), which summarizes over 450 peer-reviewed studies specific to the safety and efficacy of cannabis among different patient populations.*

Mr. Armentano works closely with politicians and regulators to draft and enact cannabis policy reforms, and he is a frequently sought-after speaker on the topic at legal and academic seminars.

*Mr. Armentano was the principal investigator for defense counsel in the federal case *U.S. v Schweder et al.*, one of the first legal cases in decades to challenge the constitutionality of cannabis as a Schedule I controlled substance. He was also an expert in the successful Canadian constitutional challenge, *Allard v Canada*, which preserved qualified patients' right to grow cannabis at home.*



He is the recipient of the 2013 Alfred R. Lindesmith Award for Achievement in the Field of Scholarship and the 2019 Al Horn Memorial Award in appreciation of advancing the cause of justice.

Jesse Kelley
Senior Policy Strategist
The Clean Slate Initiative

House Committee on Judiciary and Hawaiian Affairs

Tuesday, February 6, 2024

Testimony in Support of HB 1595 and HB 1663

To Rep. David Tarnas and Members of the Committee:

My name is Jesse Kelley, and I am the Senior Policy Strategist at The Clean Slate Initiative - a national non-profit whose mission is to work alongside states to streamline the record clearing process and ensure it happens automatically. I am writing on behalf of The Clean Slate Initiative to express our strong support for House Bills 1595 and 1663, which aim to address and rectify the impact of past records on individuals and communities.

As of 2019, about 300,000 people in Hawaii, or 28% of the adult population, have some form of a record. Non-conviction and conviction records can present significant barriers to employment, housing, education, and social reintegration. Clean Slate legislation has proven to be an effective tool in addressing these challenges by allowing eligible individuals to have their records automatically sealed, giving them a fresh start.

Twelve states have enacted Clean Slate laws, and the positive impact on individuals and communities has been substantial. The implementation of similar legislation in Hawaii has the potential to significantly bolster public safety and stimulate economic growth.

The Clean Slate Initiative applauds the proposed creation of a state-initiated process to expunge records of arrests and convictions, specifically focusing on narrower eligibility related to cannabis decriminalization offenses. By implementing a process that operates at no cost to the record holder, Hawaii can lead in the pursuit of fairness and justice.

HI HB 1595 addresses the challenges faced by individuals burdened with records and ensures that the state takes an active role in rectifying the consequences of outdated laws, particularly those related to cannabis.

Additionally, the requirement for the Hawaii Criminal Justice Data Center to submit biannual reports to the legislature until all eligible records are expunged is a commendable approach that can ensure transparency and accountability in the expungement process, allowing for ongoing evaluation and refinement of the system as needed.

Furthermore, The Clean Slate Initiative fully supports the expansion of eligibility of conviction records for expungement, as well as providing for the expungement to occur automatically, as outlined in HB 1663. By broadening the eligibility criteria, the bill recognizes that individuals who have served their sentences and demonstrated rehabilitation deserve a genuine opportunity for a fresh start.

The proposed timeline, starting from December 1, 2026, to mandate the Attorney General to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases is pragmatic and aligns with the implementation timelines of other states working toward automatic record clearing. This timeline allows for the necessary adjustments in administrative processes and ensures a smooth transition to a more equitable system.

In summary, both HB 1595 and HB 1663 represent crucial steps toward establishing a fair and effective expungement process. The Clean Slate Initiative urges the House Committee on Judiciary and Hawaiian Affairs to support and pass these bills, recognizing their positive impact on the lives of individuals seeking redemption and reintegration into society.

Thank you for your time and consideration. I am available to answer any questions or provide additional information as needed.

Sincerely,

Jesse Kelley

jkelly@cleanslateinitiative.org

Opportunity Youth Action Hawai‘i

February 6, 2024

Senate Committee on Judiciary and Hawaiian Affairs; and Senate Committee on Health and Homelessness

Hearing Time: 2:00PM

Location: State Capitol Conference Room 325

Re: HB1595, Relating to Expungement

Aloha e Chair Tarnas, Vice Chair Takayama, and members of the Committee on Judiciary and Hawaiian Affairs; and Chair Belatti, Vice Chair Takenouchi, and members of the Committee on Health and Homelessness:

On behalf of the Opportunity Youth Action Hawai‘i hui, we are writing in **strong support** of HB1595, relating to expungement. This bill creates a state-initiated process to expunge records of arrests and convictions pursuant to section 712-1249, Hawai‘i Revised Statutes, at no cost to the record holder. This bill also requires the Hawai‘i Criminal Justice Data Center to submit biannual reports to the legislature until all eligible records are expunged.

This bill addresses a critical issue in our criminal justice system, providing a pathway for individuals with past convictions to rebuild their lives and reintegrate into society successfully. Expunging criminal records can significantly reduce the barriers that many face when seeking employment, housing, and other opportunities, fostering a more equitable and just community.

Further, expunging records not only benefits individuals seeking a fresh start, but also contributes to the overall wellbeing of our communities. Research shows that individuals with expunged records are more likely to secure stable employment and housing, reducing the likelihood of recidivism. This, in turn, enhances public safety and fosters a sense of community rehabilitation.

By creating a state-initiated expungement process at no cost to the record holder, HB1595 recognizes the financial challenges that individuals with criminal records often face. Removing financial barriers to expungement ensures that all eligible individuals, regardless of their economic status, can access the benefits of a clean slate.

Opportunity Youth Action Hawai‘i is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs. We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth homelessness and housing market discrimination against young adults; and promote and fund more holistic and culturally informed approaches among public/private agencies serving youth.

Please support HB1595.

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Aloha Chairs Tarnas and Bellati, Vice Chairs, and Committee members:

I, Les Estrella, am testifying in strong support of HB 1595

relating to the expungement of criminal records.

I commend the initiative to create a state-initiated process for expunging records of arrests and convictions pursuant to section 712-1249, Hawaii Revised Statutes. The provision of a no-cost expungement process for the record holder is a step in the right direction towards giving individuals a fair chance to rebuild their lives.

In Hawaii, 560,800 people have a record. That is 1 in 2, or over 50% of people are saddled with records that could block their access to jobs, housing, education, starting a business, or participating fully in social and civic community life.

I strongly urge the Committee on Judiciary & Hawaiian Affairs to support and pass HB 1595 and 1663.

This bill is critical to making our communities safer, stabilizing families, addressing jail overcrowding, and freeing hundreds of thousands of Hawai'i residents from being trapped in paper prisons. Please vote yes on HB 1595/ HB 1663 to keep our loved ones together.

Mahalo for your consideration,

Les Estrella

President & CEO, Going Home Hawai'i

RE: HB1595 ; Hearing Tuesday February 6, 2024

Aloha Honorable Committee Members,

We appreciate the opportunity to testify for HB1595.

The Cannabis Society of Hawai'i is in support of this bill.

We suggest the involvement of the UH Law and other organizations that want to help or provide resources to the Hawai'i Criminal Justice Data Center to help offset costs of this much needed bill to restore justice and confidence from the community.

This is a prime example of how cannabis can create jobs and employ ancillary businesses.

Please contact us if you have any questions or would like to go over our testimony in detail.

Thank you,

Cannabis Society of Hawai'i // cannabissocietyofhawaii@gmail.com



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice Support for HB1595 – Relating to Expungement House Committee on Judiciary and Hawaiian Affairs

Thank you for the opportunity to submit testimony in SUPPORT of HB1595, which creates a state-initiated process to expunge the arrest and conviction records of individuals with low-level cannabis-related crimes.

Despite the decriminalization of possession of small amounts of cannabis through Act 273 in 2019, many individuals may find it difficult to petition for expungement, due to either cumbersome administrative processes or lack of knowledge of the process. As a result, thousands of Hawaii's residents are carrying arrest and conviction records that can severely limit their access to housing, employment, and overall economic stability.

Research demonstrates that those carrying convictions often struggle in the labor market, with only 55% reporting any earnings in the first calendar year after being released.¹ Among those with reported earnings, the median income is \$10,900, which is roughly \$4000 less than the federal poverty level for a single individual.^{2 3} The mere presence of a conviction or arrest record can often limit someone's ability to be gainfully employed, as many employers may be reluctant to hire someone with a criminal record. This not only perpetuates a cycle of poverty, it also weakens our overall economy through lost productivity, lower consumer spending, and lower tax collections.

According to the Department of the Attorney General, there are over 50,000 arrests and 10,000 convictions in the system for low-level cannabis related offenses.⁴ By creating a state-initiated expungement process the legislature will make huge strides in broadening economic opportunity for thousands of Hawaii residents who deserve a chance to fully participate in our economy and achieve financial stability.

¹ Looney, Turner, "Work and Opportunity Before and After Conviction," The Brookings Institution, 2018: https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf

² Ibid

³ US Department of Health and Human Services: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

⁴ "Report Regarding the Final Draft Bill Entitled 'Relating to Cannabis.' Hawaii State Department of the Attorney General, January, 2024: <https://ag.hawaii.gov/wp-content/uploads/2024/01/REPORT-REGARDING-THE-FINAL-DRAFT-BILL-ENTITLED-RELATING-TO-CANNABIS-PREPARED-BY-THE-DEPARTMENT-OF-THE-ATTORNEY-GENERAL-dated-January-5-2024.pdf>



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February 5, 2024

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To: Chair David A. Tarnas and Members of the House Committee on Judiciary & Hawaiian Affairs Committee

From: Minda Yamaga, President, Japanese American Citizens League, Honolulu Chapter

Re: **SUPPORT OF H.B. 1595, RELATING TO EXPUNGEMENT**

Chair Tarnas and Members of the Committee:

The Japanese American Citizens League (JACL) is the oldest Asian civil rights organization in our country, and we seek to protect and defend the rights of all persons. HB 1595 proposes a state-initiated process to expunge cannabis records. As a civil rights organization, we are acutely aware that the War on Drugs and the criminalization of cannabis have created a racially inequitable criminal legal system that disproportionately impacted people of color, including Native Hawaiians. We strongly believe that every person living with a criminal record who has earned the chance to be in society deserves a fair chance at supporting themselves and their families. The collateral consequences of a criminal record are staggering and often pose an insurmountable barrier to reformed individuals finding housing, employment, education, or even insurance. A criminal record should not lead to a lifetime of poverty, exclusion, and stigma.

Critically, this bill does not expand or alter those already eligible for expungement under the current laws. It simply provides a state-initiated path to expungement for those eligible individuals. This is vitally necessary because national data shows individuals eligible to have their record expunged frequently do not utilize this benefit. The cumbersome process or the cost associated with filing fees are the most often reported barriers. We recognize that individuals without work flexibility and without financial resources are likely disproportionately burdened by the current system.

HB 1595 ensures that individuals who continue to suffer the consequences of a no longer imposed penalty are treated fairly which also assists them in moving on with their lives and getting back to work as productive members of our community.

Signed,

Minda Yamaga

Minda K. Yamaga
President
JACL Honolulu Chapter

HB-1595

Submitted on: 2/3/2024 5:36:06 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
dain retzlaff	Individual	Support	Written Testimony Only

Comments:

Most Hawaii voters want cannabis to be legal, yet tens of thousands of lives are derailed for old cannabis records. Criminal records are an economic life sentence, closing the door on many jobs and housing. It's time to wipe the slate clean.

HB-1595

Submitted on: 2/3/2024 9:48:29 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cassandra Chee	Individual	Support	Written Testimony Only

Comments:

I support HB1595 because criminal records are a financial and health risk. Arrests and convictions burden people who are trying to provide for themselves and their families. Even if they have been cleared by the courts they are burdened in securing housing and jobs.

I have a friend who was arrested for things they were never charged for. It was not until a later background check that they were even made aware that those things were on their record. They had to apply and pay for expungement for accounts that they were never tried or charged for.

Please pass HB1595 to enable people not to be haunted by past convictions and arrests.

Cassandra Chee
Honolulu, 96817

HB-1595

Submitted on: 2/4/2024 7:53:28 PM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

support HB1595

HB-1595

Submitted on: 2/4/2024 8:14:40 PM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lisa Seikai Darcy	Individual	Support	Written Testimony Only

Comments:

Aloha Committee,

This is a substantial move forward. Please support **HB 1595**. Interrupting the cycles which disproportionately traps native Hawaiians in poverty is historic.

Mahalo,

Lisa Seikai Darcy

HB-1595

Submitted on: 2/5/2024 10:49:56 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Randy Gonce	Individual	Support	Written Testimony Only

Comments:

Strong Support

HB-1595

Submitted on: 2/5/2024 11:25:53 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Danielle Sears	Individual	Support	Written Testimony Only

Comments:

I support this bill. Indigent people should not have to pay to get expungements.

HB-1595

Submitted on: 2/5/2024 12:53:29 PM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Emily Sarasa	Individual	Support	Written Testimony Only

Comments:

My name is Emily Sarasa and I am testifying in **strong support** of HB 1595 and HB 1663 relating to the expungement of criminal records. Our current overly punitive system does not make Hawai'i safer. If enacted, these bills will likely lower recidivism rates, address the overcrowding in our jails, and improve access to education, housing, and employment for hundreds of thousands of Hawai'i residents. Please vote to better our communities by voting yes on HB 1595 and HB 1663. Mahalo!

HB-1595

Submitted on: 2/5/2024 7:10:51 PM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathy Shimata	Individual	Support	Written Testimony Only

Comments:

I urge you to improve Hawaii's existing cannabis expungement law.

Passage of this legislation will make it so that thousands of people are no longer stigmatized and disenfranchised by the collateral consequences of an arrest record for behavior that most people believe should no longer be a crime.

Many other states have enacted similar legislation in recent years. This has resulted in over two-million cannabis-related expungements nationwide since 2018.

No one deserves to have their lives derailed because of a past, low-level marijuana conviction.

Again, I urge you to support HB 1595.

Mahalo.

HB-1595

Submitted on: 2/6/2024 9:33:45 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kai Luke	Individual	Support	Written Testimony Only

Comments:

RE: HB1595 ; Hearing Tuesday February 6, 2024

Aloha Chair, Vice Chair, and Members of the Committee,

I appreciate the opportunity to testify for HB1595.

I am in support of this bill.

Thank you,

Kai Luke