

**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. 1663, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS.

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
Albert Cook, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The purpose of this bill is to expand the existing expungement process under section 831-3.2, Hawaii Revised Statutes (HRS), which currently allows expungement of arrest records where there has been no conviction, to allow expungement of *conviction* records in all petty misdemeanor, misdemeanor, and nonviolent class C felonies. It also transforms the expungement process from a request-based system to an “automatic” system.

Records of convictions are necessary for law enforcement, prosecutors, and judges to evaluate the past behavior of defendants and assess potential risks when evaluating appropriate charging, bail amounts, conditions of bail, and post-conviction sentencing. Criminal records are also important for employers, landlords, and members of the public to make decisions on whether to welcome a person into their business, property, or other social activity. This bill proposes to add to chapter 831, HRS, a new section that will provide for “automatic expungement” under the specified criteria.

Although subsection (e) of that new section, on page 5, lines 8-15, allows “the prosecuting attorney” to access expunged arrest and conviction records, it does not allow the Department, law enforcement, other prosecuting agencies from the federal government or other states, or the judiciary to access expunged records. It also does not provide employers, landlords, or members of the public a means to screen

applicants. Having conviction records expunged in all petty misdemeanors, misdemeanors, and nonviolent class C felony cases would severely impact the ability of law enforcement, prosecutors, and judges to appropriately charge, supervise, and sentence defendants, and would adversely affect employers, landlords, and members of the public from making informed decisions.

Additionally, in subsection (a) of the new section, paragraphs (1) and (2) on page 3, lines 3 through 18, are problematic. Paragraph (1) would expunge all petty misdemeanor and misdemeanor convictions after five years if a person has not been *convicted* of another offense within that five-year window, and paragraph (2) would do the same for non-violent class C felonies within a seven-year window. These timeframes present several issues:

- Even if someone was just arrested or is pending trial on new offenses— when the five- or seven-year window runs--their prior convictions would be expunged, automatically, because technically there has not yet been a new conviction. Notably, felony charges often take two or more years to resolve.
- Some offenses, such as Operating a Vehicle Under the Influence of an Intoxicant, and Habitually Operating a Vehicle Under the Influence of an Intoxicant, under chapter 291E, HRS, have increased penalties for subsequent convictions within a *ten*-year window.
- Many non-violent class C felonies can serve as a prerequisite for repeat offender sentencing, pursuant to section 706-606.5, HRS. If a person is arrested and charged with a new felony and repeat offender sentencing, but the prerequisite prior conviction was a non-violent class C felony, that person's underlying class C felony could be automatically expunged, before the new case ever goes to trial. Without the prior class C felony, the new case would no longer qualify for repeat offender sentencing.
- Some individuals who are currently on probation for non-violent class C felonies could also have their conviction records expunged while they are still under court supervision for that offense. When defendants fail to abide by their probation terms and have their probation revoked, courts often

resentence them to a new term of probation, rather than send them to prison. So many defendants could be on probation for more than seven years after the date of their conviction. Expunging someone's convictions while they are still on probation (for that same offense) could result in their early release from court supervision, potentially jeopardizing public safety as well as a defendant's rehabilitation efforts.

- If someone were convicted of a class A or B felony and ended up being incarcerated for more than seven years, the individual would presumably leave prison without any prior convictions for petty misdemeanor, misdemeanor, or non-violent class C felonies, as it is relatively rare for inmates to commit new offenses while incarcerated.

The Department, while opposing all automatic expungements, is particularly concerned about automatic expungement of all petty misdemeanor, misdemeanor, and "non-violent" class C felonies. This would include petty misdemeanor and misdemeanor crimes such as negligent homicide in the third degree, section 707-704, HRS; negligent injury in the second degree, section 707-706, HRS; assault in the third degree, section 707-712, HRS; assault against a law enforcement officer in the second degree, section 707-712.6, HRS; reckless endangering in the second degree, section 707-714, HRS; terroristic threatening in the second degree, section 707-717, HRS; unlawful imprisonment in the second degree, section 707-722, HRS; custodial interference in the second degree, section 707-727, HRS; sexual assault in the fourth degree, section 707-733, HRS; indecent exposure, section 707-734, HRS; indecent electronic display to a child, section 707-759, HRS; extortion in the third degree, section 707-767, HRS; criminal trespass in the first and second degrees, sections 708-813 and 708-814, HRS; criminal property damage in the third and fourth degrees, sections 708-822 and 708-823, HRS; aggravated criminal property damage, section 708-823.5, HRS; criminal tampering in the second degree, section 708-827, HRS; theft in the third and fourth degrees, sections 708-832 and 708-833, HRS; unauthorized entry into a motor vehicle in the second degree, section 708-836.5, HRS; forgery in the third degree, section 708-853, HRS; arson in the fourth degree, section 708-8254, HRS; endangering the welfare

of a minor in the second degree, section 709-904, HRS; abuse of family or household members, section 709-906, HRS; impersonating a law enforcement officer in the second degree, section 710-1016.7, HRS; resisting arrest, section 710-1026, HRS; resisting an order to stop a motor vehicle, section 710-1027, HRS; tampering with a witness, section 710-1072, HRS; disorderly conduct, section 711-1101, HRS; harassment involving physical contact, section 711-1106(a), HRS; harassment by stalking, section 711-1106.5, HRS; cruelty to animals in the second degree, section 711-1109, HRS; sexual assault of an animal, section 711-1109.8, HRS; violation of privacy in the second degree, section 711-1111, HRS; prostitution, section 712-1200(a) and (b), HRS; promoting minor-produced sexual images in the first and second degrees, sections 712-1215.5 and 712-1215.6, HRS; and many others.

Non-violent class C felonies that would be automatically expunged include habitually operating a vehicle under the influence of an intoxicant, section 291E-61.5, HRS; custodial interference in the first degree, section 707-726, HRS; sexual assault in the third degree, section 707-732(1)(b)-(f), HRS; promoting child abuse (child pornography) in the third degree, section 707-752, HRS; electronic enticement of a child in the second degree, section 707-757, HRS; extortion in the second degree, section 707-766, HRS; habitual property crime, section 708-803, HRS; burglary in the second degree, section 708-811, HRS; unauthorized entry in a dwelling in the second degree, section 708-812.6, HRS; criminal property damage in the second degree, section 708-821, HRS; theft in the second degree, section 708-831, HRS; unauthorized control of a propelled vehicle in the first degree (car theft), section 708-836, HRS; unauthorized entry into motor vehicle in the first degree, section 708-836.5, HRS; unauthorized possession of confidential personal information, section 708-839.55, HRS; identity theft in the third degree, section 708-839.7, HRS; forgery in the second degree, section 708-8852, HRS; computer fraud in the third degree, section 708-891.6, HRS; computer damage in the third degree, section 708-892.6, HRS; unauthorized computer access in the third degree (hacking), section 708-895.7, HRS; fraudulent use of a credit card, section 708-8100, HRS; arson in the third degree, section 708-8253, HRS; money laundering, section 708A-3, HRS; endangering the welfare of a minor in the first degree,

section 709-903.5, HRS; impersonating a law enforcement officer in the first degree, section 710-1016.6, HRS; escape in the second degree, section 710-1021, HRS; promoting prison contraband in the second degree, section 710-1023, HRS; bail jumping in the first degree, section 710-1024, HRS; perjury, section 710-1060, HRS; bribery of or by a witness, section 710-1070, HRS; intimidating a witness, section 710-1071, HRS; retaliating against a witness, section 710-1072.2, HRS; bribery of or by a juror, section 710-1073, HRS; jury tampering, section 710-1075, HRS; retaliating against a juror, section 710-1075.5, HRS; riot, section 711-1103, HRS; cruelty to animals in the first degree, section 711-1108, HRS; cruelty to animals by fighting dogs in the second degree, section 711-1109.35, HRS; violation of privacy in the first degree, section 711-1110.9, HRS; habitual commercial sexual exploitation, section 712-1209.5, HRS; promoting pornography for minors, section 712-1215, HRS; promoting gambling in the first degree, section 712-1224, HRS; promoting a dangerous drug in the third degree, section 712-1243, HRS; promoting a harmful drug in the third degree, section 712-1246, HRS; promoting a detrimental drug in the first degree, section 712-1247, HRS; among others. The Department does not believe that these types of crimes should be automatically expunged.

On a more practical level, requiring people to apply for expungement—rather than everything happening automatically--serves a number of important purposes.

Pursuant to section 831-3.2, HRS, once an application for expungement is approved, the Department mails a certificate of expungement, with the mugshot and fingerprints associated with the arrest or conviction, to the qualifying individual. Confirming an individual's mailing address can be very difficult or impossible, if an application is no longer required, and the Department has grave concerns about mailing anyone's arrest record, mugphoto, and fingerprints to an unconfirmed address.

The Department would recommend that the expungement process not be changed or altered, as the current process merely consists of a simple one-page form, which provides the applicant's current legal name, any alias, date of birth, social security number, address, phone number, and email address, with payment of a

minimal fee. Those fees offset the Hawaii Criminal Justice Data Center's personnel, equipment, operational, and licensing costs.

Currently, over 2.2 million records, arrests, and convictions would qualify for expungement under 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 adequate fiscal support, staffing will be overstretched and leave systems critical to public safety vulnerable; moreover, the Department might be unable to implement the automatic expungement process effectively. Even after the initial wave of expungements, maintaining an automatic expungement process would be logistically problematic. Though certain steps of the process could be automated, this would still require manual processes (i.e., validating the identification of specific people, charges, and cases) for literally thousands of cases per year.

Due to the adverse impact of this bill on law enforcement and public safety, and the costs and practical difficulties of implementing automatic expungement, the Department requests this bill be held.

State of Hawai‘i
The Office of the Public Defender

H.B. No. 1663: RELATING TO EXPUNGEMENT OF CRIMINAL
RECORDS

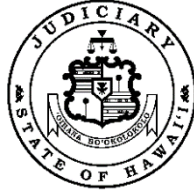
Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

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

An arrest can jeopardize a person’s housing, job prospects, and earning capacity. And because studies show that overpoliced areas—which tend to be places where people of color and the working class live—naturally produce more arrests than other areas, vulnerable people in our society are more likely to wrestle with arrest records than the more fortunate.

Long after a person is found not guilty, a judge dismisses the case, or even after a prosecutor decides not to bring charges at all, the arrest record is still there. The only way to get the record expunged is through an application process initiated by the arrestee. Because it is not a criminal case, they are not entitled to representation or assistance from the Office of the Public Defender. They are expected to track down data, information, make necessary attachments, and then submit the form to the State. For people with limited assets, access to information, and funds, this can be insurmountable.

This bill takes the logical step of having the expungement process initiated by the State. After all, the State generates and keeps the arrest record. It should be left to the State to expunge the record when cases do not result in a conviction.



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. 1663, Relating to Expungement of Criminal Records.

Purpose: Expands eligibility for, and automates, the expungement of conviction records if certain criteria are met. Beginning 12/1/2026, requires the Attorney General to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

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, Section 2 of the bill appears to provide for automatic expungement of records of convictions without court review. 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, Section 2(d) 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.** While the exact operational impacts are difficult to quantify and the Judiciary is still evaluating this measure, a preliminary assessment indicates that the total cases covered by this bill would be in the tens-of-thousands. In 2012, the electronic filing process began for criminal cases initiated in district court. This bill, as drafted, appears to cover convictions from around 2019 and earlier. Now, if we use FY 2019-2020 as an example, that year statewide in district courts nearly 30,000 convictions were entered for misdemeanor cases (e.g., assault, sex offenses, theft, weapons offenses, terroristic threatening, motor vehicle DUI, reckless driving, driving without a license, etc.).² Finally, the data and impacts this measure would have in the circuit courts have yet to be gathered and identified; however, it is fair to say that the operational impacts to review motions to expunge and/or seal on these cases in both the district and circuit 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. First, it will require many more staff to review and process the requests to expunge and/or seal court records. While the Judiciary is still evaluating the total impact of this measure, we conservatively estimate that the Judiciary would need to hire dozens of staff dedicated solely to this task of evaluating requests to expunge and/or seal tens-of-thousands of cases.

Second, 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.

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

² 2020 Annual Report Statistical Supplement, Table 22 (10,996 convictions for district courts (excluding traffic)) and Table 27 (10,195 convictions for district courts including DUI, reckless driving, and other offenses).



- 4. Graduated Penalty Scheme Offenses.** The measure, as drafted, appears silent as to its impact on graduated penalty scheme offenses. Further study is needed to identify how this measure would impact those offenses with graduated penalty schemes such as offenses for driving without a license, abuse of a family household member, and others.

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.”³ 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. 1663. 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.

³ 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).

JOSH B. GREEN, M.D.
GOVERNOR



MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

Ke Komikina Uku Luaahi Kalaima

1164 Bishop Street, Suite 1530
Honolulu, Hawaii 96813
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LATE

TESTIMONY ON HOUSE BILL 1663
RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS
by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Tuesday, February 6, 2024; 2:00 PM
State Capitol, Conference Room 325 & Videoconference

Good afternoon Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary and Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify before you today. The Commission strongly opposes the passage of House Bill 1663. HB1663 provides for the automatic expungement of conviction records for petty misdemeanants, misdemeanants, and nonviolent class C felons if certain criteria are met. The offenses eligible for automatic expungement include domestic abuse (AFHM), harassment by stalking, certain sex offenses, sexual exploitation, promoting pornography for minors, and habitual intoxicated driving. The automatic expungement of these crimes will have a detrimental impact on the victims and community safety. In addition, HB1663 does not require that offenders meet their court-ordered restitution obligations before their record is expunged, further harming victims.

The Commission provides compensation for victims of violent crime to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims.

The purpose clause for HB1663 discusses the impact of the proposed bill on offenders but does not address the impact on victims and community safety. Automatic expungement of

crimes will allow individuals with a history of serious offenses to erase their criminal record without adequate consideration of the risk they pose to their victims and community safety. This bill also undermines subsequent offender penalties for habitual crimes including domestic violence (AFHM) and intoxicated driving.

Automatic expungement also undermines the principles of accountability for the offender who will be less incentivized to comply in fulfilling their court-ordered restitution obligations once they know that their record will be automatically expunged together with their obligation to pay court-ordered restitution.

Victim and community safety are best served by retaining the current system which allows only certain offenders to apply for expungement on a case-by-case basis.

Thank you for providing the Commission with the opportunity to testify in strong opposition of House Bill 1663.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs
Thirty-third State Legislature
Regular session of 2024
State of Hawai'i
February 5, 2024

RE: HB 1663 Relating to Expungement of Criminal Records

Dear Chair Tarnas:

Our Office supports creating a navigable process for individuals to seek expungement of criminal convictions when certain conditions are met. However, our Office cannot support a bill that offers blanket automatic expungement.

This bill fails to acknowledge the existence of the process of deferred pleas. Individuals charged with an offense are routinely offered deferred pleas, in which their charges are deferred for a specified period should they comply with certain articulated conditions, mirroring probation. This process already allows qualified individuals to avoid having a conviction on their record. See Hawaii Revised Statutes Chapter 853.

Drunk driving or "Operating a Vehicle Under the Influence of an Intoxicant" ("OVUII"), which is governed by Hawaii Revised Statutes section 291E-62 has a longer lookback period than this bill allows for. Hawaii law currently elevates penalties for OVUII when an offender commits the same offense within ten years of a prior conviction. This ten-year lookback period is important to encourage parties convicted of these crimes to avoid reoffending. There are only six other states with a five year lookback period, and this Bill would result in a step backwards in the national effort to reduce drunk driving and reduce fatalities on our roadways.

Further, this bill fails to account for a number of other situations. Certain cases may take 5-7 years to resolve, especially cases that have appealable issues prior to trial. A person's record could be wiped clean while they are pending trial. An individual serving a 5-10 year prison term could walk out of prison with no other convictions on their record, aside from the one they just served a sentence for.

As drafted, the county police departments and Department of the Attorney General, the chief law enforcement entity in the State, would not have access to prior conviction data. It is unclear whether law enforcement would have access to prior conviction data which is critical to law enforcement safety. There is no articulated process for Prosecutors to access conviction data, under the "divulged by inquiry" section.

Certain violent petty misdemeanors and misdemeanors should not qualify for automatic expungement. See Hawaii Revised Statutes Section 853-4(2). Certain offenses are not eligible for deferred pleas for this reason. Convictions for offenses such as Abuse of Family or Household Member and Harassment by Stalking should not be automatically removed from someone's record after 5-7 years. Further, convictions for these offenses can and should impact whether individuals are eligible to own firearms.

The term "nonviolent class C felony offense" minimizes the seriousness of certain C felonies, including Habitual Commercial Sexual Exploitation, Promoting Pornography for Minors, Habitual Property Offender, Unauthorized Entry Into a Motor Vehicle, Unauthorized Entry Into a Dwelling, Negligent Homicide in the Second Degree, Habitual OVUII and Violation of Privacy. Automatic expungement of felonies after 7 years is a contravention of public policy and an affront to public safety.

The Office of the Prosecuting Attorney, County of Kaua'i OPPOSES HB 1663, that would allow for expungement of petty misdemeanors and misdemeanors after five years without a conviction, and for nonviolent Class C Felonies after seven years without a conviction.

Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests that this measure not be passed.

Thank you very much for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

COMMITTEE ON HEALTH & HOMELESSNESS

Representative Della Au Belatti, Chair

Representative Jenna Takenouchi, Vice Chair

Wednesday, February 6, 2024

Room 325

2:00 PM

STRONG SUPPORT FOR HB 1633 - EXPUNGEMENT/CLEAN SLATE

Aloha Chairs Tarnas and Belatti, Vice Chairs Takayama and Takenouchi and Members of the Committees!

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 3,844 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on January 29, 2024. We are always mindful that 857 - 33% of the male imprisoned population - 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.

Community Alliance on Prisons appreciates this opportunity to share our strong support for HB 1633 which makes the procedure automatic and would eliminate the need for an eligible person to navigate this process and pay any required processing fees. A criminal record impacts an individual's life after imprisonment in finding employment, housing, and a way to sustain themselves and their families.

Forty-percent of our imprisoned population are serving sentences for low-level lawbreaking. This bill is a way to lift up our people whose mistakes were low-level wrongdoing that has resulted in a criminal record.

¹ DPS/DCR Weekly Population Report, January 29, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-01-29.pdf>

Several states have “clean slate” laws²: Pennsylvania (2018); Utah (2019); New Jersey (2019); Michigan (2020); Connecticut (2020); Delaware(2021); Virginia (2021); Oklahoma (2022); Colorado (2022); California (2022); Minnesota (2023); and New York (2023).

Clean Slate efforts are rooted in a belief that people should not face unnecessary and extra-judicial punishments long after they have been arrested or completed a court-imposed sentence. Records relief offers people a pathway to redemption by opening access to meaningful employment, housing, and education opportunities that allow them to provide for themselves and their families. Many, probably a majority, of the people serving sentences are from struggling communities with few resources to address the needs of the people who live there.

While clean slate advocates promote expansive and comprehensive record clearance legislation, the minimum criteria a state law must meet to meet clean slate standards include:

- Automation of record clearance,
- Automatic clearance upon eligibility of the record (noting that eligibility varies from state to state),
- Inclusion of arrest records,
- Inclusion of misdemeanor records, and
- A strong recommendation for laws to include eligibility of at least one felony record.

A potential Legislative Champion should consider the core components of Clean Slate legislation. Generally, Clean Slate legislation should seek to ...

- Automate the record clearance process for eligible offenses.
- Automation must be applied retroactively and for all new records going forward to acknowledge that many imprisoned come from impoverished families and challenged communities.
- When possible, expand the number and types of offenses eligible for record clearance under the petition-based process with the goal of automating as many offenses as possible;
- Consider decreasing the period an individual must wait to benefit from record clearance; and,
- Discover ways to eliminate or minimize any cap on the number of offenses an individual can clear from their record.

Let’s make Hawai’i nei the next clean slate state while demonstrating our beautiful Aloha Spirit Law [§5-7.5] HRS, part of which describes “Aloha” – the working philosophy of native Hawaiians

"Aloha" is the essence of relationships in which each person is important to every other person for collective existence.

² Clean Slate Initiatives. <https://www.cleanslateinitiative.org/states#states>

**HAWAI'I
PACIFIC
HEALTH**

KAPI'OLANI
THE SEX ABUSE
TREATMENT CENTER



Date: February 5, 2024

To: Representative David Tarnas, Chair
Representative Gregg Takayama, Vice-Chair
Members of the Committee on Judiciary and Hawaiian Affairs

From: Lynn Costales Matsuoka, Executive Director
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony on HB 1663
Relating to Expungement of Criminal Records

Hearing: February 6, 2024, Conference Room 325, 2:00pm

Good Afternoon, Chair Tarnas, Vice Chair Takayama and Members of the Judiciary and Hawaiian Affairs Committee:

The Sex Abuse Treatment Center (SATC) opposes HB 1663, as it relates to any sexual offense and those offenses covered under HRS Chapter 846E, Registration of Sex Offenders and Other Covered Offenders.

The bill seeks to allow the automatic expungement of petty misdemeanor, misdemeanor and non-violent class C felonies. The bill does not define a "non-violent" offense, and potentially casts a wide net, to include sexual offenses. Based on the language of the bill, sex offenders could essentially have their convictions wiped clean, despite being convicted for a sex offense that carries sex offender registration requirements well beyond the expungement threshold set forth in this bill.

Of concern are offenses covered by HRS 707-732, a class C felony. These offenses include the sexual touching of a minor under the age of 14 years old, under 707-732(1)(b), which requires sex offender registration for life as a Tier 3 offense. (see HRS 846E-10(a). For touching a child between the age of 14 and 16, HRS 707-732(1)(c), 25 years of registration as a Tier 2 offense. For touching someone who was mentally challenged, incapacitated or imprisoned/in custody under 707-733(1)(d)(e) and (f) respectively, 10 years of registration as a Tier One offense. In all scenarios, registration requirements extend well beyond, the 7 year time frame in which the sex offender would be entitled to automatic expungement under this bill. In fact, for those convicted of covered sex offenses, they could not even petition for release from registration requirements for 40 years.

Similarly, HRS 707-733(1)(a), Sexual Assault in the Fourth Degree is a classified misdemeanor offense, that involves the sexual touching of another person, without their consent. This offense could include the sexual touching of a minor not less than 16 years old, and any adult. Under this specific misdemeanor offense, sex offender registration is required under HRS 846E for 10

years as Tier 1 offense. Again, registration requirements well beyond the 5 year threshold for automatic expungement of a misdemeanor.

SATC strongly opposes any legislation that would circumvent the sex offender registration requirements as set forth in HRS 846E. Clearly, the legislature saw it fit to mandate sex offenders to register as sex offenders, and that registration information be made available to the public. What is also clear, is sexual offenses perpetrated against children, were placed in the highest tier of registration requirements, in some instances, registration for life. The passage of this legislation will essentially allow pedophiles and sex offenders to have their records wiped clean well before the requirements of HRS 846E are satisfied. How this impacts registration requirements under Chapter 846E, and the public's right to access information on sex offenders in their community, is unclear. The impact on victims who bravely come forward seeking justice and a form of accountability, is undeniable. For many, sex offender registration may be the only form of accountability available. For many, the scars of their victimization linger far beyond 5 – 7 years, despite the offense being a misdemeanor or a non violent offense. It is important to recognize that trauma does not have to be violent, for it to potentially change the trajectory of a victim's life. The betrayal of being sexually violated, can have lasting negative impacts, especially on a child, especially when perpetrated by a trusted adult.

The Sex Abuse Treatment Center strenuously opposes passage of this legislation as it relates to sexual offenses, those covered by HRS 846E, offenses involving child victims, and those offenses covered by other registration requirements.

Thank you for the opportunity to submit testimony in opposition of HB 1663.

February 6, 2024

To: Representative David Tarnas, Chair, House Committee on Judiciary & Hawaiian Affairs,
Representative Gregg Takayama, Vice Chair; and Members of the Committee

From: Alice Liu, Program Director; Mothers Against Drunk Driving (MADD) Hawaii

Re: House Bill 1663 – RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS.

On behalf of Mothers Against Drunk Driving (MADD), I write in opposition to the proposed bill Expungement of criminal records–(HB1663). MADD represents impaired driving victims and survivors, who do not support the expungement of a drunk or impaired driving offense that resulted in a probation before judgment (PBJ).

For victims and survivors of drunk and impaired driving crashes, a bill to expunge a drunk or impaired driving offense sends the message that it is excusable. It also gives credence to the excuse that the impaired driving offense was a “mistake” made by the offender. Drunk and impaired driving is not a mistake. It is an intentional crime. The Centers for Disease Control and Prevention (CDC) have found that the average drunk driver has driven drunk approximately 80 times before their first arrest. Expunging probation before judgment sentences for drunk and impaired driving offenses endangers the communities lawmakers are sworn to protect and keep safe.

MADD urges you to oppose HB1663. Hawaii must ensure that those who drive drunk or impaired are held accountable for their deadly choices. Expungement removes accountability and puts motorists at higher risk.

Thank you for the opportunity to testify,

Alice Liu

Program Director, Mothers Against Drunk Driving (MADD) Hawaii



Testimony from Frank Stiefel
Senior Policy Associate
Last Prisoner Project

RE: Last Prisoner Project Calls on Hawai'i to Prioritize HB 1663 This Session

February 6, 2024

Dear Members of the Committee on Judiciary & Hawaiian Affairs,

Beyond incarceration, government supervision, fines, and other penalties associated with criminal convictions, individuals with criminal records face an array of extensive, life-altering restrictions, prohibitions, and disadvantages known as collateral consequences. Nearly 45,000 separate collateral consequences exist through federal and state laws and regulations, and further consequences may be imposed at the municipal and county levels.

While states generally allow individuals to petition the court to have certain records cleared, due to cost, complexity, and lack of legal representation, the vast majority of individuals eligible to clear, seal, expunge, or set aside their records never obtain relief. As a result, many individuals legally eligible for record clearance continue to be burdened by the collateral consequences of criminal records, including lack of access to meaningful employment, housing, and education.

Hawai'i must create a record clearance process that is automatic instead of petition-based. The responsibility to identify and clear eligible records should fall on the government instead of the individual, and there should be no action or fees required of the record holder. HB 1663 will create an automatic record clearance process, which allows individuals to finally move on with their lives. For these reasons, we support HB 1663.

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.

HB-1663

Submitted on: 2/5/2024 4:14:50 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. 1663 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 1663, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** HB 1663, relating to expungement of criminal records. 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.”

Clean Slate laws would expand eligibility for expungement and establish a government-initiated record clearance process, rather than requiring eligible individuals to file a paper application for expungement. This significantly expand restorative justice and repair people's lives, especially in Native Hawaiian, Pacific Islander, Black, and Filipino communities that are disproportionately harmed by the criminal legal system in Hawai'i.

Over 50 percent of people in Hawai'i are saddled with criminal records, including traffic offenses, which create barriers to accessing jobs, obtaining housing, pursuing educational opportunities, starting a business, and participating fully in social and civic community life. Clean Slate laws would remove these substantial barriers and empower people to contribute to their

communities, seek meaningful work, participate in civic life, and provide for themselves and their families.

Criminal convictions should not be lifetime sentences to economic and social hardship. As the ACLU of Hawai'i has stated, "Every person living with a record deserves a fair chance to support themselves and their families." These sentiments are especially crucial to heed in light of our state's and our nation's racially discriminatory legal apparatus.

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee

(808) 679-7454

kriscoffield@gmail.com

Abby Simmons

Co-Chair, Legislative Committee

(808) 352-6818

abbyalana808@gmail.com



February 5, 2024

Re: In support of HB 1663, Clean Slate expungement legislation

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 support HB 1663, which would create a Clean Slate law to allow second chances for people with lower-level convictions, including many cannabis convictions. People would be eligible five-to-seven years after their conviction, provided they had not been convicted of subsequent offenses.

Criminal records trigger thousands of collateral consequences that make it difficult to get housing, employment, and jobs.¹ Fifty-five percent of people with records report difficulties attaining a job, maintaining employment, or making a living.² These barriers to legally making ends meet increase the likelihood of recidivism.

A dozen states — including deep red, blue, and purple states — have enacted similar “Clean Slate” laws³ to allow individuals with lower-level prior convictions to fully re-enter society and lead productive lives. My home state, Michigan, is among them.

Recommended Amendment: Requiring Removal of Records from Screening

I also urge you to amend HB 1663 to add language to require the 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 1663 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.

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

² 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>

³ See: <https://www.cleanslateinitiative.org/states#states>

I hope you will advance justice and second chances by passing HB 1663, ideally after amending it to add an obligation on background check services.

Mahalo for your time and consideration,

A handwritten signature in black ink that reads "Karen O'Keefe". The signature is written in a cursive, flowing style.

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

Hawai'i Association of Criminal Defense Lawyers

February 5, 2024

By Richard H.S. Sing
Vice-President, Hawaii Association of Criminal Defense Lawyers
State of Hawaii

H.B. No. 1663: RELATING TO EXPUNGEMENT OF CRIMINAL
RECORDS

Chair David Tarnas
Vice Chair Gregg Takayama
Honorable Committee Members

HACDL fully supports this bill.

The Hawai'i Association of Criminal Defense Lawyers (HACDL) is a local organization of lawyers practicing in state and federal courts. HACDL members include public defenders and private counsel who represent people accused of committing crimes.

This bill takes the reasonable and logical step of having the expungement process initiated by the State, instead of placing the burden on the individual. This is logical because it was the State, through the law enforcement, who generated the arrest record that did not result in a conviction. In this situation, it should be left to the State to expunge the record when cases do not result in a conviction.

HACDL hopes this much-needed bill becomes law.

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: HB1663, Relating to Expungement of Criminal Records

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 HB1663, relating to controlled substances. This bill expands eligibility for, and automates, the expungement of conviction records if certain criteria are met. Beginning 12/1/2026, this bill requires the Attorney General to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

HB1663 is a crucial step towards fostering rehabilitation, promoting fairness, and ensuring a more equitable and just society. Several states have similar “clean slate” laws. Pennsylvania, the first to institute an automatic record clearance legislation, has cleared over 45 million records since 2019. Issues with this program saw some individuals struggling to pay the required fees, and an increase in applications caused backlogs in processing however, taken alongside HB1595, which would eliminate fees from the expungement process, Hawai‘i is well on its way to proactively addressing these potential concerns.

The barriers attached to a criminal record are detrimental not only to the individual, but for employers, the workforce, and the economy as a whole. Studies have shown that individuals with an expunged record are significantly more likely to find stable employment, which not only benefits them personally but also contributes to the overall economic well-being of the community. Expungement improves housing prospects, opens doors to educational opportunities, and restores civil rights.

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 HB1663.

1099 Alakea Street, Suite 2530 | Honolulu, Hawaii 96813 | (808) 447-1840



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Ph: (808)-464-4003 / Fax: (808) 464-4288
email:goinghomehawaii@gmail.com
www.goinghomehawaii.org

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

I, Les Estrella, am testifying in strong support of HB 1595 and HB 1663 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



February 6, 2024

Members of the House Committee on Judiciary & Hawaiian Affairs:

Chair David A. Tarnas

Rep. Linda Ichiyama

Vice Chair Gregg Takayama

Rep. Greggor Ilagan

Rep. Luke A. Evslin

Rep. Sam Satoru Kong

Rep. Sonny Ganaden

Rep. Tyson K. Miyake

Rep. Daniel Holt

Rep. Kanani Souza

Re: HB1663 Relating to Expungement of Criminal Records

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters. On behalf of HSCADV and our 27 member programs statewide, I respectfully submit testimony in opposition to HB1663 and recommend this measure be deferred.

We have several concerns with this bill:

1. Prior convictions are an important consideration when assessing an individual for dangerousness and community safety. Domestic violence and stalking are petty misdemeanors and misdemeanor crimes, and aggravated harassment by stalking is a Class C felony (HRS 711-1106.4), that should not be automatically expunged. [Sexually violent behavior can include stalking.](#)¹
2. These are crimes that would be considered in the state's Domestic Violence Fatality Review (HRS 321-473). This draft legislation does not address whether a sealed, expunged record may be divulged for a Domestic Violence Fatality Review.
3. This draft legislation does not address instances when a person is pending conviction or charge after completion of the waiting period, or if they're still on probation or parole.
4. This draft legislation does not address restitution, reparations, or other forms of victim compensation that may still be owed.

¹ <https://www.stalkingawareness.org/wp-content/uploads/2022/04/Stalking-Sexual-Violence-Fact-Sheet.pdf>



Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado, Executive Director

RE: HB1663 ; Hearing Tuesday February 6, 2024

Aloha Honorable Committee Members,

We appreciate the opportunity to testify for HB1663.

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

We suggest the involvement of the UH Law and other organizations that can 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 see linked examples of Missouri's SB793

<https://www.senate.mo.gov/22info/pdf-bill/intro/SB793.pdf>

and the Missouri Expungement - Administrative Order

<https://www.courts.mo.gov/file.jsp?id=193237>

There are ways forward and resources that can help.

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



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 H.B. 1663 Relating to Expungement of Criminal Records**

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

The ACLU of Hawai'i **supports H.B. 1663**, which expands eligibility for and automates, the expungement of conviction records if certain criteria are met. In addition, the measure requires the Attorney General, beginning 12/1/2026, to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

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 people living in poverty, as well as Native Hawaiian and Pacific Islanders in Hawai'i.

Why is Clean Slate important?

As the use of background checks has grown, so has the number of laws and restrictions limiting access to jobs, occupational licensing, credit, housing, education, and other basics. People with records potentially face some [50,000 such restrictions](#).

In the digital era, with nearly [9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges](#) now using background checks, any record—no matter how old or minor—can put employment, housing, education, and other basics permanently out of reach.

According to data reported by Prison Policy Initiative and the National Resource Re-entry Center, a criminal record reduces a job seeker's chance of getting a callback or job offer by nearly 50%.¹

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.

Of note, the University of Michigan study also showed that people who had their records cleared and earned higher wages, also had a decrease in recidivism.² In short, enabling people with records to earn a clean slate will smooth the path to re-entry, reducing the likelihood of recidivism. That means safer communities, fewer people behind bars, and fewer taxpayer dollars wasted on unnecessary incarceration.

The Scope of the Problem in Hawai'i

In Hawai'i, it is estimated that anywhere from 400,000 to 560,800 people have a record. That is nearly 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.³

Clean Slate Laws

Clean Slate legislation is the process of clearing records, using technology to move records through a system towards clearance. As highlighted by Clean Slate Initiative, "Successfully reforming a state's record-clearing process requires a collaborative approach with stakeholders, understanding the interconnected processes in a particular state, and developing data-driven."⁴

To date, twelve (12) states have passed laws that meet Clean Slate Initiative's criteria for Clean Slate designation. These states include Pennsylvania (2018), Utah (2019), New Jersey (2019), Michigan (2020), Connecticut (2020), Delaware (2021), Virginia (2021), Oklahoma (2022), Colorado (2022), Minnesota (2023), and New York (2023). Additionally, a handful of other states are also considering enacting Clean Slate laws.

H.B. 1663 is important for Hawai'i as it would create a process for more people to experience expungement relief. Some people are already eligible to have their records cleared through expungement or sealing. However, the vast majority don't ever get

¹ <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>

² <https://online.ucpress.edu/fsr/article-abstract/30/4-5/361/96141/Michigan-Set-Asides-Found-to-Increase-Wages-and?redirectedFrom=fulltext>

³ Clean Slate Initiative estimated data from 2022.

⁴ <https://www.cleanslateinitiative.org/lawmakerspage>

relief, because they can't afford a lawyer, pay the court fees, or figure out how to navigate the paper application process – or don't have the funds that accompany an application. Many are not even aware it's an option. Hence, Clean Slate provides a win-win solution!

Proposed Amendment

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, H.B. 1663 should mandate that screening services remove all expunged convictions from the next update. Indiana Code § 35-38-9-12 or Virginia Code § 19.2-392.16 provides examples of statutory language that may be used to strengthen this measure.

For the above reasons, we urge the Committee to support this Clean Slate measure. Thank you for the opportunity to testify in support of **H.B. 1663**.

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.

Dennis M. Dunn

Kailua, Hawaii 96734

dennismdunn47@gmail.com

Re: HB 1663, Relating to Abusive Litigation

Date: February 6, 2024, 2:00 p.m.

To: House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Good afternoon, Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary and Hawaiian Affairs. My name is Dennis Dunn, and I am the retired Director of the Victim Witness Kokua Services in the Honolulu Prosecuting Attorney's Office. It is through the lens of my 45+ years of assisting crime victims that I am testifying in **strong opposition to HB 1663**, Relating to Expungement of Criminal Records.

The provisions of HB 1663 would create automatic expungement of convictions of most petty misdemeanor and misdemeanor offenses including domestic violence, sexual assault, and stalking, and most Class C felonies. I am unclear as to the origins of this measure, but it is clearly a very bad idea. My initial concern is simply that many offenses covered by this measure could involve crimes that involve acts of domestic violence, sexual assault, and stalking among other serious crimes. While an individual may enter a plea agreement to an offense that may appear to be less serious in nature, such as Harassment, but the underlying conduct may be much more serious. For this reason alone automatic expungement would not be prudent as without scrutinizing the specific details of the facts underlying the case. Of equal concern is the fact that many criminals with histories of acts of domestic abuse, sexual violence, and stalking may have committed many offenses involving these types of acts without criminal convictions. The reasons may be varied but can (in addition to plea agreements) include victim intimidation, victim disillusionment with the criminal justice system, and situations in which the length of time taken to get a matter to trial may have resulted in victim, or other witness, relocation, loss of interest, or even the death of key witnesses. The lack of subsequent or concurrent convictions may clearly not mean that an offender is not a current or future danger to other potential victims or the public. Automatic expungements would deprive us of the ability to properly scrutinize and assess the past behavior of individuals and may put all of us at risk.

Additional factors that should be considered when evaluating the merits of the provisions of HB 1663 would be the impact that the provisions of the Bill may have on the requirements of the Sex

Offender Registration statute or other statutes which have look back provisions that can enhance charging or sentencing established by the Legislature for certain types of crimes. Not only are there obvious concerns about potential safety implications posed by automatically expunging offenses but a myriad of administrative and fiscal impacts that would result. The large number of offenses that would need to be expunged under this measure would undoubtedly create an administrative nightmare that would severely tax agencies that are already overextended and understaffed. This simply makes no sense to me. We must retain the ability to accurately assess offenders and limit any type of ability to expunge criminal convictions to only those offenders who clearly merit such consideration and it must clearly be only at their expense.

For the above stated reasons, I urge the Committee to hold HB 1663. Thank you for your time and consideration.

Mahalo!

HB-1663

Submitted on: 2/3/2024 12:48:27 AM

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

Submitted By	Organization	Testifier Position	Testify
Alan Urasaki	Individual	Support	Written Testimony Only

Comments:

In support. Thank you.

HB-1663

Submitted on: 2/3/2024 5:36:53 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:

Criminal records are an economic life sentence, closing the door on many jobs and housing. It's time to wipe the slate clean.

HB-1663

Submitted on: 2/3/2024 9:57:01 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 HB1663 because the burden of expungment should be on the State not the individual to clear criminal records. Criminal records create paper prisons for those in our community by burdening them from living their lives fully. How do we expect people to reintegrate and contribute to the health of our communities when we force them to keep fighting to not be called "criminal"?

Please pass HB1663.

Cassandra Chee
Honolulu, 96817

HB-1663

Submitted on: 2/4/2024 7:54:23 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:

I support the expungement of eligible criminal records often these records hold people back from achieving more once they have paid their debt to society

Mahalo,

Tamara Paltin

HB-1663

Submitted on: 2/4/2024 8:17:21 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,

Please support SB 1663. This is a rare opportunity to assist native Hawaiians who are disproportionately affected by the criminal justice system. Please support!!

Mahalo,

Lisa Seikai Darcy

HB-1663

Submitted on: 2/5/2024 10:50:10 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-1663

Submitted on: 2/5/2024 11:28:49 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 -- automatic expungements and sealing of the records will allow people to obtain employment and housing without having to navigate the legal system to get their records cleared.

HB-1663

Submitted on: 2/5/2024 11:51:16 AM

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

Submitted By	Organization	Testifier Position	Testify
Mari Romeo	Individual	Oppose	Written Testimony Only

Comments:

I feel as a citizen of Hawaii and the United States, that there should be no automatic expungements for any convicted crimes. This is especially true of domestic abuse, stalking, sexual assault, physical assault theft, carjacking, robbery. Our islands are becoming crime ridden due to the soft on crime policies being implemented and carried out. We the people want to feel safe in our homes, in our churches, in our businesses and on our streets at any time of day. I would implore you to get tougher on crime, not softer. You can already see it is not working. If the government will not protect it's citizens, it's citizens will have to resort to protecting themselves and each other.

HB-1663

Submitted on: 2/5/2024 12:15:59 PM

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

Submitted By	Organization	Testifier Position	Testify
Joy Schoenecker	Individual	Oppose	Written Testimony Only

Comments:

Defeat this bill !

HB-1663

Submitted on: 2/5/2024 12:54:37 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 yes on HB 1595 and HB 1663. Mahalo!

HB-1663

Submitted on: 2/5/2024 4:28:59 PM

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

Submitted By	Organization	Testifier Position	Testify
Blaine De Ramos	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose HB1633 Hawai'i crime rate has been on the rise for years. Its disgusting that our elected officials even consider expunging records of these criminals. I strongly support countering this bill and imprisoning the introducers of HB1633.

HB-1663

Submitted on: 2/5/2024 4:41:47 PM

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

Submitted By	Organization	Testifier Position	Testify
Michael Hirakami	Individual	Oppose	Written Testimony Only

Comments:

Absolutely opposed. Should have law that 3 or more should be automatically elevated to felony and minimum jail time and fine.

HB-1663

Submitted on: 2/5/2024 5:03:24 PM

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

Submitted By	Organization	Testifier Position	Testify
Randy Chun	Individual	Oppose	Written Testimony Only

Comments:

I do not support HB1663.

Expungement of a person's criminal records does not offer the person to take responsibility for their actions.

HB-1663

Submitted on: 2/5/2024 5:18:24 PM

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

Submitted By	Organization	Testifier Position	Testify
Caroline Nascimento	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose this bill, what is the reason for this? Why do our legislators continue to protect and bend over backwards for citizens and non- citizens that break the law? Crime is already outrageous, literally growing worse by the day! Criminals need to face consequences, and knowing that their bad decisions stay on their record is a strong one, especially felony C convictions!!!

HB-1663

Submitted on: 2/6/2024 6:02:19 AM

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

Submitted By	Organization	Testifier Position	Testify
MIKE TASAKA	Individual	Oppose	Written Testimony Only

Comments:

Good Morning,

Please help me to understand WHY this House Bill is even coming to Committee? If I understand it correctly, if this bill is successful, it will mean convicted individuals who are incarcerated for burglary, property crime, sexual assault and other Class C felonies will be freed and their records expunged. If this is true, why on earth are the legislators who are sponsoring this bill even bringing it up! Let's NOT become another San Francisco!