

DAVID Y. IGE
GOVERNOR



EXECUTIVE CHAMBERS
HONOLULU

February 4, 2021

TO: The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Human Services & Homelessness

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **SB391 – RELATING TO EXPUNGEMENT**

Hearing: Thursday, February 4, 2021, 3:00 p.m.
VIA VIDEO CONFERENCE
Conference Room 225, State Capitol

POSITION: The Governor's Coordinator on Homelessness supports this measure.

PURPOSE: The purpose of the bill is to authorize a court to expunge the records of a person for certain offenses if they are substantially related to the person's homeless status.

This measure aligns with the goals of the Hawaii Interagency Council on Homelessness (HICH) ten-year strategic plan, which includes disseminating "best practices on helping people with histories of homelessness and barriers to employment enter the workforce," and advancing "health and stability for people experiencing homelessness who have frequent contact with hospitals and the criminal justice system." In addition, the HICH voted in December 2020 to adopt the expungement of "non-violent criminal offenses that adversely impact individuals experiencing homelessness" as a legislative priority for 2021.

This measure establishes a clear process to address the expungement of these offenses for homeless individuals. A history of criminal convictions can be a barrier for homeless individuals seeking employment or housing. In many cases, an individual's criminal history includes multiple convictions for non-violent offenses, such as park closure, violation of sit-lie ordinances, or sidewalk obstruction.

This measure will complement current efforts, such as the Community Outreach Court on Oahu, which aims to address outstanding warrants for similar non-violent offenses. Between July 2017 and September 2019, the Community Outreach Court served 201 persons,

and cleared 2,321 cases. While the Community Outreach Court is effective, it cannot address convictions, and this measure will address this gap for persons experiencing homelessness.

Thank you for the opportunity to testify on this bill.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2021 Session

Senate Committee on Human Services
Senator Joy A. San Buenaventura, Chair
Senator Les Ihara, Jr., Vice Chair

Thursday, February 4, 2021, 3:05 p.m.
State Capitol, Conference Room 225

WRITTEN TESTIMONY ONLY

By:

Mark M. Santoki
Acting Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 391, Relating to Expungement.

Purpose: Authorizes a court to expunge the records of a person for certain offenses if they are substantially related to the person's homeless status.

Judiciary's Position:

The Judiciary takes NO POSITION on this measure, providing the following comments.

Expungement would require the court to completely delete any data from the system making any retrieval impossible. Mistakes in identity can occur and an expungement that was mistakenly executed may in some cases be virtually impossible to reverse. All criminal court records are stored electronically.

Therefore, the Judiciary requests that instead of the term expungement, that the term "seal or sealing" be used. The process of sealing a court record provides that all information regarding the defendant's case is not viewable to the public, but remains as part of the internal court record. In addition, sealing a court record – rather than deleting it completely -- promotes transparency because the request to seal the record and the processing of such a request are documented and can be reviewed internally if necessary.

Testimony on Senate Bill No. 391, Relating to Expungement
Senate Committee on Human Services
Thursday, February 4, 2021
Page 2

The Judiciary also notes that the description of qualifying offenses is broad and could authorize the expungement of records of serious offenses. As drafted, the bill would appear to include certain violations of temporary restraining orders, burglary, trespass into a dwelling, unauthorized entry or control of a propelled vehicle, criminal property damage, theft, and drug offenses, as such charges may not necessarily involve bodily harm or the threat of bodily harm but be substantially related to the defendant's homeless status. To avoid unintended consequences, the Judiciary suggests that the bill may provide greater clarity in this area.

The Judiciary would welcome the opportunity to explore whether the process of sealing these records on O'ahu could be incorporated into its Community Outreach Court (COC). With the assistance of the Department of the Prosecuting Attorney and the Office of the Public Defender, COC would be able to determine a defendant's eligibility and to determine those offenses that are appropriate for sealing. Community Outreach Court currently operates in the First Circuit (O'ahu) only.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Human Services**

February 5, 2021

S.B. No. 391: RELATING TO EXPUNGEMENT.

Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 391.

While homeless or houseless individuals struggle to find safe shelter, they also face a myriad of extreme hardships directly related to the lack of safe and secure shelter. This includes limited access to food, hygiene stations, and medical care, as well as the mental and emotional burden that results from living on the streets, in the parks, in encampments, or on the beach. The devastation caused by homelessness is only compounded when the unsheltered are cited for offenses that are substantially related to the individual’s housing status. Citing individuals over and over again for minor offenses will not improve that individual’s chances of obtaining housing or regaining independent living.

Indeed, these citations operate as more of a barrier for an individual trying to escape houselessness. When trying to find housing or employment, these individuals find barriers to permanent housing because of court citations and/or law violations that accumulated. In addition to the stigmatization of a criminal record, these individuals are burdened by the physical and mental health challenges that a criminal citation entails. Thanks to disruptive and relentless homeless camp “sweeps” that cause the loss of property and belongings, it can be a struggle to keep court paperwork and identification documents safe. Compounding this difficulty is the challenge of keeping a schedule when living outdoors and keeping a working phone activated and in their possession. This frequently results in individuals receiving bench warrants and being arrested before they are ever able to communicate with legal counsel and service providers. This measure will remove a barrier for houseless individuals who are trying to find permanent housing and regain their independent living status. It will assist these individuals to lift themselves up and out of a legal quagmire that holds them back without providing any tangible benefit to our State.

Thank you for the opportunity to comment on this measure.



‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai

SB391

RELATING TO EXPUNGEMENT

Ke Kōmike ‘Aha Kenekoa o ka Lawelawe Kānaka

Pepeluali 4, 2021

3:05 p.m.

Lumi 225

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB391, a measure in OHA’s 2021 Legislative Package. This bill seeks to alleviate the long-lasting impacts of the criminalization of houselessness, by establishing a process to expunge records of certain offenses if they are substantially related to a person’s houseless status. **Such a process will help to remove the significant barriers houseless individuals may face in seeking employment, securing rental housing, and taking other steps necessary for them to build stability and navigate a path off the streets.**

A criminal record exacerbates the barriers people experiencing houselessness face in finding housing and employment.¹ Records for “quality of life” crimes²—offenses that target or are enforced largely against those experiencing houselessness—can create a vicious and counterproductive cycle that only inhibits houseless individuals from taking the steps necessary to improve their circumstances. Arrests, citations, and convictions for these types of offenses can result in fines that individuals cannot afford to pay, and even result in short periods of incarceration.³ While these punishments are disruptive enough for houseless individuals, they also result in a criminal record that can hamper their efforts to obtain housing, employment, and certain public benefits.⁴ Without the ability to find shelter, affordable housing, or even work, houseless people will inevitably remain on the streets where they are subject to further criminalization once again.⁵

¹ See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOUSELESSNESS IN U.S. CITIES 9 (2014).

² E.g., laws that prohibit sitting, lying down, or sleeping in public spaces.

³ See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOUSELESSNESS IN U.S. CITIES 18 (2014).

⁴ For example, nearly nine in 10 employers, four in five landlords, and three in five colleges use background checks to screen for applicants’ criminal records, and one study found that more than 45,000 federal and state statutes and regulations impose disqualifications or disadvantages on individuals with a conviction. Center for American Progress, Expunging and Sealing Criminal Records, How Jurisdictions Can Expand Access to Second Chances, <https://www.americanprogress.org/issues/criminal-justice/reports/2020/04/15/483264/expunging-clearing-criminal-records/> (last accessed Dec. 2, 2020).

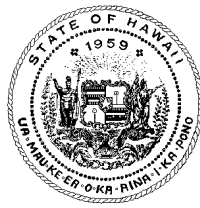
⁵ See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOUSELESSNESS IN U.S. CITIES 7 (2014).

By broadening the class of offenses eligible for expungement, SB391 can provide an invaluable second chance for people who have struggled, or continue to struggle, to find financial and housing stability due to the criminalization of houselessness. This, in turn, may enable such individuals to better support themselves and their families, allow them to better contribute to their communities as well as the state's economy, and encourage stability in their lives.

As a final note, OHA emphasizes that this bill is narrowly tailored to address a very specific set of circumstances, namely to assist those who seek to better their circumstances but are unfairly disadvantaged due to the criminalization of houselessness. SB391 does not prevent any laws from being enforced against houseless individuals; it merely provides a process for the expungement of records related to non-violent "quality of life" crimes. Furthermore, petitioners for expungement must demonstrate that they have completed and satisfied any requirements ordered by a court or administrative body relating to the offense or offenses described in the person's application for expungement, provided that any outstanding judicial or administrative fines or fees may be waived.

Therefore, OHA respectfully urges the Committee to **PASS** SB391. Mahalo piha for the opportunity to testify on this critical measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY FOR SENATE BILL 391
RELATING TO EXPUNGEMENT.

By
DEPARTMENT OF PUBLIC SAFETY
Max Otani, Director

Senate Committee on Human Services
Senator Joy A. San Buenaventura, Chair
Senator Les Ihara, Jr., Vice Chair

Thursday February 4, 2021, 3:05 p.m.
State Capitol, Conference Room 225

VIA VIDEOCONFERENCE

Chair San Buenaventura, Vice Chair Ihara, and Committee Members,

The Department of Public Safety offers the following comments on Senate Bill (SB) 391, Relating to Expungement. While current law allows for certain convictions to be expunged, the bases for the court to grant expungement are mainly related to the convicted person's compliance with the court order and the court's estimation of his/her likelihood of reoffending. The proposed measure would allow the court to waive any outstanding financial obligation associated with fines and fees, which would mean court compliance would not be fulfilled. We note, also, that SB 391 does not address any outstanding restitution owed to victim(s) and does not specify the timeframe when an individual would be eligible to apply for expungement.

Thank you for this opportunity to testify.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 391, RELATING TO EXPUNGEMENT.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 4, 2021 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lance Goto,
Deputy Attorney General, at 586-1160)

Chair San Buenaventura and Members of the Committee:

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

The purpose of this bill is to authorize a court to order the expungement of the records of a person for certain offenses if they are substantially related to the person's homeless status.

The Department opposes this bill for the following reasons.

Page 1 of the bill, at lines 10-14, provides that a person may apply for expungement ". . . for any and all offenses described under section 708-814.7, 711-1105, and any statute, ordinance, or rule not involving bodily harm or the threat of bodily harm, where the person's conduct or alleged conduct underlying each offense was substantially related to the person's homeless status." This is too broad. It would allow for the expungement of any offenses, as long as they do not involve bodily harm or the threat thereof, and as long as the offenses are "substantially related to the person's homeless status." The list of offenses that could be expunged under this bill is extensive. Offenses such as theft, car theft, burglary, criminal property damage, criminal trespass, criminal tampering with public utilities, identity theft, forgery, arson, or cruelty to animals could be included.

The condition that the offenses are "substantially related to the person's homeless status" is vague and will be difficult to apply. First, it may be difficult to address a person's assertion that the person was "homeless" at the time of the offense. And second, it will be difficult to determine whether or not an offense was substantially related to a person's homeless status.

This bill does not define "expungement", nor does it set out a clear process for expungement, as is provided in section 831-3.2, Hawaii Revised Statutes (HRS). It provides that a person could apply to the court for expungement, and that the court shall order the expungement if the court determines that the person has met certain general requirements. The bill is silent as to what criteria would be required or what the court could consider to make the determination, and there is no clear process after the court makes the determination. Under section 831-3.2, a person may apply to the Attorney General for expungement under the provisions of that section. But under this bill, the process is unclear.

Page 2 of the bill, at lines 11-15, provides that the effect of the expungement order shall be to restore persons to their status before the criminal case. That means a person may be able to continue committing the same crimes repeatedly and be treated like a first-time offender each time. Persons therefore will not be held responsible for their prior convictions.

The following are just a few examples of situations in which this expungement law might apply:

- (1) A homeless person occupies a property illegally and ends up burning down or otherwise destroying property, and is convicted of trespass, property damage, and arson;
- (2) A homeless person chronically steals tents, tarps, lamps, generators, and electricity, and is convicted of theft or tampering with public utilities; and
- (3) A homeless person breaks into an unoccupied home, stays there, uses and takes things, and damages property, and is convicted of burglary, theft, and criminal property damage.

The Department also notes that chapter 706, HRS, is not the appropriate place for the expungement provisions in the bill. Chapter 706 of the Penal Code relates to sentencing in criminal cases. While chapter 706 has a few provisions regarding expungement, they are tied to specific types of sentencing. But the expungement provisions in this bill are not related to sentencing. Instead, the bill proposes to allow a special class of individuals to get their convictions expunged. The provisions might fit better under chapter 831, HRS, related to the status of convicted offenders, and which includes the expungement law in section 831-3.2, HRS.

For the foregoing reasons, the Department respectfully requests the Committee hold this measure.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
THE HONORABLE LES IHARA, JR., VICE CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i

February 2, 2021

RE: S.B. 391 – RELATING TO EXPUNGEMENT

Chair San Buenaventura, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in support of S.B. 391.

The purpose of this Bill is to provide a path to expungement of records of conviction for persons whose status as homeless was substantially related to the offenses of which they were convicted. The offenses will be limited in scope to those that do not involve bodily harm or the threat of bodily harm.

A criminal conviction can possibly preclude a rehabilitated offender from attaining housing and employment once their interaction with the criminal justice system is complete. Once a defendant has satisfied all non-financial obligations to the court, they should have less obstruction on the path to seeking housing, employment, and being productive members of society. Removing the obstacle of stigma associated with a criminal conviction related to their socioeconomic status will remove obstacles for defendants convicted of certain lesser offenses so that they may lead a more positive and productive life in society following their involvement with the criminal justice system. Inducing a commitment to mental health treatment and financial counseling will also reduce the barriers to a positive life post-conviction for those whose offenses were substantially related to homelessness.

For these reasons, the Office of the Prosecuting Attorney supports the passage of S.B. 391. Thank you for this opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES
Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i

February 4, 2021

RE: S.B. 391; RELATING TO EXPUNGEMENT.

Chair San Buenaventura, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 391.

The purpose of S.B. 391 is to allow the courts to expunge the records for certain offenses that are substantially related to the individual's homeless status. Although this bill has good intentions, it lacks the specificity and procedural details needed to properly implement.

First, it is unclear which offenses the new section would be applicable to. Currently, the bill includes "any and all offenses described under section 708-814.7, 711-1105 and any statute, ordinance, or rule not involving bodily harm or the threat of bodily harm." Under this definition, it is possible that the following offenses would be among those expunged anytime a defendant submits a written application under the new section:

- Burglary in the 1st and 2nd degree (HRS §708-810 and §708-811)
- Unauthorized entry in a dwelling in the 1st and 2nd degree (HRS §708-812.55 and §708-812.6)
- Violation of temporary restraining order (HRS §586-4 or §604-10.5)
- Theft in the 1st, 2nd, 3rd and 4th degree (HRS §708-830.5, §708-831, §708-832 and §708-833)
- Criminal property damage in the 1st, 2nd, 3rd and 4th degree (HRS §708-820, §708-821, §708-822 and §708-823)
- Unauthorized possession of confidential personal information (HRS §708-839.55)
- Identity theft 1st, 2nd and 3rd (HRS §708-839.6, §708-839.7 and §708-839.8)
- Sex trafficking (HRS §712-1202)
- Harassment by stalking (HRS §711-1100)
- Sexual assault in the 3rd and 4th degree (HRS §707-732 and §707-733)

Although this bill incorporates language which attempts to disqualify a number of the above listed offenses, use of the term “bodily harm” which is not currently defined in the Hawaii Revised Statutes is problematic. For example, sexual assault in the fourth degree involves an offense that causes bodily harm and should be excluded, however proving “bodily harm” or bodily injury is not a required element of the offense and a defendant may not be disqualified from an expungement. Further, this bill fails to sufficiently define what factors are used in determining that an offense is “substantially related to the person’s homeless status” creating a vague set of circumstances resulting in limitless unintended consequences. The Department is deeply concerned that these types of cases—and perhaps others not yet contemplated—could be removed completely from a person’s record, because a defendant is arguably able to show that the offense is “substantially related to the person’s homeless status”.

Additionally, the Department believes, that if one of the underlying purposes for this bill is to address homeless driven offenses, only requiring a “willingness to seek financial or mental health counseling” fails to address this goal. The lack of limitations on the use of this proposed expungement process would allow a defendant the opportunity to commit repeated criminal offenses such as theft without ensuring that social services aimed at addressing the defendant’s homelessness are received.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 391. Thank you for the opportunity to testify on this matter.

SB-391

Submitted on: 2/3/2021 9:48:35 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Normann	Testifying for Neighborhood Place of Puna	Support	No

Comments:

As a homeless provider, Neighborhood Place of Puna supports SB391. In order to reduce homelessness, we need to remove barriers the prevent individuals from moving into housing. Criminal Offences -- espeically those related to homelessness -- can pose significant barriers to housing. SB391 is a bill that moves us in the right direction by allowing for expunging certain types of offenses -- especially those related to homelessness.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support of SB391 – Clearing the Path Home for People Experiencing Houselessness/ Relating to
Expungement
Senate Committee on Human Services
Thursday, February 4, 2021, 3:05 PM, Via Videoconference

Dear Chair San Buenaventura, Vice Chair Ihara, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **SB391**.

Hawai'i Appleseed Center for Law & Economic Justice works to address systematic injustice and inequality that inhibits Hawai'i residents from achieving economic security and fulfilling their potential. A symptom of inequality is the persistently high prevalence of houselessness in Hawai'i.

The National Alliance to End Homelessness found that in 2019, Hawai'i had the 4th highest rate of houselessness amongst states and territories. For every 10,000 residents, 45 residents in Hawai'i were houseless, which is nearly 2.5 times higher than the average national rate of 17 people. As Hawai'i has adopted policy changes that increase criminalization of houselessness, the percentage of Hawai'i's residents struggling with houselessness increased by 6% from 2007 to 2019, and those who were without shelter increased by 8%.

We can anticipate that without intervention houselessness will dramatically climb post-pandemic. The Census's most recent Pandemic Household Pulse Survey (see week 22) found that of 122,230 Hawai'i residents surveyed, 54.6% of them are living in households not current on rent or mortgage where eviction or foreclosure is somewhat to very likely in the next two months. A housing cliff is approaching, and we must do all we can to address systematic issues now.

We support SB391 because it targets a major impediment for houseless individuals to achieve social and economic security that will help them secure long-term housing. By expunging arrest and conviction records for certain state laws that are typically enforced against those experiencing houselessness and for any other non-violent offenses shown to have arisen from an individual's houseless status, the measure would alleviate the burden of criminal records on their ability to receive services, employment, and housing.

Houselessness is merely a symptom of an economic crisis affecting us all. Our state struggled to reduce houselessness pre-pandemic. We need to work together to find new solutions to mitigate the economic burden ahead. We urge the committee to **PASS SB391**.

We appreciate your consideration of this testimony

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.



To: Senate Committee on Human Services

Hearing Date/Time: Thursday, February 4, 2021 at 3:05 pm

Re: Testimony in Support of SB391

From: Heather Lusk, Hawaii Health and Harm Reduction Center

Dear Chair San Buenaventura, Vice Chair Ihara and members of the committee:

The Hawaii Health & Harm Reduction Center (HHHC) strongly support SB391 which would clear the path home for people experiencing homelessness by expunging criminal records. We actively work to house people, and criminal records can be a major barrier to both getting documentation (housing ready) as well as finding a landlord that will rent to someone with a criminal background. Many of the offenses that are on people's records are civil misdemeanors or other low-level offenses and yet are a barrier to housing.

HHHC's mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities. HHHC has been very active in the Community Outreach Court since its inception and have provided case management and other services on-site (prior to COVID). Most recently, we have started a Medical Legal Partnership with Legal Aid Society which places a lawyer at HHHC weekly to help clients resolve issues that are barriers to housing – and passing SB 391 will have a great impact on our and others' work to house our most vulnerable.

Thank you for the opportunity to testify!

SB-391

Submitted on: 2/3/2021 2:23:05 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Testifying for Hawai'i Friends of Justice & Civic Education	Support	No

Comments:

The Hawai'i Friends of Restorative Justice strongly supports this measure that would help to decriminalize poverty in Hawai'i. The bill would authorize courts to expunge the records of people cited, charged, convicted, etc., for certain offenses if they are substantially related to the person's status of being without a traditional home to live in.

Please vote yes, and support this bill.

Please contact me at lorenn@hawaiiifriends.org if you have any questions about our support for this law that our community needs.

Mahalo for your public service.

Lorenn Walker, JD, MPH

Director, Hawai'i Friends of Restorative Justice



Committee: Committee on Human Services
Hearing Date/Time: Thursday, February 4, 2021, 3:05 p.m.
Place: Conference Room 225
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 391, Relating to Expungement

Dear Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in support of, with one proposed amendment to, S.B. 391**, which allows for the expungement of records for certain offenses that are substantially related to a person's status of being houseless. **We ask that the measure be amended to provide for automatic expungement of records relating to a person's houseless status.**

The City & County of Honolulu has been steadfast in its effort to criminalize and/or civilly penalize the status of being poor through the enforcement of myriad anti-homeless laws, such as sit-lie bans, stored property ordinances, and sidewalk nuisance ordinances.¹ Additionally, citations issued pursuant to the Governor's and Mayor of Honolulu's emergency proclamations on COVID-19 under Haw. Rev. Stat. § 127A-25 were disproportionately enforced against people experiencing houselessness.² The City's

¹ See, e.g., Revised Ordinances of Honolulu ("ROH") §§ 29-15.1, 29-15A.2, 29-15B.2 (sit-lie bans); ROH §§ 10-1.1, 10-1.2(a)(12), 10-1.2(a)(13), 10-1.2(a)(15), 10-1.3(a)(2) (park closure rules); ROH §§ 40-24A.1 – 40-24A.4 (urination and defecation bans); ROH §§ 29-16.1 to 29-6.3 & 29-10.1 to 29-19.8 (stored property and sidewalk nuisance ordinances); ROH §§ 29-8.1 to 29-8.11 (sidewalk structures ordinance). On June 18, 2020, Mayor Caldwell signed Bill 13 (2020), which further expands the sit-lie bans to Iwilei. See City Ordinance 20-15, Relating to Public Sidewalks, <http://www4.honolulu.gov/docushare/dsweb/Get/Document-264857/ORD20-015.pdf>. The City also passed Bills 51 and 52 in 2018, which criminalize "obstruction" of sidewalks and "lodging" in public places. See City Ordinance 18-34 Relating to Obstructions on Public Sidewalks, [http://www4.honolulu.gov/docushare/dsweb/Get/Document210691/DOC%20\(9\).PDF](http://www4.honolulu.gov/docushare/dsweb/Get/Document210691/DOC%20(9).PDF); Ordinance 18-35, Relating to Illegal Lodging, <http://www4.honolulu.gov/docushare/dsweb/Get/Document-210692/DOC001.PDF>.

² Christina Jedra & Yoohyun Jung, *Easy Targets? Some Oahu Homeless Have Been Ticketed Dozens of Times During the Pandemic*, Honolulu Civil Beat (November 2020) (finding that HPD's pandemic enforcement shows homeless people account for nearly a quarter of pandemic violations, despite comprising less than one percent of the population), available at <https://www.civilbeat.org/2020/11/easy-targets-some-oahu-homeless-have-been-ticketed-dozens-of-times-during-the-pandemic/>.

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ordinances, as well as state laws such as Haw. Rev. Stat. §§ 708-814.7 and 711-1105, unfairly target innocent conduct that is a “universal and unavoidable consequence of being human.”³

The state and its counties must take immediate steps to end the criminalization of poverty. The enforcement of criminal laws prohibiting people from camping, sitting, lying, or engaging in other innocent conduct on public property violates the Eighth Amendment’s violation on cruel and unusual punishment as applied to people who are homeless and have no option to sleep indoors.⁴ Further, saddling a person experiencing houselessness with fines and a criminal record is counterproductive to the goal of helping them lift themselves out of poverty. The collateral consequences of criminal records on a person’s ability to secure employment, housing, and services is well-documented.⁵ While S.B. 391 does not substantively change existing laws prohibiting conduct that is related to a person’s status of being houseless, this bill is a significant step forward in providing a fresh start.

To maximize effectiveness, ACLU of Hawai‘i respectfully requests that this measure be amended to provide for the *automatic* expungement of records relating to offenses known to disproportionately target people experiencing houselessness. The petition process could create barriers to those who are making daily survival decisions and for whom filing a petition with the court is infeasible. Should the Committee be inclined to include this recommendation, the ACLU of Hawai‘i is happy to assist in identifying relevant laws and offense categories that could be made eligible for automatic expungement.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai‘i

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

³ See, *Martin v. Boise*, 920 F.3d 584, 615-18 (9th Cir. 2019) at 616-17 (quoting *Jones v. City of L.A.*, 444 F.3d 1118, 1131-37 (9th Cir. 2006) at 1136.

⁴ *Id.*

⁵ Jaboa Lake, *Criminal Records Create Cycles of Multigenerational Poverty*, Center for American Progress (April 15, 2020), available at <https://www.americanprogress.org/issues/poverty/news/2020/04/15/483248/criminal-records-create-cycles-multigenerational-poverty/>.

LATE



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 4, 2021
Re: SB 391 Relating to Expungement**

Good afternoon Chair Buenaventura and members of the Senate Committee on Human Services. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains and everyone in between.

While we understand the intent, we are **STRONGLY OPPOSED** to SB 391 Relating to Expungement. This measure authorizes a court to expunge the records of a person for certain offenses if they are substantially related to the person's homeless status.

We are overly concerned as this bill essentially gives those who have been arrested for a non-violent crime like shoplifting, breaking into someone home, distribution of illegal drugs, prostitution, gambling, fraud, harassment, disorderly conduct to name a few will have their record erased because they are homeless. Labor laws already state how many years we can look back at a person's criminal record. We want to be sure that when we hire someone that they are not a risk to our fellow employees or our customers.

This type of legislation is a big win for the offenders especially career criminals and an even bigger loss for anyone in the community who is a victim of a crime including our co-workers, family, friends, and neighbors.

Retailers have major concerns on this measure.

- **Many thieves know the exact value of what they are stealing and makes sure that what they are taking is valued right under the minimum threshold.** Retailers have been facing an upward increase in theft – from designer clothing to handbags to sunglasses to electronics to spam to cosmetics to liquor to tobacco to name a few.
- **Because the criminal's records are expunged or essentially erased by the courts, offenders get a free pass.** This bill highlights that there is no real consequence to those offenders of non-violent crimes including career criminals. Jails are filled and with the pandemic and social distancing, many of these nonviolent offenders know that they will spend little to no jail time – they just have to claim to be homeless.
- **For organized retail criminals, they consider stealing from our stores their daily job.** The thieves are part of organized retail crime and come into the stores daily with a list of items, like your grocery list, of things that they are going to steal: Designer hand bags, jewelry, electronics, tools to name a few.
- **It is a losing battle for many retailers** where the police may or may not catch and arrest the thieves. When HPD does arrests them and lets them go after being processed, the thieves are right back into the stores stealing again. Then it is the prosecutors who may or may not prosecute them regardless of the number of priors they have. IF they don't prosecute, the thieves are right back in the stores stealing. If we are lucky to get a prosecution, the judges often let the thieves off easy with a slap on the wrist as it is a non-violent crime and within hours the thieves are back in the stores stealing again. **Bills like this give criminals the green light to do nonviolent illegal activities as there are no real consequences for their actions only a slap on the wrist.**
- **Although these crimes are not violent, they are still crimes and the victims are not just the retailers but the community as well.** There is only so much a retailer can absorb before we must raise the prices of items to cover the loss. And there is a limit on how much we can raise our prices to remain competitive and in business. **When we raise our prices the cost of living in Hawaii also increases. The alternative we have is to let go hard-working law-abiding employees or close our doors for good.**

We ask that you hold this measure.

Mahalo again for this opportunity to testify.

SB-391

Submitted on: 2/1/2021 12:55:23 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

Support for S.B. No. 391: Relating to Expungement

Dear Senator Joy A. Buenaventura, Chair, Senator Les Ihara Jr., Vice Chair, and members of the Committee on Human Services,

Thank you so much for holding this hearing today to give time and space to this incredibly important issue in Hawai'i. My name is Sarah Michal Hamid and I am testifying today in support of Senate Bill 391 relating to expungement. SB391/HB202 will help to drastically reduce the disproportionate impact of Hawai'i's criminal justice system on Native Hawaiians, who we know are disproportionately impacted by the criminal justice system and that impact accumulates at every stage.

Native Hawaiians are more likely than other ethnic groups to be convicted of offenses, and therefore more likely to suffer the negative long-term impacts of a criminal record. Native Hawaiians are also more likely to be houseless or at risk of houselessness, and therefore may be at greater risk of being subject to enforcement actions for "quality of life" offenses. SB391/HB202 will complement the State and Judiciary's coordinated strategies to address houselessness. In recognition that the criminalization of houselessness has significant impacts on people experiencing houselessness and may exacerbate our houselessness challenges, the State, the Judiciary, and the counties have developed and supported programs that address

The expungement of criminal records can be life-changing for individuals trying to improve their circumstances, especially houseless people. Recent research has shown that a criminal record can debilitate a person's ability to secure housing or employment or pursue higher education. National data reveal that "[n]early 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges use background checks to screen for applicants' criminal records, and one study found that more than 45,000 federal and state statutes and regulations impose disqualifications or disadvantages on individuals with a conviction." We need to be assisting those who need support, not criminalizing them, and SB 391 will create a tangible pathway to clear non-violent "quality of life" offenses from their criminal record. Please support SB 391 and help folks as they attempt to move forward in their lives. Mahalo for your time and have a wonderful day.

Sincerely,

Sarah Michal Hamid

SB-391

Submitted on: 2/1/2021 3:53:17 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of homelessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their homeless status from their criminal record. Currently, people with homeless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced homeless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/1/2021 4:09:26 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
B.A. McClintock	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391.

SB-391

Submitted on: 2/1/2021 4:12:46 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Max Castanera	Individual	Support	No

Comments:

I strongly support the passage of SB 391, which will help to end the vicious cycle of homelessness that people here experience where one citation (as a result of criminalizing homelessness) creates barriers to that person attaining housing and employment in the future. If you would like to decrease the burden of homelessness in the state of Hawaii, pass SB 391 and alleviate some of these barriers that prevent the homeless from rejoining society.

SB-391

Submitted on: 2/1/2021 4:45:46 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon B. Lindsey	Individual	Support	No

Comments:

I am in support SB391 for may reasons.

SB-391

Submitted on: 2/1/2021 4:58:40 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
J Kamehameha Boyd	Individual	Oppose	No

Comments:

Aloha Honorable Senators

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of homelessness. During this active criminalization of Hawaii's homeless/ shelterless, a relative who is homeless - did at one point encounter law enforcement, his drivers license/birth certificate/Social Security card was taken and he has not been able to re-enter the workforce. He has been stuck in a cycle of criminalized homelessness.

I believe that this measure could create a way for people to clear their non-violent "quality of life" offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. They also struggle to track down significant personal items that were taken such as birth certificates, and Social Security cards. Their lost records act as a major barrier to housing and employment due to the stigma associated with all types of criminal and/or missing records. Allowing the clearance of "quality of life" records, and restoration of significant personal documents would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391 and follow through with measures to help these individuals acquire important personal documentation needed to re-enter the workforce and normalize.

SB-391

Submitted on: 2/1/2021 5:35:32 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

Senator Joy San Buenaventura, Chair

Senator Les Ihara Jr., Vice Chair

Senate Committee on Human Services

Dear Chair San Buenaventura, Vice-Chair Ihara, and esteemed members of the committee:

My name is Alani Bagcal and I am writing today in support for SB391.

I believe that everyone deserves to be housed and this bill will help remove the barriers to employment, housing and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent “quality of life” offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of “quality of life” records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing.

Thank you for the opportunity to testify in support for this bill,

Alani Bagcal

96815

SB-391

Submitted on: 2/1/2021 5:57:55 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Frances Dinnan	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/1/2021 6:57:04 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Corrina Carnes	Individual	Support	No

Comments:

Aloha,

I support all elements of this bill. Society as a whole benefits when we treat our most vulnerable with compassion and help to provide a path to a better life, rather than inflicting unnecessary punishment for mistakes made under extenuating circumstances which many will never experience.

warmest regards,

Corrina Carnes

Waialua, Hawaii

SB-391

Submitted on: 2/1/2021 8:11:28 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments:

Aloha,

As a concerned citizen and public health professional, I, I urge the committee to pass SB391, which will help reduce the cycle of chronic homelessness in Hawaii. By providing a pathway for people to clear their non-violent “quality of life” offenses arising from their houseless status from their criminal record, this measure removes barriers to employment, housing, and stability.

Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to employment due to the stigma associated with all types of criminal records.

Allowing the clearance of “quality of life” records, would provide people and families who once experienced houselessness an opportunity to turn their life around by having greater access to employment and housing.

Again, I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/1/2021 9:09:09 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Banner Fanene	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/1/2021 9:32:04 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Serafina Gajate	Individual	Support	No

Comments:

Aloha mai kākou

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of homelessness. This measure would create a way for people to clear their non-violent “quality of life” offenses arising from their homeless status from their criminal record. Currently, people with homeless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of “quality of life” records, would provide people and families who once experienced homeless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/2/2021 6:25:13 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Brown III	Individual	Support	No

Comments:

I strongly support this measure. Houselessness should not be a crime. Universal housing, universal healthcare, guaranteed employment with a living wage, nutritious food & clean water, and addiction treatment + harm reduction, are all steps toward addressing the needs of the unhoused. Criminalization is not the answer, and this bill is a big step in the right direction.

Mahalo,

Joey Brown

Kailua, 96734

SB-391

Submitted on: 2/2/2021 8:36:23 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathleen Hoppe	Individual	Support	No

Comments:

I am writing to support SB391, relating to expunging criminal records relating to houselessness or homelessness. I work for a Title 1 school at which many families experience houselessness or homelessness and already have to navigate through the web of social services, financial support, school requirements, and just meeting basic needs. It is overwhelming to say the least. Having a criminal record simply as a result of their houselessness would negatively impact their ability to secure work or receive necessary support services for survival for themselves and their keiki. That trickles down into education when students are attending school while worried about where they might sleep at night. Worried minds, trauma centered minds, have extreme difficulty learning. How is criminalizing houseless/homelessness compassionate, and more importantly, how is that supporting our keiki? It is not. Expunging records through SB391 would alleviate obstacles to attaining self-sufficiency and would positively work toward community strengthening. I whole-heartedly support SB391 to strengthen our community and support security for Hawai'i's keiki especially.

SB-391

Submitted on: 2/2/2021 10:04:23 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Supporting this bill.

SB-391

Submitted on: 2/2/2021 11:00:55 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy lee	Individual	Support	No

Comments:

The criminalization of poverty has metastasized abominably over the last few decades in our society and overall culture. Instead of spending resources on normalizing houselessness as a crime, we should be supporting more social services that address the root of the problem and not the symptoms. Especially during the pandemic, we've seen the houseless disproportionately targeted with all types of offenses in the "name of law". Expunging these records will clear the pathway home for people suffering from houselessness and its criminalization. It is not a crime to be poor.

SB-391

Submitted on: 2/2/2021 11:06:27 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Debbie A Cabebe	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent “quality of life” offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of “quality of life” records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

Testimony of Ellen Godbey Carson IN SUPPORT OF SB391
To the Senate Committee on Human Services
Hearing Date: February 4, 2021, 3:05pm, Conf Room 225

I support SB391's proposal to expunge records of low level, non-violent convictions that prevent many homeless persons in recovery from advancing in their lives.

I am a former president of IHS (Institute for Human Services), Hale Kipa (Youth Services), the Hawaii State Bar Association and Hawaii Women Lawyers. I am greatly concerned for improving our legal system to foster productive, self-sustaining lives for our most vulnerable residents, many of whom have become involved in our legal system due to homelessness and related circumstances far beyond their control.

Hawai'i law (HRS 378-2) already prohibits discrimination in employment against individuals based on arrest and court record. During my 30+ years of legal practice in this state, I became sadly aware of how many unscrupulous employers easily find public records of these events and discriminate covertly against these individuals, thereby evading the public policy against discrimination based on arrest and court records.

The harm of unexpunged records is particularly great when the individual's arrest or conviction was substantially related to the person's homelessness. The entire community loses when this occurs. These individuals with unexpunged records are hindered from obtaining employment that could sustain them and their families over their lifetime. The community loses vital members of the workforce and instead suffers the burden of financially supporting persons who cannot find gainful employment, often for a lifetime. The trauma to the individual from this situation spreads to the family and to those trying to support the individual, causing a cascade of inter-generational harm.

It is fitting that OHA has introduced this bill, as Native Hawaiians are over-represented both in regard to criminal records and homelessness. We need more enlightened approaches of support and rehabilitation, to help turn around generational trauma suffered by those who become homeless and have minor criminal records.

SB391 wisely sets 4 conditions for expungement:

- The offense must be only minor, non-violent infractions under specified statutes;
- The conduct leading to the court record must be substantially related to the person's homeless status;
- The person must have satisfied all requirements of any judgment relating to the offense, other than payment of outstanding fines and fees; and
- The person must express a willingness to seek financial or mental health counseling, if financial or mental health challenges may contribute to their becoming or remaining homeless.

I therefore request passage of SB391.

Ellen Godbey Carson

Honolulu Hawai'i February 2, 2021

SB-391

Submitted on: 2/2/2021 2:25:37 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nanea Lo	Individual	Support	No

Comments:

Hello,

My name is Nanea Lo. I'm a Kanaka Maoli (Native Hawaiian) and have been living in my ancestral homelands all my life - 31 years. I'm writing to say I support SB391. OHA's expungement bill hopes to clear the pathway home for people suffering from houselessness and its criminalization. This is especially important due to the economic hardships the people of Hawai'i and KĀ• naka Maoli have been facing during the Panedmic.

me ke aloha 'Ā• ina,

Nanea Lo

SB-391

Submitted on: 2/2/2021 2:43:40 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Travis Aiwohi	Individual	Support	No

Comments:

My testimony Travis Aiwohi

SB391 - I've been houseless for 5 yrs it's hard for me to look for a job with no bus money. I have great parents I chose move out because my parents rules. I struggle with drug addiction.

Mahalo, Travis Aiwohi

SB-391

Submitted on: 2/2/2021 2:46:38 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacquelyn Esser	Individual	Support	No

Comments:

S.B. No. 391: RELATING TO EXPUNGEMENT.

Written Testimony of Jacquie Esser in SUPPORT of S.B. No. 391, An Act Relating to Expungement.

Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee:

I submit this testimony in **support** of S.B. No. 391, which would, among other things, help end the cycle of homelessness by reducing barriers to employment and housing. Criminal records can create almost insurmountable barriers to obtaining identification, employment, housing, education and other critical resources like social safety net programs.

I strongly support S.B. No. 391 because it reduces barriers to employment and housing, will help reduce the incidence of homelessness and improve the public health and safety of people, families and communities.

Thank you for the opportunity to comment on this measure.

SB-391

Submitted on: 2/2/2021 2:56:29 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

My testimony Henry Otani
SB391

I've been struggling with my drug addiction for a while. I live with my parents but I don't pay any bills I have no job and struggle to get money. I fix bike & sell them to pay for my drug. I've loss my older brother in an accident 10 yrs ago & from then till now it's been hard. I've came close to losing my life 2 times. I self medicate my self I struggle with depression anxiety drugs & anger issues. I know there's services out there but for me to open up to people is hard it brings the pass back & make me more depressed.

Mahalo,
Henry Otani

SB-391

Submitted on: 2/2/2021 3:15:17 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

SB391

I have been homeless for over 7 years now due to many mistakes I have made with my partner and our daughter. I did have a job and a vehicle but after about 7 months into being homeless my vehicle broke down. That left me without a vehicle but at least I still had it so I could sleep in it, this was my home for almost 1 year. Because my vehicle was broken, I had to catch the bus to and from work which many times I got to work late, yes, I loss my job. Then the spiral started, drugs, stealing and many other things jus to get by in life. I now live and different beach parks on the west side. I have had help from the community but with me moving all the time, it's hard for me to stay connected with the service. It would greatly be helpful if SB391 is passed, which than me, a native Hawaiian male can get some of my criminal records clear and get myself a job. Getting a job is so hard with being homeless and having a record. If I had a second chance to do my life over, yes, I would. Mahalo for taking the time to read my testimony.

Mahalo, John Amanonce

SB-391

Submitted on: 2/2/2021 3:30:35 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

I strongly support SB391. Houselessness should not be a crime. We must stop criminalizing it and this bill will help people who are experiencing or have experienced homelessness. By expanding the types of offenses that are eligible for expungement to include all records related to homelessness, we help people get back on their feet again. Please move this bill forward.

SB-391

Submitted on: 2/2/2021 4:11:58 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erika Kim	Individual	Support	No

Comments:

My name is Erika-ann Kim. I am from Kaimuki. Growing up in Honolulu, Hawai'i's houselessness problem has always been evident to me, and virtually everyone else that I know. I personally have family members and friends that are currently, or have been, houseless. They face extremely daunting challenges related to physical health, mental health, substance abuse, and more. Therefore, the criminalization of homelessness has always been quite ridiculous to me.

Giving those who are houseless a criminal record only adds more trauma and stress to their lives. Furthermore, the criminalization of homelessness serves as a structural barrier toward things like pursuing education or employment, seeking healthcare, seeking housing, and more. It is nearly impossible to advance in life with a criminal record; criminalizing someone simply for not having a home is extremely counterintuitive.

The last point that I think is important to be made is that homelessness and its intersecting issues disproportionately affect Native Hawaiians and other people of color. Over generations, Native Hawaiians have been displaced and torn from their own homeland, resulting in generational trauma. Native Hawaiians make up a significant amount of Hawai'i's houseless population, and are also overrepresented in our jails and prisons. The criminalization of homelessness has served as a strong tool in the genocide of Kanaka Maoli.

With that, I heavily support SB391. This bill is a very necessary step toward decriminalizing homelessness. Expunging the criminal records of those who were convicted of crimes related to homelessness will remove a heavy structural barrier between job and housing security. It will also aid in stopping the appalling arrest rates of Kanaka Maoli and other people of color in Hawai'i. Thank you for your time.

SB-391

Submitted on: 2/2/2021 4:43:24 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joshua DeMello	Individual	Support	No

Comments:

Please support this bill. The legislature should place Homelessness as one of it's top priorities and this bill will start the path of reducing homeless in Hawaii. Expunging records and citations for people that received it for being homeless would allow them to better themselves and their situations by qualifying for things like licenses and employment. Further, this problem disproportionately affects our native population. This bill gives our houseless community a hand-up rather than a hand-out so they can make the changes they need without costing the state anything. This doesn't disqualify them or expunge their records for major offenses, just those that are related to being homeless. Please support helping these people rather than vilifying them for their unfortunate situation. Mahalo

SB-391

Submitted on: 2/2/2021 8:56:02 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Johanna Stone	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of homelessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their homeless status from their criminal record. Currently, people with homeless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced homeless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/2/2021 9:14:14 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chloe Amos	Individual	Support	No

Comments:

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent “quality of life” offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records, and are essentially criminalizing people for being poor. The poor and houseless are being targeted with these kinds of criminal charges. As a society, it is past time for us to stop criminalizing people simply for being poor--and Hawai'i should be leading the way on decriminalization of the poor. Allowing the clearance of “quality of life” records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

SB-391

Submitted on: 2/2/2021 9:26:30 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kelsey Amos	Individual	Support	No

Comments:

SUPPORT

SB-391

Submitted on: 2/3/2021 8:10:24 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
LeeAnn Silva	Individual	Support	No

Comments:

I strongly support and urge passage of this bill.

SB-391

Submitted on: 2/3/2021 8:25:06 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

Thursday February 4, 2021

Conference Room 225 - 3:05pm

Aloha Chair San Buenaventura, Vice Chair Ihara, and Honorable Members,

I support SB391 because there is currently no way for a person who has experienced houselessness to expunge their conviction record. This means a person's challenging time in their life will forever prohibit them from opportunities like employment and housing due to the stigma associated with criminal records.

Please pass SB391.

Mahalo,

Jen Jenkins

To: Senate Committee on Human Services

From: Kamealoha Smith, OHA Beneficiary *Kamealoha Smith – e-authorized signature*

Date: February 3, 2021

Re: Support with reservations for SB391

My name is Kamealoha Smith, Kauai Island OHA Beneficiary and community organizer and advocate. I work for a nonprofit in Culture-based Environmental Stewardship and Education. I have a Masters Degree in Second Language Studies and a Professional Teaching Diploma K-12 with a focus in Indigenous Curriculum Development and Instruction. I am from Anahola, Kauai. I support SB391 but with reservations. I offer the following mana'o (thoughts):

Please pass SB391, which will help remove barriers to employment, housing, and stability created by the criminalization of houselessness. This measure would create a way for people to clear their non-violent "quality of life" offenses arising from their houseless status from their criminal record. Currently, people with houseless related convictions have virtually no way to remove their related criminal records, despite having paid their debt to society. These criminal records act as a major barrier to housing employment due to the stigma associated with all types of criminal records. Allowing the clearance of "quality of life" records, would provide people and families who once experienced houseless an opportunity to turn their life around by having greater access to employment and housing. I respectfully urge you to pass SB391!

Some OHA Beneficiaries received an "urgent" email from OHA, on or around February 1, 2021 to support SB391. My reason for having reservations in supporting SB391, involves lack of resources to implement this ambitious program. In responding to OHA's email, I complimented them for having qualified staff to work on issues involving homelessness in the Hawaiian Community. However, they have yet to put together a task force, committee, or commit resources together to appropriately address any issues related to homelessness in the Hawaiian Community.

The idea behind SB391 is a good idea but without an actual plan as to how they are going to implement this program, I have no idea how this is going to be successful. In my response to OHA, I also suggested the following:

"There issues are important to all Hawaiians & there are many who are actively and collectively involved in trying to raise awareness and tackle these issues, especially as work to address CV19 impacts. We need solutions; it will take our entire community, working together to solve these issues. OHA has on staff some really qualified people who are familiar with issues regarding homelessness. May I suggest that people familiar with this community problem, be the point team for OHA. Maybe you folks can put together a task force or committee to meet with beneficiaries, nonprofits, and others who are interested in helping the community solve this issue.

Please visit this link: [Prevent Homelessness | United States Interagency Council on Homelessness \(USICH\)](#)

This Federal level Interagency Council has some suggestions about how agencies like OHA can work collaboratively with community groups, churches, and nonprofits on this issue. I think this Federal level Interagency Council is correct in suggesting that agencies like OHA work to empower Native Hawaiian community groups & nonprofits, and to assist with building the capacity of Native Hawaiian organizations so we can help ourselves.”

In addition to this written testimony, I also humbly ask for the opportunity to provide oral testimony via Zoom at tomorrow’s Senate Committee Meeting on SB391, Thursday, October 4, 2021, on or around 3:05pm. Mahalo for allowing me to share mana’o (comments) on SB391.

SB-391

Submitted on: 2/3/2021 10:28:27 AM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Angela Molina	Individual	Support	No

Comments:

Welina me ke aloha,

Mahalo for allowing me to testify in favor of SB391

I write with no legislative experience as well as the ability to articulate in a manner that approved in judicial proceedings. I do however have testimony of our kanaka who have been in and out of court, prison, jail, and institutions and are unable to move forward due to prior arrests of being homeless with out being afforded the ability to obtain a job, providing a livable wage to (eventually) alliviate their homelessness. There are homeless people whom I know personally that would benefit from this bill. By expunging their records would give hope of possibly obtaining sustainability enabling him/her to provide the basic human needs as an individual. I appreciate your attention to this testimony.

Me ka 'oia'i'o,

Angela Molina

SB-391

Submitted on: 2/3/2021 3:42:52 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica dos Santos	Individual	Support	No

Comments:

Homelessness should not be criminalized. Homelessness is not a crime. People need to be uplifted and supported instead of being pulled down by the weight of a system disproportionately working against them and their very existence.

LATE

SB-391

Submitted on: 2/3/2021 4:14:43 PM

Testimony for HMS on 2/4/2021 3:05:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Nikos Leverenz	Individual	Support	No

Comments:

Chair San Buenaventura, Vice-Chair Ihara & Committee Members:

I strongly support SB 391, which authorizes a court to expunge the records of a person for specified offenses if they are substantially related to a person's homeless status.

It is deeply troubling that those who are unsheltered and unstably housed have become the focus of enforcement of pandemic-related code violations, [as noted by a November 2020 Civil Beat article that surveyed the ticketing practices of the Honolulu Police Department](#).

Continued sweeps of homeless encampments in Honolulu [run afoul of guidelines from the federal Centers for Disease Control and Prevention](#). The city's new mayor, [who indicated that he would end this reckless policy shortly after his election](#), has yet to take needed ameliorative measures.

Prior to the COVID-19 pandemic unsheltered and unstably housed persons have been cited, arrested, and given criminal records for offenses specifically targeting persons who lack a fixed residence, including site-lie bans, sidewalk obstruction, and sleeping in a vehicle.

Native Hawaiians are notably overrepresented in our state's unsheltered and are disproportionately impacted by Hawaii's criminal legal system at every level.

There are many lasting impacts to the continued criminalization of homelessness. A criminal record impairs a person's ability to obtain housing, employment, education, and needed government support. Expungement is necessary to afford persons of limited or no economic means the opportunity to meet their basic economic needs.

With an economic downturn that is likely to last for many years, Hawaii should seek to recalibrate its approach to homelessness, poverty, and behavioral health issues.

Continued criminalization demeans both its powerless targets and those exercising power.

Continued criminalization compounds the injury felt by those who are already struggling with a range of economic and health issues.

Continued criminalization perpetuates lasting stigma, internal and external, that is felt far beyond the time that a person experiences homelessness or ill health.

Expungement of records will mean a great deal to those impacted. Yet it is one salutary measure of many that are needed to address the myriad shortcomings of longstanding government policies regarding homelessness, poverty, and behavioral health concerns.

Thank you for the opportunity to testify.

Sincerely,
Nikos Leverenz

LATE

SB-391

Submitted on: 2/3/2021 4:44:21 PM

Testimony for HMS on 2/4/2021 3:05:00 PM

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

Comments:

I am in strong support of SB391.

LATE

Aloha mai e Chair San Buenaventura and Committee Members:

I am an attorney currently representing patients at a community health center with their civil legal needs. Many of my clients are unsheltered and are some of the individuals with highest medical, mental health, and legal needs; many are recently released from incarceration. I am submitting this testimony in **SUPPORT** of SB391.

The policy changes proposed in here are needed to make sure that lifelong effects of poverty do not further follow individuals for the rest of their lives and prejudice them from jobs and housing. Allowing individuals to expunge their records and have a clean start is in the interest of justice.

Allowing individuals who are simply too poor to afford housing have upwards of 200 criminal misdemeanors on their record is not in the interest of justice.

Current state and county regulations allow for a criminal misdemeanor citation, which includes a court date along with a hearing, for behaviors such as remaining in a park, littering, smoking, or simply sitting or lying in designated areas of the island. People can be fined and cited for sitting in their car from 6pm to 6am.

Just dealing with navigating clients to deal with criminal citations makes it near impossible for me to work with many clients on their actual civil legal issues that would support long term housing stability. As people too poor to afford housing, they can receive multiple citations during one day with not time to complete tasks related to applying for social security or other benefits or identification. They must appear in court or receive a bench warrant. Unfortunately, I have seen poor individuals jailed for a smoking ticket, after failing to appear in court. Failing to appear and remain in jail then costs individuals their spot in a shelter or their part-time job. Many have mobility challenges, as they are unable to find a rental on their maximum of \$788 disability income per month.

I cannot stress enough the difficulty currently in placing a client in shelter. Many if not all of my unsheltered clients would appreciate the opportunity to enter a shelter and are already working with providers, including myself. Emergency shelters are routinely full for both families and individuals. Shelter fees range from \$60 to \$100 per month. Clients of mine have been unable to pass breathalyzer tests and therefore have been unsheltered. Clients also discuss how they do not have the cash or the ability to complete chore requirements in the shelter. Shelters need to be low-barrier and easy to enter.¹

Additionally, many emergency shelters do not allow people to remain on the shelter during the day, requiring people to go outside during daytime hours. As such people may engage

¹ https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-key-considerations.pdf

in behavior otherwise allowed in private residences, but receive a criminal citation for their use of public space even if technically 'housed.' Our service providers already need more support to assist with immediate transportation to shelter intake, rather than more reasons to force or coerce compliance through criminal citations for remaining in public spaces.

The current Community Outreach Court program that can allow for expungements on a limited basis does not reach all needy individuals.

While the Community Outreach Court is an attempt to deal with these tickets in a different manner, it is hard to place people in this program. Those with past records are often disqualified. Even if accepted into the Community Outreach Program to clear their violations, individuals must complete community service requirements. Unfortunately, most community service spaces even prior to the pandemic can be difficult to access, have no transportation or are not set up to accept people with physical or mental disabilities. I have had only two clients be accepted into the program; the majority were unable to qualify.

This bill offers a way for individuals targeted in public spaces to make a clean start.

All of the underlying offenses targeted for expungement in this bill are simply those that people who are poor, or have limited access to private space are likely to receive. Allowing these to be cleared from someone's record will allow them the ability to make a new start. Employers, landlords, and individuals unfamiliar with the exact offenses will likely be prejudiced to see someone with hundreds of criminal misdemeanor citations, not understanding the offense could be for sitting on a bench in Waikiki while living in a shelter, smoking a cigarette in a public area, or for leaving a backpack as litter in a public area. Please pass this bill to allow people a chance to remove these citations from their records.

Mahalo

Deja Ostrowski, J.D.