



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, March 29, 2023, 2:00 p.m.
Conference Room 325 & Via Videoconference

WRITTEN TESTIMONY ONLY

By:

Michelle D. Acosta
Deputy Chief Court Administrator
District Court of the First Circuit

Bill No. and Title: Senate Bill No. 410, S.D.1, H.D.1 – Relating to Expungement.

Purpose: Requires the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations on a person's record, including the traffic abstract and the Judiciary's publicly accessible electronic databases. Requires the court to automatically seal or remove from the Judiciary's publicly accessible database any information relevant to the arrest or case of a person for whom an expungement order listing the court case number has been entered. Effective 07/01/2025. (HD1)

Judiciary's Position:

The Judiciary takes no position regarding the intent of the measure and provides comments on aspects of the measure that will cause significant operational issues for the courts.

The Judiciary is OPPOSED to Sections 2-4 as it will cause significant operational issues. Section 2 would amend §286-172, Hawai'i Revised Statutes (HRS) for the Furnishing of Information that is provided by the Director of Transportation in regards to traffic records. The

amendment adding subsection (e) would prevent dismissed traffic citations from appearing on the Judiciary's publicly accessible electronic database. The Judiciary Information Management System (JIMS) is authorized and maintained by the Judiciary and therefore it is unclear if this amendment would apply to the courts. If the court was required to mask all dismissed traffic citations it would require significant operational changes to the JIMS system.

The Judiciary is further concerned that the term "dismissed traffic citations" is not defined and may cause confusion. For example, Section 3, amending § 286-245 HRS (within Part XIII -Commercial Driver Licensing) provides that for commercial drivers the Judiciary would not provide "any traffic citation that has been dismissed", however, Section 4 amends § 287-3(a), HRS to provide that the Judiciary furnish traffic abstracts of all alleged **moving** violations, "except for any traffic citations that have been dismissed." Moving violations are specific offenses within the traffic code in which the court provides a traffic abstract of those alleged violations.

The Judiciary thanks the House Consumer Protection and Commerce Committee for applying the suggested amendments to Section 5 and for an effective date of July 1, 2025 to give the court time to develop, design, test and implement a system to fulfill the expungement aspects of this measure. The Judiciary estimates, based on current rates under our software vendor contract, a one-time cost of \$70,000 for software code changes and respectfully requests an appropriation to cover this cost.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State
of Hawai'i to the House Committee on
Judiciary & Hawaiian Affairs**

March 29, 2023

S.B. No. 410, SD1, HD1: RELATING TO EXPUNGEMENT

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

The Office of the Public Defender strongly supports S.B. No. 410, SD1, HD1 which prohibits the inclusion of any traffic citation that has been dismissed on any driver's record. S.B. No. 410, SD1, HD1 also automatically requires that the court seal or remove any information relevant to the arrest or case from the Judiciary's publicly accessible database of any person for whom an expungement order has been entered.

A. Exclusion of dismissed citations on any driver's record, driving abstract, and the Judiciary's publicly accessible electronic databases.

For obvious reasons, the OPD supports the exclusion of dismissed citations from a driver's record, abstract, and from the Judiciary's publicly accessible electronic databases. As one of the most basic and fundamental principles of the American criminal justice system, "innocent until proven guilty" is not a meaningless catchphrase, but a precept that is practiced every day in the criminal courts of Hawaii. It makes very little sense to include offenses in these records that were never adjudicated and where there had never been a finding of guilt. It makes even less sense to include traffic offenses that were *actually dismissed*.

Including dismissed offenses on a driver's record, abstract, and the Judiciary's publicly accessible electronic databases only runs the unnecessary risk of confusion and prejudice. One who searches or checks the aforementioned records may not distinguish between cases where there was a finding of guilt and cases that were dismissed. A casual glance at these records may result in the false conclusion that the person in question has a bad driving record, when, in fact, many of the offenses that appear have actually been dismissed. Others who search these records might simply conclude a person is a bad driver based on the number of offenses that appear, and not by the number of convictions. This is patently unfair.

B. Requires the Judiciary to automatically remove all judiciary files and other information pertaining to the applicable arrest or case from the Judiciary's publicly accessible database.

Currently, in order to have judiciary records and other information pertaining to the arrest or case sealed or removed from the Judiciary's publicly accessible database, an individual, for whom an expungement order was already granted, is required to avail themselves of yet another process – petitioning the court, via motion, to remove the relevant matters from the publicly accessible database, Judiciary Information Management System (JIMS), eCourt Kokua, and Judiciary Electronic Filing and Service System (JEFS).

The additional requirement of filing a motion with the courts to have the records removed takes time, time that many applicants for expungement do not have. Many of these individuals rely on an expeditious expungement of their cases because they have specific employment in mind and want to apply without any impediments or complications. Furthermore, because the average person may not understand the nature and process of petitioning the court for this type of relief, many people realize that they need to hire an attorney, but simply are unable to afford one. The automatic removal from JIMS, eCourt Kokua, and JEFS will streamline the process for people who needed their expungement *yesterday*, and will eliminate the expense of hiring an attorney.

In a National Public Radio special series called Criminal Justice Collaborative, in a presentation entitled “Scrubbing the Past to Give Those With a Criminal Record a Second Chance,” authors Eric Brosher and Barbara Brosher wrote, “With background checks ubiquitous for jobs, schools, mortgage applications and more, even one conviction — and sometimes even just one arrest — can dog people for years, critics say, relegating them to permanent second-class status.” More and more, we are learning that a criminal record affects more than just job applications and employment.¹ A criminal record, or sometimes just an arrest, can affect loan applications, housing, insurance rates, education, licensing and certifications, adoptions, and federal assistance.

Because this bill will assist many in finding better employment and improve their all around quality of life, the OPD enthusiastically supports S.B. No. 410, SD1, HD1. Thank you for the opportunity to comment on this measure.

¹ Article available at <https://www.npr.org/2019/02/19/692322738/scrubbing-the-past-to-give-those-with-a-criminal-record-a-second-chance>

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THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

March 29, 2023

RE: S.B. 410, S.D. 1, H.D. 1; RELATING TO EXPUNGEMENT.

Chair Tarnas, Vice-Chair Takayama and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following **comments** regarding S.B. 410, S.D. 1, H.D. 1, **with suggested amendments**.

While the Department understands and takes no position on the general concept of the bill, the Department humbly requests that the committee clarify and expressly state that the proposed amendments will not preclude law enforcement agencies from viewing dismissed or expunged offenses for official law enforcement purposes. When active court cases are pending the plea negotiation process, it is not uncommon for minor traffic or criminal offenses to be dismissed pursuant to an agreed-upon plea agreement. Nevertheless, it is important for police officers, deputy prosecuting attorneys, and other relevant law enforcement personnel to have access to an individual’s complete record, in order to make a complete assessment of the person’s actual background. These officers and deputies are trained and able to give dismissed matters the appropriate level of weight and consideration, and can also look into the details of those specific matters further if needed.

After speaking with stakeholders, the Department believes our current access to traffic abstracts will not be affected by the proposed language. However, this is not entirely certain, nor are we certain that all law enforcement agencies have identical means of access. In order to ensure continued public safety, and allow law enforcement agencies to properly investigate, review and charge cases, **we suggest adding language to Section 1 of the bill that expressly states all law enforcement agencies – including the Department of the Attorney General, the various county prosecuting attorneys offices, police departments, sheriffs, etc – will continue to have access to information regarding dismissed and expunged cases, regardless of whether those agencies utilize “publicly accessible” or other types of electronic databases.**

Thank you for the opportunity to testify on this matter, and provide our **suggested amendments**.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Wednesday, March 29, 2023

Room 325 & Videoconference

2:00 PM

SUPPORT SB 410 SD1 HDI- EXPUNGEMENT

Aloha Chair Rhoads, Vice Chair Takayama and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,036 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 914 - 26.4% of the male imprisoned population² - of Hawai`i’s imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in strong support of SB 823 SD1 HD1. The HD1 that clarifies that, for purposes of sealing or otherwise removing information from the Judiciary’s publicly accessible electronic databases, the expungement order must list the court case number and be transmitted to the court and changes the effective date to July 1, 2025.

Under existing law, in order to have Judiciary records and other information pertaining to an arrest or case sealed or removed from the Judiciary’s publicly accessible electronic database, an individual, for whom an expungement order was already granted, is required to petition the court to remove the relevant matters from the database. This additional petition takes time and resources, further impeding an individual’s ability to fully participate in society. This measure will streamline the process for persons granted expungements for dismissed traffic citations on a person’s record, including the traffic abstract.

¹ Department of Public Safety, Weekly Population Report, March 20, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-Weekly-2023-03-20_George-King.pdf

² Why are 26.4% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room here: Halawa is at 77%; Halawa Special Needs Facility is at 58%; Kulani is at 44%; Waiawa is at 51% of operational capacity.

This is important because with an expungement, an individual can clean your slate and move on with their life.³ An expungement is an investment in an individual's future because it erases parts of their past that no longer matches who they are now and can lead to

1. More & Better Job Opportunities
2. Better Educational Opportunities
3. Removing the Stigma of Having a Criminal Record
4. More Options for Housing
5. Starting or Expanding Their Family
6. Obtaining Public Assistance and Avoiding the "collateral consequences" of conviction
7. Lowering Insurance Premiums
8. Making a Difference in Their Communities
9. Privacy

Last September, California Gov. Gavin Newsom signed a bill from Sen. Maria Elena Durazo, D-Los Angeles, allowing people convicted of a felony to have their records automatically sealed if they complete their sentence and remain conviction-free for at least four years. Records of arrest that never resulted in a conviction can be sealed as well.

The law "will give individuals the tools to turn the page on their past and an opportunity to build a new, better life while providing an economic boost in California, including an estimated \$20 billion yearly increase to our state's gross domestic product that it currently misses out on from widespread unemployment and under employment of those with a conviction history," Durazo said in a statement Thursday night.

The law will take effect July 1, and excludes registered sex offenders and people convicted of serious or violent crimes. Those individuals may still petition to have their records sealed.⁴

Currently, California is one of six states to offer ex-felons ways to seal their records. The four-year implementation is the most progressive in the nation for automatic relief. Under the new law, law enforcement agencies and schools would have access to the sealed records. But most employers and landlords would not be able to view the records.

It is about time for Hawai'i to acknowledge persons who have traffic offenses be able to get on with their lives if they complete their sentence and remain conviction-free for at least four years. Records of arrest that never resulted in a conviction can be sealed as well.

Community Alliance on Prisons urges the committee to pass this measure and free Hawai'i's people with traffic offenses to expunge their records so they can move on with their lives.

Mahalo nui!

³ 9 Benefits of Expunging a Criminal Record - <https://www.cleanslate.law/blog/9-benefits-of-expunging-your-criminal-record>

⁴ Gov. Newsom signs law to seal criminal records of hundreds of thousands of Californians, Mathew Miranda, The Sacramento Bee - Sep 30, 2022. <https://www.sacbee.com/news/politics-government/capitol-alert/article266570516.html>



Hawai'i

Committee: Senate Judiciary & Hawaiian Affairs
Hearing Date/Time: Wednesday, March 29, 2023, 2:00 P.M.
Place: Conference Room 325 & Videoconference
Re: S.B. 410, S.D.1, H.D. 1 Relating to Expungement – SUPPORT

Aloha Chair Tarnas, Vice Chair Takayama and Committee Members:

The ACLU of Hawai'i strongly supports **S.B. 410, S.D. 1, H.D. 1 Relating to Expungement**.

This measure prohibits the inclusion of traffic citations that have been dismissed from a person's driving record. S.B. 410, S.D. 1, H.D. 1 also requires that the Judiciary automatically seal or remove any information from its publicly accessible database relating to arrests or case where an expungement order has been ordered.

Proliferation of Background Checks and the Collateral Consequences of Records

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](#).¹

In the digital era, with nearly [9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges](#)² now using background checks, any record—no matter how old or minor—can put employment, housing, education, and other basics permanently out of reach.

Scope of the Problem in Hawai'i

In Hawai'i, nearly 560,800 people have arrest and/or court records.³ 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.

Current Process Hinders Access to Actual Expungement of Records

The current process to seal or remove arrest and case related information from expungement orders is time-consuming, costly, and complicated. It also relies on an outdated paper system, rather than pivoting to an automated technology system.

Thousands of people in Hawai'i are eligible to have their records cleared through sealing or expungement. However, the majority of people who are eligible for expungement do not ever get that relief because they can't afford a lawyer, pay the court fees, or figure out how to

¹ <https://niccc.nationalreentryresourcecenter.org/>

² <https://www.americanprogress.org/article/news-can-use-research-roundup-re-entry-advocates/>

³ <https://codeforamerica.org/programs/criminal-justice/automatic-record-clearance/#:~:text=Code%20for%20America%20is%20a,that%20are%20initiated%20by%20government.>

navigate the court petition process. Many are not even aware that expungement is an option for arrests. ***In short, eligibility for expungement doesn't always mean access to expungement.***

Racial Disparities in Arrest and Court Records in Hawai'i

Numerous reports and literature have highlighted the racial disparities that exist within Hawai'i's legal system – and disparately targets Native Hawaiians.

- *Crime and Justice Related to Hawaiians and Part-Hawaiians in the State of Hawai'i*, Dr. Gene Kassebaum, A Report Prepared for Alu Like, Inc., Study supported by a grant from the Department of Health and Human Services, Office of Human Development, Administration for Native Americans (April 1981)
- *Racial Tensions and Public Concern about Crime Control in Hawaii*, Dr. Gene Kassebaum, Department of Sociology, University of Hawaii at Manoa (1981)
- *The Colonial Carceral and Prison Politics in Hawai'i*, Dr. RaeDeen Keahiolalo Dissertation (2008)
- *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, Office of Hawaiian Affairs, Justice Policy Institute, Georgetown Law, University of Hawaii at Manoa and Georgetown Law, 2010.
- *Understanding Women's Pathways into Crime and What Works to Improve Outcomes Among Women in the Criminal Justice System*, Criminal Justice Research Institute, Dr. Erin Harbinson and Aerielle Reynolds, MS. (2021-2022). **In 2019, Native Hawaiian women were 19% of the female general population in Hawai'i. However, they comprise 44% of the female incarcerated population in Hawai'i.**

While these Commissions and initiatives have issued a plethora of recommendations to reduce and eliminate racial disparities within our criminal legal system, these recommendations have been wholly ignored, underfunded and rarely implemented. ***Consequently, Native Hawaiians, as well as other racial and ethnic groups (i.e. Pacific Islanders, Filipinos and Black people), continue to be disparately treated within the criminal legal system.***

By enacting this measure, Native Hawaiians and other racial minority groups will disproportionately benefit from an automated system of expungement for arrests that have not resulted in convictions, and cases where expungement orders have been entered.

Clean Slate Laws Increase Meaningful Second Chances

According to research compiled by the National Conference of State Legislatures, as of July 2021, twenty (20) states have at least one statutory automatic record-clearing provision. Michigan, Pennsylvania, Utah, Delaware, California and Colorado are examples of states having laws that automate the record-clearing process; these laws are sometimes known as "clean slate laws".⁴

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

ACLU of Hawai'i supports the enactment of "Clean Slate" laws to expand access to second chances through legislation that will expand expungement eligibility and help more eligible records access expungement. **S.B. 410, S.D. 1, H.D. 1 is a step forward for automated expungement and increasing access to true second chances in Hawai'i.**

Clean Slate is Good for Our Economy

Given the severe staffing shortages in Hawai'i, it makes sense to reduce systemic barriers that prevent people from finding gainful employment or being promoted. Yet, over the years, the ACLU of Hawai'i has heard the real life stories of community members who have faced the collateral consequences of past arrest and court records, particularly when it comes to finding jobs.

Clean Slate laws have been proven to help 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.⁵

For these reasons, the ACLU of Hawai'i strongly supports **S.B. 410, S.D. 1, H.D. 1**. This measure is an incremental step to providing a light at the end of the tunnel for people who are dealing with the collateral consequences of a record – and providing a fair opportunity to work, take care of their families, and contribute to their community.

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.

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⁵ <https://online.ucpress.edu/fsr/article-abstract/30/4-5/361/96141/Michigan-Set-Asides-Found-to-Increase-Wages-and?redirectedFrom=fulltext> See also, <https://www.cleanslateinitiative.org/public-resources/why-clean-slate-policies-are-good-for-the-economy>



HAWAII WORKERS CENTER

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

Defending and Respecting the workers of
Hawai'i

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March 28, 2023

Hawaii State House of Representatives
Committee on Judiciary and Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair

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Committee of the
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Robyn Conboy

Co-Executive
Directors

Tony Doroño

Sergio Alcubilla III,
Esq.

RE: Support for SB410 SD1 HD1, Relating to Expungement

Dear Chair Rep. Tarnas, Vice-Chair Rep. Takayama, and members of the Committee on Judiciary and Hawaiian Affairs:

The Hawaii Workers Center envisions a Hawaii in which all workers are empowered to exercise their right to organize for their social, economic and political well-being. It is a resource of information, education, training and organizing for Hawaii's low-wage and immigrant workers.

The Hawaii Workers Center stands in strong support of SB410 SD1 HD1, Relating to Expungement.

On Saturday, March 25, the Hawaii Workers Center, in partnership with the Office of the Public Defender, the Lāhui Foundation, the Native Hawaiian Legal Corporation, and other community advocates and service providers held a expungement clinic in Kahuku to help those that were arrested protecting sacred places.

The written comments from those in attendance were clear when asked, "Do you believe you have been negatively impacted by your arrest record?"

"Hard time to be hired."

"Unable to get in as a member of the burial council and job as a mana lomi practioner in massage therapy."

"Have been vastly overlooked for several employment opportunities."

"It has been difficult to find a job with my arrest records."

Major barriers to jobs, renting, and many other opportunities."

"It makes be look like a bad guy."

"I believe because of these charges I am not able or have been denied visitation to visit my brother in the federal prison."

"Mental stress."

The social, economic, and mental impact of an arrest are very real for those unable to navigate the legal system on their own, especially those from working class communities. SB410 SD1 HD1 is a step in the right direction to remove additional barriers to ensuring that our justice system works for all of us, not just those that can afford to hire legal help.

Sincerely,

Sergio J. Alcubilla
Executive Director

SB-410-HD-1

Submitted on: 3/28/2023 11:10:20 PM

Testimony for JHA on 3/29/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments:

Aloha,

Expungement of dismissed traffic citations is important because it enables a person to avoid discrimination in housing, employment, education, etc., that would prevent them from becoming a productive member of society.

Please pass SB410 SD1 HD1.

Mahalo.