

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

ON THE FOLLOWING MEASURE:
S.B. NO. 2522, RELATING TO EXPUNGEMENT.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 13, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

The purpose of this bill is to allow persons convicted of certain criminal violations to apply to the court for an expungement order under certain circumstances.

Part III of the bill seeks to make retroactive Act 230, Session Laws of Hawaii 2006 (Act 230), which was later codified as section 706-622.9, Hawaii Revised Statutes (HRS), Sentencing for First-Time Property Offenders, to allow people who were sentenced prior to the act, to expunge their convictions pursuant to section 706- (3) as set forth in Act 230.

Those who were convicted for the first time of class C felony property offenses under chapter 708 before Act 230 was enacted, however, would not have met the criteria set forth in Act 230 because the criteria are to apply when the first-time class C felony property offenders are being sentenced. Specifically, section 706- (1) in section 1 of Act 230 requires the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to

- dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (c) The court has determined that the offense for which the person is being sentenced is related to the person's substance abuse dependency or addiction;
 - (d) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person's history, including whether substance abuse treatment has previously been afforded to the person, and an appraisal of the person's current circumstances and attitude; and
 - (e) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

Therefore, the Department believes that amending Act 230 would not accomplish the bill's objective. The Department suggests instead amending section 706-622.9 by adding new subsection (4) as follows:

(4) A person sentenced before June 22, 2006, for any class C felony property offense under chapter 708, and who would have qualified for sentencing pursuant to this section had that person been sentenced after the enactment of this section, and who otherwise meets all the requirements of this section for expungement, may apply to a court for expungement of the record of conviction for the property offense.

The court, upon written application from the person, shall issue a court order to expunge the record of conviction for the property offense; provided that:

- (a) The person has complied with the terms of the sentence imposed by the court;
- (b) The court finds that the person would in fact have qualified for expungement pursuant to this section;
- (c) The person has not been convicted of a felony offense in this or another jurisdiction prior to or after the conviction for which the person is applying for expungement; and
- (d) The court makes the finding that the person is currently nonviolent, based upon the court's review of the person's current criminal history, the factual circumstances of the offense for which the person is seeking expungement, and any other relevant information.

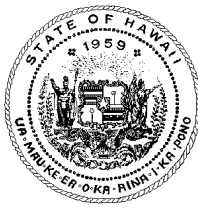
If the court cannot make the finding that the person fulfilled the criteria required in paragraph (b) at the time of sentencing, the court may nevertheless issue an order to expunge the record of conviction for the property offense; provided that the court finds that the person has successfully completed a substance abuse treatment program.

A person granted an expungement of conviction under this subsection shall not be eligible for another expungement of conviction under this section.

[Note: Subsections (4) and (5) of section 706-622.9 will need to be renumbered if new subsection (4) is inserted]

Thank you for the opportunity to provide comments on this bill.

JOSH B. GREEN, M.D.
GOVERNOR



MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

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

Ke Komikina Uku Luaahi Kalaima

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TESTIMONY ON SENATE BILL 2522
RELATING TO EXPUNGEMENT

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, February 13, 2024; 10:00 AM
State Capitol, Conference Room 016 & Videoconference

Good morning Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify before you today. The Commission strongly opposes the passage of Senate Bill 2522. This bill allows minors convicted of driving under the influence of an intoxicant and first time property offenders to apply for an expungement under certain circumstances. The potential expungement of these crime will have a detrimental impact on community safety because it eliminates subsequent offender penalties and allows minors who drive under the influence of an intoxicant to erase their criminal record without adequate consideration of the risk they pose to the community.

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

Most intoxicated drivers have driven impaired multiple times before their first arrest. Allowing minor offenders to have their criminal record expunged removes accountability for the offender and puts the community at risk.

Thank you for providing the Commission with the opportunity to testify in strong opposition of Senate Bill 2522.



Mothers Against Drunk Driving
Hawaii State Office
madd.org/Hawaii

745 Fort Street
Suite 303
Honolulu, HI 96813

808.532.6232 direct
877.MADD.HELP victim support
877.ASK.MADD

February 6, 2024

To: Senator Karl Rhoads, Chair, Senate Committee on Judiciary, Committee Members on Judiciary; Senator Mike Gabbard, Vice Chair; and Members of the Committee

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

Re: Senate Bill 2522 – RELATING TO EXPUNGEMENT.

On behalf of Mothers Against Drunk Driving (MADD), I write in opposition to the proposed bill Expungement–(SB2522). MADD represents impaired driving victims and survivors, who do not support the expungement of a drunk or impaired driving offense that resulted in a probation before judgment (PBJ).

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

MADD urges you to oppose SB2522. Hawaii must ensure that those who drive drunk or impaired are held accountable for their deadly choices. Expungement removes accountability and puts motorists at higher risk.

Thank you for the opportunity to testify,

Alice Liu

Program Director,
Mothers Against Drunk Driving (MADD) Hawaii

State of Hawai'i
The Office of the Public Defender

S.B. No. 2522: RELATING TO EXPUNGEMENT

Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members

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

The Office of the Public Defender supports the effort to give chances to start anew for those who commit criminal offenses, finish their sentence, and have made positive changes in their lives. This bill does just that.

While drunk driving is indeed a major social problem, first-time offenders who have served their sentence should not have to face a lifetime of disclosing something that resulted from a brief but terrible lapse in judgment. This bill acknowledges the need to give people a second chance.

Opportunity Youth Action Hawai‘i

February 13, 2024

Senate Committee on Judiciary
Hearing Time: 10:00 AM
Location: State Capitol Conference Room 016
Re: SB2522, Relating to Expungement

Aloha e Chair Rhoads, Vice Chair Gabbard, and members of the Committee,

On behalf of the Opportunity Youth Action Hawai‘i hui, we are writing in **strong support** of SB2522, relating to expungement. This bill allows persons convicted of certain criminal violations to apply to the court for an expungement order under certain circumstances.

It is essential to recognize that individuals who have served their sentences and demonstrated a commitment to rehabilitation should not be indefinitely burdened by the stigma of past mistakes. Allowing for the expungement of certain criminal records provides these individuals with a second chance to fully reintegrate into society, pursue meaningful employment opportunities, and contribute positively to their communities.

Moreover, SB2522 represents a crucial step towards addressing the systemic inequalities and barriers faced by marginalized populations within our criminal justice system. Far too often, individuals from disadvantaged backgrounds are disproportionately impacted by the long-term consequences of a criminal conviction, hindering their ability to access housing, education, and employment opportunities. By providing a pathway for expungement, this legislation promotes fairness, equity, and social justice for all members of our society.

It is important to note that this bill includes safeguards to ensure that expungement is granted based on a thorough review of each individual case by the court, taking into account factors such as the nature of the offense and the individual’s rehabilitation efforts.

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

Please support SB2522.

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