

JON N. IKENAGA
PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

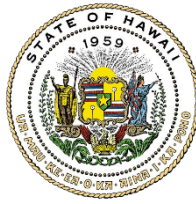
APPELLATE DIVISION
TEL. NO. (808) 586-2080

DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
TEL. NO. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y. C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAII 96720
TEL. NO. (808) 974-4571
FAX NO. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. NO. (808) 327-4650
FAX NO. (808) 327-4651

KAUAI OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAII 96766
TEL. NO. (808) 241-7128
FAX NO. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER, STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY**

March 14, 2024

HB 2513, HD1: RELATING TO EXPUNGEMENT

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office of the Public Defender supports HB 2513, HD1.

Currently, those convicted under Hawaii Revised Statute (HRS) § 291E-64 (Operating a Vehicle After Consuming a Measurable Amount of Alcohol; Persons Under the Age of Twenty-One), or who qualify for sentencing under HRS § 706-622.9 (Sentencing for First-Time Property Offenders) are able to expunge their conviction and arrest record. This bill would allow those individuals convicted before the laws explicitly permitted expungement to receive the same benefit afforded by the current laws.

As many as one in three adults in the U.S have some sort of criminal record.¹ “A criminal records can be a life sentence to poverty, creating barriers to jobs, housing, public assistance, education, family, reunification, building good credit and more.”² Our Office has seen the impact of a lifelong criminal record on our clients and the barriers it creates to becoming a productive and contributing member of the community. While those who would benefit from

¹ Americans with Criminal Records, The Sentencing Project. See <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

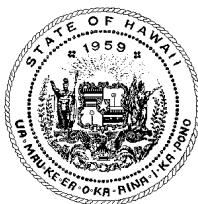
² “Working with communities and government to fundamentally transform the process of clearing records,” Code for America (<https://codeforamerica.org/programs/criminal-justice/automatic-record-clearance/>)

this bill have older convictions and arrest records, it would provide them a meaningful chance to access opportunities, such as employment, education and community involvement, that they have previously been unable to pursue.

The expansion of those eligible for expungement under these statutes still requires those to show proof of completion and compliance with court supervision and prohibits expungement if subsequent convictions have been incurred. In other words, only those who have demonstrated rehabilitative efforts and meaningful life changes would qualify for expungement. We believe it is only fair that the same opportunities for expungement that currently exist be applied retroactively to benefit those previously convicted.

Thank you for the opportunity to comment on HB 2513, HD 1.

JOSH B. GREEN, M.D.
GOVERNOR



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

Ke Komikina Uku Luaahi Kalaima

1164 Bishop Street, Suite 1530

Honolulu, Hawaii 96813

Telephone: 808 587-1143

Fax: 808 587-1146

MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 2513, HD1
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

Friday, March 15, 2024; 9:45 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 House Bill 2513, HD1. 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 House Bill 2513, HD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU

STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515 • WEBSITE: www.honoluluProsecutor.org

THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I



THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i

March 15, 2024

RE: H.B. 2513, H.D. 1; RELATING TO EXPUNGEMENT.

Chair Rhoads, Vice Chair Mike Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu stands in **strong opposition** to the passage of H.B. 2513, H.D.1 because it is over broad and as a result will have a detrimental impact on public safety.

Although Section 2 of the proposed bill states that it “shall not apply to persons in possession of a commercial learner’s permit or commercial driver’s license or convicted in a commercial motor vehicle or while transporting hazardous materials,” it does not address the possibility that a person after receiving the expungement would later apply for a commercial driver’s license. The Federal Motor Carrier Safety Administration (FMCSA) requires all applicants for a commercial driver’s license to undergo a driving record check across all 50 states and the District of Columbia. The proposed bill would create an expungement that could jeopardize public safety across the entire United States by undermining the federal driving record check.

H.B. 2513, H.D. 1 Section 3 of the proposed bill is also flawed. The amendment to H.R.S. section 706-622.9 (1) proposes that “...a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under section 706-606.5, section 706-622.5, or this section shall be eligible to be sentenced to probation...” The words “shall be eligible” are clearly unnecessary since judges through their own discretion already sentence first-time class C property offenders to either a deferral or probation. The proposed language of this bill should be amended from “...a person convicted for the first time

of any class C felony property offense...” to “...a person convicted for the first time *a single* class C felony property offense...” Persons facing concurrent first-time sentencing for multiple class C property offenses are often not appropriate for probation. Similarly, Habitual Property Crime offenders are often not appropriate for probation. The Legislature passed H.R.S. § 708-803 into law in 2016 to address the “habitual property crime perpetrator” who is defined as a person who, within ten years of the instant offense, has convictions for offenses within H.R.S. Chapter 708 for:

- (a) Any combination of two felonies or misdemeanors; or
- (b) Any combination of either one felony or one misdemeanor and one petty misdemeanor; or
- (c) Three petty misdemeanors.

The Habitual Property Crime law was designed to address the numerous crimes committed by offenders who target retail merchants and others. Habitual property crime is a class C felony property offense which will fall within the scope of the proposed bill. The language of H.B. 2513, H.D. 1 should not conflict with sentencing requirements of H.R.S. § 708-803(5) which states “[f]or a conviction of under this section, the sentence *shall* be either:

- (a) An indeterminate term of imprisonment of five years; provided that the minimum term of imprisonment shall not be less than one year; or
- (b) A term of probation of five years, with conditions to include but not be limited to one year of imprisonment; provided that probation shall only be available for a first conviction under this section.

Our courts need the option to sentence Habitual Property Crime Offenders defendants to prison when they are on a crime spree.

Finally, H.B. 2513, H.D. 1 Section 3 adds H.R.S. § 706-622.9 (4) which allows a person sentenced prior to June 22, 2006 to apply for an expungement provided they otherwise meet all the requirements of the section for new offenders. This amendment ignores the criminal history of the defendant after the first conviction. If a person committed new offenses even after successfully completing probation or completing a substance abuse treatment program why should they be eligible for the expungement? Granting this expungement is inconsistent with the criteria expressed in H.R.S. § 853-1 (2) used when assessing whether or not a person is deserving of a deferral, “It appears to the court that the defendant is not likely again to engage in a criminal course of conduct.” Deferrals are granted on an expectation based on a defendant’s history at the time of sentencing that it is unlikely that they will commit an offense in the future. It is absurd to grant an expungement for any individual whose criminality did not end with the first offense. The bill should add language that makes clear that a person that had a criminal history after their first offense shall not be granted an expungement.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu stands in **strong opposition** to the passage of H.B. 2513, H.D.1.

Thank you for this opportunity to testify on H.B. 2513, H.D.1.



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 15, 2024

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

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

Re: House Bill 2513 – RELATING TO EXPUNGEMENT.

On behalf of Mothers Against Drunk Driving (MADD), I write in opposition to the proposed bill Expungement–(HB 2513). 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 HB2513. 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

Opportunity Youth Action Hawai‘i

March 15, 2024

Senate Committee on Judiciary
Hearing Time: 9:45am
Location: State Capitol Conference Room 016
Re: HB2513 HD1, 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 HB2513 HD1, relating to expungement. This bill allows persons convicted of certain criminal violations to apply to the court for an expungement order under certain circumstances. The bill’s amendments clarify the reach of this measure and certain aspects of the process.

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, HB2513 HD1 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 HB2513 HD1.

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



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
MARCH 15, 2024
HB 2513 HD1 RELATING TO EXPUNGEMENT**

Good morning, Chair Rhoads, and members of the Senate Committee on Judiciary. 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.

We respectfully oppose HB 2513 HD1. This measure expands expungement eligibility to persons whose convictions for consuming a measurable amount of alcohol while underage or first-time property offenses predated current expungement provisions; and is effective 7/1/3000.

While expunging criminal records can offer individuals a fresh start and help them reintegrate into society, it is essential to balance this goal with considerations of public safety, victim rights, and the potential consequences for businesses and communities affected by retail theft.

This measure will have a significant impact on retailers. While we acknowledge that shoplifting is not a violent crime, it is a serious crime to those being violated. **Expunging criminal records, even for their first offense can send the message that there are no lasting consequences for engaging in criminal behavior.** This may undermine efforts to promote personal responsibility and accountability for one's actions, potentially perpetuating a cycle of criminality. **If a shoplifter knows that their criminal records will be expunged, they might be less deterred from engaging in similar criminal behavior in the future.** Retailers are already frustrated seeing that many of those who shoplift in our store have no real repercussions or consequences. We see shoplifter as old as our Kapuna coming into our stores stealing high end electronic items. Shoplifters as young as elementary school students stealing not candy but hundreds of dollars worth of designer items. **Shoplifters know the court system will not impose strict penalties sighting overcrowded jails. They are not doing it because they are hungry or to feed their family but as their "job" to make money from Organized Retail Crime.**

Organized retail crime has become an issue for retailers not only nationwide but even in Hawaii with stores closing due to theft losses and for safety precautions. As incidents of retail crime continue to escalate throughout the country, retailers have seen a dramatic jump in financial losses associated with theft. When taken as a percentage of total retail sales in **2022, shoplifting accounted for \$112.1 billion in losses, up from \$93.9 billion in 2021**, according to the 2023 [National Retail Security Survey \(https://nrf.com/research/national-retail-security-survey-2023\)](https://nrf.com/research/national-retail-security-survey-2023). [Forbes Advisor report \(https://www.forbes.com/advisor/business-insurance/impact-retail-theft-on-small-businesses/\)](https://www.forbes.com/advisor/business-insurance/impact-retail-theft-on-small-businesses/) that came out this past December **analyzed all 50 states to find which areas are the most and least affected by retail crime, and Hawaii ranked 4th as the most impacted.** Among all the states, Hawaii has the fifth highest value of stolen goods per resident at \$288. In comparison, D.C.'s average is \$173. [Hawaii's resident count \(https://census.hawaii.gov/main/2023-state-pe/#:~:text=On%20July%201%2C%202023%2C%20the,State%20of%20Hawaii%20was%201%2C435%2C138.\)](https://census.hawaii.gov/main/2023-state-pe/#:~:text=On%20July%201%2C%202023%2C%20the,State%20of%20Hawaii%20was%201%2C435%2C138.) in July was 1,435,138.

We ask that you hold this measure. Mahalo for the opportunity to testify.