

State of Hawai‘i
The Office of the Public Defender

S.B. No. 2706: RELATING TO EXPUNGEMENT OF CRIMINAL
RECORDS

Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members

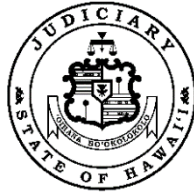
The Office of the Public Defender **supports** this bill.

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

Long after a person is found not guilty at a trial, a judge dismisses the case, or even after a prosecutor decides not to bring charges at all, the arrest record remains. Employers and landlords hire non-government companies to run background checks on applicants, and when that arrest record comes up, the applicants’ chances of getting the job or landing a place to live shrink.

The only way to get the record expunged is through an application process initiated by the arrestee. Because it is not a criminal case, they are not entitled to representation or assistance from the Office of the Public Defender. They are expected to track down data, information, make necessary attachments, and then submit the form to the State. For people with limited assets, access to information, and funds, this is another barrier, and, in some cases, it is insurmountable.

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



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2024 Regular Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, February 13, 2024, 10:00 a.m.

State Capitol, Conference Room 016 & Videoconference

by:

Thomas J. Berger

Staff Attorney for the Hawai‘i Supreme Court

Bill No. and Title: Senate Bill No. 2706, Relating to Expungement of Criminal Records.

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

Judiciary’s Position:

We appreciate the legislative intent of the bill and most assuredly share the Committee’s concerns about simplifying the process for self-represented parties. However, we respectfully request this measure be deferred, and offer the following comments for your consideration:

1. **The Judiciary cannot support those provisions of the proposed bill which would limit judicial review and discretion.** First, Section 2 of the bill provides for automatic expungement of convictions by the Department of the Attorney General without court review: “(b) . . . the [Department] . . . shall: . . . (2) Automatically issue an expungement order annulling, canceling, and rescinding the record of conviction.” SB No. 2706, § 2 at 3:19-4:8. The Judiciary has serious concerns about this provision because it purports to provide the Department with the ability to overturn a conviction without court review.



There is an important distinction between the Department of the Attorney General expunging arrest records held by the Department or other law enforcement agencies versus the expungement of a conviction (SB No. 2706, § 2 at 3:19-4:8). While both phrases refer to “expungement,” there is a fundamental difference between the “expungement of an arrest record” and the “expungement of a conviction” that are critically not reflected in the bill as presently drafted. Specifically, when a judgment of conviction is entered by the court, that judgment can only be set aside, reversed, vacated, or amended by various actions of the court (e.g., appellate action; habeas corpus relief; post-conviction proceedings, expungement of conviction by the court under HRS §§ 706-622.5(4), 706-622.9(3)).¹ In this way, judicial review is required.

Next, Section 2(d) of the bill contemplates automatic sealing of court records without court review. SB 2706, § 2 at 4:20-5:4. The Judiciary has serious concerns about this provision because the decision to seal a case file requires case-by-case review. For example, the court must perform a case-by-case review of requests to seal a case file based on the Department of the Attorney General’s “expungement order . . . rescinding the record of arrest” under HRS §§ 831-3.2(a), 831-3.2(f), and issue the appropriate order. The prosecutor, the Department of the Attorney General, the probation office, the public, and/or the press may have a position on the total sealing of a case file, and the court has the opportunity to consider these positions with case-by-case review. Moreover, on a criminal case with multiple defendants or multiple convictions, judicial discretion is needed as to the timing and scope of the sealing of those records. This is because the criminal case may still be open as to some co-defendants or offenses.

As a possible solution, the Judiciary suggests significant revisions be made to this measure to provide for judicial review and discretion consistent with the comments set forth above.

2. **The bill would cause significant operational impacts to the Judiciary.** While the exact operational impacts are difficult to quantify and the Judiciary is still evaluating this measure, a preliminary assessment indicates that the total cases covered by this bill would be in the tens-of-thousands. In 2012, the electronic filing process began for criminal cases initiated in district court. This bill, as drafted, appears to cover convictions from around 2019 and earlier.

Now, if we use FY 2019-2020 as an example, that year statewide in district courts nearly 30,000 convictions were entered for misdemeanor cases (e.g., assault, sex offenses, theft, weapons offenses, terroristic threatening, motor vehicle DUI, reckless

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



driving, driving without a license, etc.).² Finally, the data and impacts this measure would have in the circuit courts have yet to be gathered and identified; however, it is fair to say that the operational impacts to review motions to expunge and/or seal on these cases in both the district and circuit courts would be significant, and would strain resources that would otherwise be focused on the efficient resolution of pending criminal and civil matters.

- 3. Significant Costs.** The costs to the Judiciary are not addressed in the proposed bill. First, it will require many more staff to review and process the requests to expunge and/or seal court records. While the Judiciary is still evaluating the total impact of this measure, we conservatively estimate that the Judiciary would need to hire dozens of staff dedicated solely to this task of evaluating requests to expunge and/or seal tens-of-thousands of cases.

Second, implementing this measure may require further technological enhancements to the Judiciary Information Management System (JIMS) with likely substantial costs. Additional study is needed to evaluate these costs and feasibility.

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

Finally, in addition to the above-concerns, the Judiciary shares with this Committee the following explanation from a report funded by the Clean Slate Initiative (CSI): “Clean Slate initiatives are often referred to as ‘automatically’ clearing criminal records for eligible cases and individuals; [however] the process is not automatic *per se*, but rather *automated* at least to some degree.”³ And continuing, “Research indicates that no Clean Slate initiatives studied are issuing blanket sealing provisions. In every case, the court must identify or validate the identification of specific people, charges, cases, and adjudications that will be cleared.” This is a labor-intensive process that is deserving of thoughtful consideration before implementation. Fortunately, there are models that could be studied to determine what desired outcomes are possible in Hawai‘i.

² 2020 Annual Report Statistical Supplement, Table 22 (10,996 convictions for district courts (excluding traffic)) and Table 27 (18,531 convictions for district courts including DUI, reckless driving, and other offenses).

³ ROBERTS, DAVID J., ET AL., TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE: RESEARCH FINDINGS (2023), available at <https://static1.squarespace.com/static/62cd94419c528e34ea4093ef/t/643580d2e1b38045c120495f/1681227986297/Tech+Op+Challenges+Clean+Slate+ResearchFindings.pdf> (research by SEARCH, the National Consortium for Justice Information and Statistics); see also *Our Work*, CLEANSLATEINITIATIVE.ORG, <https://www.cleanslateinitiative.org/2023-annual-report> (last visited Feb. 3, 2024) (noting that the clean slate implementation report was a CSI-funded research project).



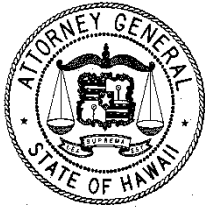
Senate Bill No. 2706, Relating to Expungement of Criminal Records
Senate Committee on Judiciary
Tuesday, February 13, 2024
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However, more time and coordination between stakeholders is needed to analyze options, assess available resources and processes, and identify challenges and possible solutions.

To this end, we respectfully note that further study is needed to analyze how other states have implemented “clean slate laws” and other record clearing measures to identify the challenges, solutions, and open issues that could guide policy in Hawai‘i.

In conclusion, as drafted the Judiciary is not able to support the provisions of Senate Bill No. 2706. We will, however, continue to work with the members of the Committee and the Legislature to develop solutions consistent with intent of this bill.

Thank you for the opportunity to testify on this matter.



**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. 2706, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS.

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) opposes this bill.

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

Records of convictions are necessary for law enforcement, prosecutors, and judges to evaluate the past behavior of defendants and assess potential risks when evaluating appropriate charging, bail amounts, conditions of bail, and post-conviction sentencing. Criminal records are also important for employers, landlords, and members of the public to make decisions on whether to welcome a person into their business, property, or other social activity. This bill proposes to add to chapter 831, HRS, a new section that will provide for “automatic expungement” under the specified criteria. Although subsection (e) of that new section, on page 5, lines 8-15, allows “the prosecuting attorney” to access expunged arrest and conviction records, it does not allow the Department, law enforcement, other prosecuting agencies from the federal government or other states, or the judiciary to access expunged records. It also does not provide employers, landlords, or members of the public a means to screen

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

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

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

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

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

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

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

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

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

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

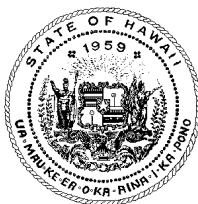
Pursuant to section 831-3.2, HRS, once an application for expungement is approved, the Department mails a certificate of expungement, with the mugshot and fingerprints associated with the arrest or conviction, to the qualifying individual. Confirming an individual's mailing address can be very difficult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

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

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

Currently, over 2.2 million records, arrests, and convictions would qualify for expungement under this bill. If fees, fines, costs, assessments, or charges related to a case eligible for expungement are waived, the Department would need adequate funding to support personnel and operational expenses. Without adequate fiscal support, staffing will be overstretched and leave systems critical to public safety vulnerable; moreover, the Department might be unable to implement the automatic expungement process effectively. Even after the initial wave of expungements, maintaining an automatic expungement process would be logistically problematic. Though certain steps of the process could be automated, this would still require manual processes (i.e., validating the identification of specific people, charges, and cases) for literally thousands of cases per year.

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



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

Ke Komikina Uku Luaahi Kalaima

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TESTIMONY ON SENATE BILL 2706
RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS
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 2706. SB 2706 provides for the automatic expungement of conviction records for petty misdemeanants, misdemeanants, and nonviolent class C felons if certain criteria are met. The offenses eligible for automatic expungement include domestic violence (AFHM), harassment by stalking, certain sex offenses, sexual exploitation, promoting pornography for minors, and habitual intoxicated driving. The automatic expungement of these crimes will have a detrimental impact on the victims and community safety. In addition, SB2706 does not require that offenders meet their court-ordered restitution obligations before their record is expunged, further harming victims.

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

The purpose clause for SB2706 discusses the impact of the proposed bill on offenders but does not address the impact on victims and community safety. Automatic expungement of crimes will allow individuals with a history of serious offenses to erase their criminal record

without adequate consideration of the risk they pose to their victims and community safety. This bill also undermines subsequent offender penalties for habitual crimes including domestic violence (AFHM) and intoxicated driving.

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

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

Thank you for providing the Commission with the opportunity to testify in strong opposition of Senate Bill 2706.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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Victim/Witness Program 808-241-1898 or 800-668-5734

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Thirty-third State Legislature
Regular session of 2024
State of Hawai'i
February 8, 2024

RE: SB 2706 Relating to Expungement of Criminal Records

Dear Chair Rhoads:

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

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

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

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

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

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

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

The Office of the Prosecuting Attorney, County of Kaua'i OPPOSES SB 2706, that would allow for expungement of petty misdemeanors and misdemeanors after five years without a conviction, and for nonviolent Class C Felonies after seven years without a conviction.

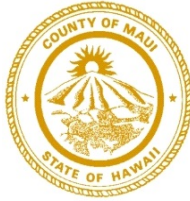
Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests that this measure not be passed.

Thank you very much for the opportunity to testify.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



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TESTIMONY
ON S.B. 2706 RELATING TO
EXPUNGEMENT OF CRIMINAL RECORDS

TO: Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: February 12, 2024

SUBJECT: **OPPOSITION TO SB 2706, EXPUNGEMENT OF CRIMINAL RECORDS**

Thank you for the opportunity to testify in **OPPOSITION** to SB 2706 and request that it be deferred. Although we appreciate the legislature's efforts to make it easier for eligible citizens to expunge their criminal record, the bill in its current form would make it harder for our Department to not only protect public safety, but to seek a just and appropriate outcome in each case. We oppose this measure for the following reasons:

1. This bill appears to allow automatic expungement of conviction records in all petty misdemeanor, misdemeanor and nonviolent class C felony cases. Although the bill creates a lookback period of five or seven years without a subsequent conviction when determining whether an offender is eligible for expungement, it does not allow the attorney general to evaluate each case to determine whether there are other factors weighing against expungement. For example, HRS §831-3.2 lists specific scenarios where expungement of arrest records is not appropriate, including: 1) arrests that do not result in conviction because of bail forfeiture, and 2) acquittals and dismissals resulting from mental health issues under HRS Chapter 704.

2. As drafted, the bill also appears to allow automatic expungement of convictions for serious offenses such as Operating a Vehicle Under the Influence of an Intoxicant (HRS § 291E-61), Habitually Operating A Vehicle Under the Influence of an Intoxicant (HRS § 291E-61.5), Harassment by Stalking (HRS § 711-1106.5), Aggravated Harassment by Stalking (HRS § 711-1106.4), Sexual Assault in the Third and Fourth Degree (HRS §§ 707-732 and 707-733), Electronic Enticement of a Child in the Second Degree (HRS § 707-757), Extortion in the

Second Degree (HRS § 707-766), Assault in the Third Degree (HRS §707-712), Assault Against a Law Enforcement Officer in the Second Degree (HRS §707-712.6), Promoting Child Abuse in the Third Degree (HRS §707-752), Burglary in the Second Degree (HRS § 708-811), Criminal Property Damage in the Second and Third Degree (HRS §§ 708-821 and 708-822), Theft in the Second, Third and Fourth Degree (HRS §§ 708-831, 708-832 and 708-833) Cruelty to Animals in the First and Second Degree (HRS §§ 711-1108.5 and 711-1108.4), Riot (HRS § 711-1103) and Violation of Privacy in the First and Second Degree (HRS §§ 711-1110.9 and 711-1111). For example, although the bill restricts felony expungement to “non-violent” offenses, that term is not defined and only limited to felony offenses. Thus, violent misdemeanor offenses such as Assault in the Third Degree, as well as arguably “non-violent” felony and misdemeanor offenses involving non-consensual sexual contact such as Sexual Assault in the Third and Fourth Degree, appear to fall within the bill’s scope.

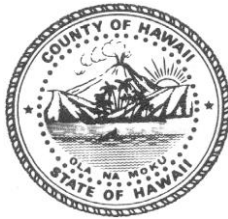
3. Allowing conviction expungement for offenses such as Operating a Vehicle under the Influence of an Intoxicant (“OVUII”), Habitual OVUII , and Theft in the Second, Third and Fourth Degree prevents repeat offenders from facing appropriate punishment for their actions. Exiting OVUII and Theft offenses allow for increased penalties for offenses committed within ten years of prior convictions, but SB 2706's shorter time frame is inconsistent with those provisions. Moreover, expungement of prior offenses would prevent certain repeat offenders from facing mandatory minimum terms of imprisonment under HRS § 706-606.5, even if those offenders were incarcerated (and thus unlikely to receive further convictions) for the five or seven year period contemplated by this bill.

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes the passage of SB 2706 and requests that it be deferred. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY



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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT TO SENATE BILL NO. 2706

A BILL FOR AN ACT RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, July 13, 2024 at 10:00 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

Honorable Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in opposition of Senate Bill No. 2706.

This bill was drafted with the intention to expand eligibility for, and automates, the expungement of conviction records if certain criteria are met, including the lack of a conviction record for a specified time period following the date conviction.

This bill fails to acknowledge the existence and effectiveness of deferred pleas and conditional discharges, which already allow individuals to avoid convictions on their records by meeting certain conditions. (Hawaii Revised Statutes Chapter 853 and Section 712-1255).

This bill also proposes a shorter lookback period than what is currently prescribed under the existing law for offenses with graduated penalties such as operating a vehicle under the influence of an intoxicant (OVUII) and habitual property offender. Appropriate lookback periods are important to discourage repeat offenses and improve road safety.

Legal cases can take several years to resolve, potentially allowing individuals to have their records expunged while still facing charges or serving sentences. The law does not take into account the impact and potential trauma upon victims of crime and others negatively impacted by the actions of the offenders.

The bill does not specify how law enforcement agencies, including county police departments and prosecutors, would access prior conviction data. This lack of clarity raises concerns about law enforcement safety and effective enforcement.

The bill minimizes the seriousness of criminal conduct characterized as non-violent, such as Habitual Commercial Sexual Exploitation or Negligent Homicide in the Second Degree. Automatic expungement of such felonies after seven years will jeopardize public safety.

In summary, this bill overlooks important aspects related to deferred pleas and conditional discharges, lookback periods, law enforcement access to data, and the seriousness of certain offenses. These oversights will have negative implications for public safety and inhibit law enforcement.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, opposes Senate Bill No. 2706. Thank you for the opportunity to testify on this matter.



February 13, 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 2706 – RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS.

On behalf of Mothers Against Drunk Driving (MADD), I write in opposition to the proposed bill Expungement of criminal records–(SB2706). MADD represents impaired driving victims and survivors, who do not support the expungement of a drunk or impaired driving offense that resulted in a probation before judgment (PBJ).

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

MADD urges you to oppose SB2706. 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



Date: February 9, 2024

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

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

RE: Testimony on SB 2706
Relating to Expungement of Criminal Records

Hearing: February 13, 2024, Conference Room 016, 10:00am

Good Morning Chair Senator Rhoads, Vice Chair Senator Gabbard and Members of the Senate Judiciary Committee:

The Sex Abuse Treatment Center (SATC) **opposes** SB 2706, as it relates to any sexual offense and those offenses covered under HRS Chapter 846E, Registration of Sex Offenders and Other Covered Offenders.

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

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

Similarly, HRS 707-733(1)(a), Sexual Assault in the Fourth Degree is a classified misdemeanor offense, that involves the sexual touching of another person, without their consent. This offense could include the sexual touching of a minor 16 years and older, and any adult. Under this specific misdemeanor offense, sex offender registration is required under HRS 846E for 10

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

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

The Sex Abuse Treatment Center strenuously opposes passage of this legislation as it relates to sexual offenses, those covered by HRS 846E, offenses involving child victims, and those offenses covered by longer lookback periods, beyond the 5 and 7 year time period proposed in this legislation.

Thank you for the opportunity to submit testimony in opposition of SB 2706.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
FEBRUARY 13, 2024
SB 2706 RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS.**

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 SB 2706. This measure expands eligibility for, and automates, the expungement of conviction records if certain criteria are met; and beginning 12/1/2026, requires the Attorney General to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

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 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 repeat offenders coming into our stores daily to shoplift as they know the court system will not impose strict penalties sighting overcrowded jails.

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](#). [Forbes Advisor report](#) 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. [Hawaii's resident count](#) in July was 1,435,138. In comparison, D.C.'s average is \$173.

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

SB-2706

Submitted on: 2/12/2024 2:55:13 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jennifer Brown	Testifying for Hawai'i Innocence Project and Beyond Guilt Hawai'i	Support	In Person

Comments:

We strongly support this bill as it expands what qualifying convictions would be eligible for expungement and creates an automated process for expunging qualifying convictions.

Those who have been convicted of crimes have met their various obligations as required by the court, and should not have to suffer a lifetime with a conviction on their record. We must most move from our punitive system to a system that believes and understands that people deserve the opportunity for a second chance and relief from a prior conviction. This is what this bill will allow, people who may have committed an offense but have been rehabilitated and deserve a second chance to have a clean record, and a clean slate.

We also would support an amendment to this bill to go one step further and allow for expungements of convictions that have been pardoned. Governor Pardons, especially in Hawai'i, are rarely if ever granted. In the rare cases that someone receives a pardon, the conviction still remains on their record. We would support an amendment to this bill that would allow for pardoned individuals to have their conviction expunged.

We would be happy to provide any technical and legal support as needed in order to see that the objectives of this bill are carried out.

Jennifer Brown, Associate Director Hawai'i Innocence Project and Beyond Guilt Hawai'i



February 13, 2024

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB2706 Relating to Expungement of Criminal Records

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 27 member programs statewide, I respectfully submit testimony in opposition to SB2706 and recommend this measure be deferred.

We have several concerns with this bill:

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

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



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

Sincerely,
Angelina Mercado, Executive Director

Opportunity Youth Action Hawai‘i

February 13, 2024

Senate Committee on Judiciary

Hearing Time: 10:00 AM

Location: State Capitol Conference Room 016

Re: SB2706, Relating to Expungement of Criminal Records

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 SB2706, expungement of criminal records. This bill expands eligibility for, and automates, the expungement of conviction records if certain criteria are met. Beginning 12/1/2026, this bill requires the Attorney General to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

SB2706 is a crucial step towards fostering rehabilitation, promoting fairness, and ensuring a more equitable and just society. Several states have similar “clean slate” laws. Pennsylvania, the first to institute an automatic record clearance legislation, has cleared over 45 million records since 2019. Issues with this program saw some individuals struggling to pay the required fees, and an increase in applications caused backlogs in processing however, taken alongside SB2689, which would eliminate fees from the expungement process, Hawai‘i is well on its way to proactively addressing these potential concerns.

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

Opportunity Youth Action Hawai‘i is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs. We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth 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 SB2706.

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



Hawai'i

Committee: Judiciary
Hearing Date/Time: Tuesday, February 13, 2024 at 10:00am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of SB2706 Relating to Expungement of Criminal Records**

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

The ACLU of Hawai'i **supports SB2706**, which expands eligibility for and automates, the expungement of conviction records if certain criteria are met. In addition, the measure requires the Attorney General, beginning 12/1/2026, to issue automatic expungement orders and the Judiciary to seal or remove information from publicly accessible databases.

The ACLU of Hawai'i believes in a society where all people, including those who have been arrested and/or convicted of a crime, and have paid their debt under the law, get an equal opportunity to contribute to society and build successful and fulfilling lives.

Research confirms that criminal records create barriers and in some cases block access to jobs, housing, education, participating in public programs and services, insurance, or participating fully in social and civil community life. These barriers have a ripple effect on families and their local communities and economies, disparately impacting people living in poverty, as well as Native Hawaiian and Pacific Islanders in Hawai'i.

Why is Clean Slate important?

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

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

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

In stark contrast, expungement helps people move on with their lives and get back to work. **[Research from the University of Michigan](#) finds that people are 11 percent more likely to be employed and are earning 22 percent higher wages one year after a record has been cleared.**

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

The Scope of the Problem in Hawai'i

In Hawai'i, it is estimated that anywhere from 400,000 to 560,800 people have a record. That is nearly 1 in 2, or over 50% of people are saddled with records that could block their access to jobs, housing, education, starting a business, or participating fully in social and civic community life.³

Clean Slate Laws

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

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

SB2706 is important for Hawai'i as it would create a process for more people to experience expungement relief. Some people are already eligible to have their records cleared through expungement or sealing. However, the vast majority don't ever get

¹ <https://nationalreentryresourcecenter.org/news/clearing-path-conviction-employment#:~:text=Studies%20have%20shown%20that%20the,effects%20of%20a%20criminal%20record>. See also, <https://www.prisonpolicy.org/reports/outofwork.html>

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

³ Clean Slate Initiative estimated data from 2022.

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

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

Proposed Amendment

We recommend including language that requires removal of records from screening databases. Many employers and property managers find out about criminal convictions not from government databases directly, but from their third-party criminal history screening services.

To ensure expunged convictions do not continue to serve as barriers to individuals, SB2706 should mandate that screening services remove all expunged convictions from the next update. Indiana Code § 35-38-9-12 or Virginia Code § 19.2-392.16 provides examples of statutory language that may be used to strengthen this measure.

For the above reasons, we urge the Committee to support this Clean Slate measure. Thank you for the opportunity to testify in support of **SB2706**.

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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TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

SENATE COMMITTEE ON JUDICIARY

FEBRUARY 13, 2024

SB 2706, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** SB 2706, relating to expungement of criminal records. Pursuant to the “Public Safety and Disaster and Emergency Preparedness” section of the official Democratic Party of Hawai'i platform, the party believes that “public safety laws should be just, equitable and enforced fairly without discrimination. We believe that true justice restores people and communities.”

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

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

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

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

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee

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Abby Simmons

Co-Chair, Legislative Committee

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February 12, 2024

S.B. No. 2706: RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS

Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members

As a career criminal defense attorney, I fully support this bill.

An arrest can jeopardize a person's housing, job prospects, and earning capacity. And because overpoliced areas—which tend to be neighborhoods for people of color and the working class—produce more arrests than other places, vulnerable people in our society are more likely to wrestle with arrest records than anyone else. I have had people ask for help with expungement 20 years after their arrests and/or convictions because it is keeping them from being hired for work.

Long after a person is found not guilty at a trial, a judge dismisses the case, or even after a prosecutor decides not to bring charges at all, the arrest record remains. This has long reaching effects for many, many years post arrest where a person may have been fully rehabilitated after a transgression while they were young.

Employers and landlords hire non-government companies to run background checks on applicants, and when that arrest record comes up, the applicants' chances of getting the job or landing a place to live shrink.

The only way to get the record expunged is through an application process initiated by the arrestee. They are expected to track down data, information, make necessary attachments, and then submit the form to the State. For people with limited assets, access to information, and funds, this is another barrier, and, in some cases, it is insurmountable.

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

Very truly yours,

/s/ Wendy A. Hudson

Wendy A. Hudson

SB-2706

Submitted on: 2/8/2024 3:54:18 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Misakian	Individual	Oppose	Written Testimony Only

Comments:

My name is Greg Misakian and I oppose SB2706.

The current system should remain, and the "automatic" system, which may easily remove records of public officials and others that are important for the public to be aware of, is a concern.

SB-2706

Submitted on: 2/11/2024 6:33:58 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Abigail Naaykens	Individual	Oppose	Written Testimony Only

Comments:

Aloha Senator Rhoads, Senator Gabbard, and the Senate Committee on Judiciary,

My name is Abigail Naaykens and I am a graduate school student at the University of Hawai‘i at Mānoa and a Victim Advocate on the island of Kaua‘i. I serve people in our community that have been victims of interpersonal violent crimes, including but not limited to: child abuse, intimate partner violence, family violence, and sexual assault.

I am submitting this testimony in **opposition** to SB2706 relating to expungement of criminal records. According to the United States Sentencing Commission, "over 60 percent (63.8%) of violent offenders recidivated by being rearrested for a new crime or for a violation of supervision conditions" ([2019](#)). The recidivism rate of violent offenders is simply too high to justify the expungement of criminal records proposed in the draft of this bill. Violent behaviors in interpersonal relationships are shown to escalate ([National Domestic Violence Hotline](#)), indicating the need to take certain misdemeanor offenses seriously and not to remove the record of said criminal behaviors.

I kindly, yet strongly, urge the Senate Committee on Judiciary to defer this bill. Mahalo for giving me the opportunity to submit testimony.

Sincerely,

Abigail Naaykens

SB-2706

Submitted on: 2/9/2024 9:11:52 AM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lindsey A Drayer	Individual	Oppose	Written Testimony Only

Comments:

I respectfully submit testimony in opposition to SB2706 and recommend this measure be deferred.

We have several concerns with this bill:

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

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

SB-2706

Submitted on: 2/9/2024 9:42:06 AM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Maddalynn Sesepasara	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in opposition to SB2706 and recommend this measure be deferred.

We have several concerns with this bill:

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

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

Maddalynn Sesepasara

SB-2706

Submitted on: 2/9/2024 1:07:47 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
mary drayer	Individual	Oppose	Written Testimony Only

Comments:

oppose this - based on victims rights

SB-2706

Submitted on: 2/10/2024 10:40:02 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
David Pullman	Individual	Support	Written Testimony Only

Comments:

Aloha,

I'm writing in support of this bill because it is so important that those who have been convicted of non-violent and less serious offenses be able to clear their records. Criminal convictions prevent people from securing housing and employment which ironically limits their options and is likely to cause them to resort to criminality out of necessity.

The automation of this process is crucial, because most people are completely unaware of the expungement process that does exist. The procedure is both costly and complicated. Most who are eligible for this relief never avail themselves of it.

The one correction that needs to be made to this bill is to include arrests that never result in conviction amongst the cases eligible for automatic expungement. Often people are wrongly arrested and never charged or their cases dismissed. Yet, their criminal record remains public. These people also have no idea they are eligible for expungement and if they are aware of it, don't know how to accomplish it. Better for the process to be automatically carried out by those who are knowledgeable and well-positioned to effectuate the expungements.

Thank you so much for your time and consideration!

SB-2706

Submitted on: 2/12/2024 12:50:25 PM

Testimony for JDC on 2/13/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Isabella Zingray	Individual	Oppose	Written Testimony Only

Comments:

I respectfully submit testimony in opposition to SB2706 and recommend this measure be deferred.

We have several concerns with this bill:

1. Prior convictions are an important consideration when assessing an individual for dangerousness and community safety. Domestic violence and stalking are petty misdemeanors and misdemeanor crimes, and aggravated harassment by stalking is a Class C felony (HRS 711-1106.4), that should not be automatically expunged. [Sexually violent behavior can include stalking](https://www.stalkingawareness.org/wp-content/uploads/2022/04/Stalking-Sexual-Violence-Fact-Sheet.pdf).⁽¹⁾
2. These are crimes that would be considered in the state's Domestic Violence Fatality Review (HRS 321-473). This draft legislation does not address whether a sealed, expunged record may be divulged for a Domestic Violence Fatality Review.
3. This draft legislation does not address instances when a person is pending conviction or charge after completion of the waiting period, or if they're still on probation or parole.
4. This draft legislation does not address restitution, reparations, or other forms of victim compensation that may still be owed.

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

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

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February 12, 2024

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
House of Representatives, State of Hawai`i

via: <http://www.capitol.hawaii.gov>

Dear Committee leadership and members,

Re: **SB2706 RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS
PLEASE SUPPORT AND AMEND to Provide For Automatic Expungement
For Acquittals, Discharges, and Dismissals With Prejudice**

Hearing Date: Tuesday, February 13, 2024
Time: 10:00 a.m.
Location: Conference Room 016
State Capitol
415 South Beretania Street

and thank you, Senator Chris Lee, for introducing this important legislation. I write in support but especially for the class of persons not contemplated by HRS Chapter 831, entitled “Uniform Act on The Status of Convicted Persons” (emphasis added): “The Exonerated” - persons that are arrested and never charged within the applicable statute of limitations; persons that are acquitted (found not guilty); persons discharged (judicial determination of no probable cause for arrest); and cases terminated via an order of dismissal with prejudice (nolle prosequi with prejudice).

Section 1 of SB2706 opens with: “The legislature finds that approximately seventy-seven million people living in the United States, or one in three adults, have a criminal record. (*Comment: please amend to include “including xyz persons in the State of Hawai`i”*). In some instances, the person was arrested but ultimately not convicted of any crime.” So the draft recognizes this class exists, but no such persons are accounted for in the proposed revisions to Chapter 831 set forth in section 2. Ultimately, a Chapter 831A entitled, “Act on the Status of Exonerated Persons,” is called for.

After suffering the indignity of arrest and “processing” (and if you are in the 3rd circuit that includes publication of your name, mug shot, and charge(s) printed in the Hawaii Tribune), potential pretrial detention in a county jail, missed work, and the emotional and psychological

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preoccupation with court proceedings, the adjudicated “free to go” is not in fact “free to go” until such time that the arrest record is expunged and the case is removed in the entirety from the publicly accessible database. And this should be automatic and occur at the same time judgment is entered. (The court can transmit the order of expungement to the Office of the Attorney General).

Under existing statute and circumstances, the exonerated are treated the same as the expungement-eligible persons that have been convicted or granted a deferral: they have to make the same application to the AG requesting expungement of the arrest, pay the same \$40.00 (money order or cashiers check only) to get one, wait months for the order to arrive, and then proceed to provide a copy of the order to the court with a letter requesting that the case record is sealed. Many if not most persons charged with a criminal offense under the laws of the State of Hawai`i either are not informed about the expungement/sealing post-adjudication procedures, and most if not all of do not know that expungement does not mean erasure.

And sealing the record in the publicly accessible database (e-court kokua) after expungement of the arrest is not enough. Right now, unless request specifically is made that the case title is redacted, a search by an individual’s name will yield a showing of, e.g. “State v. John Doe” and the case number, e.g., “3CC-23-0001234”. Click on the case to open it and this appears: “These records are not available for public inspection at this time,” (emphasis added). No, these records will not be made available public inspection at a later time or any time. That statement incites conviction conjecture: “hmm, this person must have something really bad probably involving a minor or other protected person, but in any event I know this is a criminal case because the case title is ‘State v.’”.

Thank you for your attention to this issue, in the interests of complete justice, and my comments today in these regards.

Sincerely, mahalo,

