

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

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

Wednesday, February 5, 2025, 9:15 a.m.
State Capitol, Conference Room 016 & Videoconference

By

Jennifer Awong
Staff Attorney, Criminal Administrative Division
Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 861, Relating to Expungement

Purpose: Authorizes the Hawai‘i Criminal Justice Data Center to transmit all expungement orders to the Judiciary to effectuate the purposes of Act 159, SLH 2023.

Judiciary's Position:

The Judiciary provides the following comment on this measure and seeks additional amendments to the bill as outlined below. The Judiciary has worked diligently to reconfigure our Judiciary Information Management System (JIMS) in order to effectuate the provisions of Act 159 (2023). The Judiciary is prepared to implement updates to the program on July 1, 2025, that will seal an entire court case from public view upon the filing of an expungement order issued by the Attorney General.

However, due to the limitations of the JIMS system, the Judiciary is unable to seal only portions of cases while leaving the rest available to the public. Specifically, where the expungement order received from the Attorney General’s office applies to only one (or more), but not all, of either: 1) the charges filed against a particular defendant in a multiple offense case, or 2) the total defendants in the case, JIMS does not have the capacity to seal only those offenses or defendants that are the subject of the order. Therefore, we are respectfully requesting the following amendments to Act 159 to address these limitations:



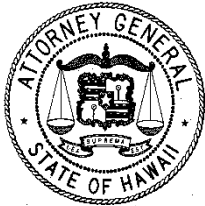
Senate Bill No. 861, Relating to Expungement
Senate Committee on Judiciary
Wednesday, February 5, 2025
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"(f) Every expungement order with a court case number issued by the attorney general shall be transmitted to the judiciary solely for the purposes of this section. The court shall seal or otherwise remove from the judiciary's publicly accessible electronic databases all judiciary files and other information pertaining to the applicable arrest or case of any person for whom an expungement order listing the court case number and arrest number associated with the offense has been entered and transmitted to the court[.]; provided that the court's duties under this subsection shall not apply to any case referenced in the expungement order where the person for whom the order has been entered:

- (1) Was charged with multiple offenses at least one of which is not the subject of the order; or
- (2) Is only one of multiple defendants in the case at least one of whom has not been the subject of a prior expungement order.

The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time."

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 861, RELATING TO EXPUNGEMENT.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 5, 2025 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Philip D. Higdon, Administrator, Hawaii Criminal Justice Data
Center

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports the intent of this bill with recommendations.

The purpose of this bill is to amend section 831-3.2, Hawaii Revised Statutes (HRS), to require the Hawaii Criminal Justice Data Center (HCJDC) to transmit all expungement orders to the judiciary.

Section 831-3.2, HRS, requires the Judiciary to seal or otherwise remove from the Judiciary's public database all information for which an expungement order listing the court case number has been entered and transmitted to the court. Currently, HCJDC lacks the authority to forward expungement orders to the Judiciary, which hinders the Judiciary's ability to fulfill its obligations under section 831-3.2, HRS.

The Department recommends that the proposed amendment to section 831-3.2(f) in section 2 on page 1, line 16, through page 2, line 1, be revised to state:

"(f) Every expungement order with a case number issued by the attorney general shall be transmitted to the judiciary solely for the purposes of this subsection." Without this clarification, the Judiciary will receive all expungement orders granted by HCJDC, potentially resulting in unnecessary research and additional work for the Judiciary.

The Department appreciates the opportunity to provide comments on this bill.

JON N. IKENAGA
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SB861 RELATING TO EXPUNGEMENT

Chair Rhoads, Vice Chair Gabbard, and Committee Members,

The Office of the Public Defender (OPD) **SUPPORTS THIS BILL**

LATE

An arrest can jeopardize a person's housing, job prospects, and earning capacity. 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 nongovernment 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. As the state is in possession of the record, it should be left to the State to expunge the record when cases do not result in a conviction.

We are grateful for the recent collaboration of the Judiciary, the Office of the Attorney General, and legal service providers to assist in hosting two expungement clinics on Oahu in the last several months in Waianae on September 28, 2024, and Waimanalo on January 11, 2025. According to our records, at the Waianae clinic processed 119 cases, worked with 80 individuals regarding prospective expungement, and submitted 72 of those individuals' cases for expungement. The Waimanalo clinic processed 42 cases and submitted 41 of those individuals' cases for expungement.

We are certain that there are hundreds of individuals in all districts throughout the state which could benefit from expungement and continue to lead law abiding lives without the burden of an easily searchable record which would discriminate them from contributing to our community.

COMMUNITY ALLIANCE ON PRISONS

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Wednesday, February 5, 2025

Room 016 & VIDEOCONFERENCE

9:15 AM

STRONG SUPPORT FOR SB 861 - EXPUNGEMENT ORDERS TRANSMITTED TO JUDICIARY

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 3,697 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on any given day. We are always mindful that 937 - 49% - of Hawai'i's imprisoned male population are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to express our **strong support for SB 861** that bill authorizes the Hawai'i Criminal Justice Data Center to transmit all expungement orders to the Judiciary to effectuate the purposes of Act 159, SLH.

¹ DCR Weekly Population Report, January 20, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-01-20.pdf>

This bill mandates that every expungement order issued by the Attorney General shall be transmitted to the Judiciary to effectuate Act 159. It is vital to democracy that the state has correct and updated information and CAP applauds this fix to the process of expungement!!

Community Alliance on Prisons is in strong support of this measure that will make the expungement process more efficient and asks the committee to positively consider this bill in the interest of justice.

Mahalo for this opportunity to share our thoughts!

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February 4, 2025

Rep. David Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
Committee on Judiciary
House of Representatives
33rd Legislature, State of Hawai`i

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

Dear Committee leadership and members,

Re: **SUPPORT FOR SB861, RELATING TO EXPUNGEMENT**

Hearing Date: February 5, 2025
Time: 9:15 a.m.
Location: Conference Room 016
State Capitol
415 South Beretania Street

I write to express support for this proposed legislation and to request amendments.

This bill authorizes the Hawai`I Criminal Justice Data Center to transmit all expungement orders to the Judiciary to effectuate the purposes of Act 159, SLH 2023.

Act 159 was based in part on findings “court records for an arrest or case that has been expunged from a person’s record may still be accessed by prospective employers, landlords, lenders, educational institutions, and others. Though expunged, these records can be regarded negatively and have a significant and long-lasting impact on a person’s future.”

In order that the legislative intent as expressed in Act 159 is fully realized, please consider amending this bill further to provide that the act of sealing the court record includes redaction of the case name, and further, that the statement “This record is not available for public inspection at this time” which presently appears in a search of a case that has been otherwise sealed pursuant to expungement, is removed. That messaging, coupled with the identification of the Defendant reasonably could lead to a conclusion that

1) this individual was criminally charged (e.g., State v. Defendant's Full Name) and 2) if the records are sealed this person must committed a crime involving children.

Thank you, Honorable committee leadership and members, for your attention to this issue and consideration of my letter. Mahalo.

Sincerely,

/s/ Georgette A. Yaindl
GEORGETTE ANNE YAINDL



LATE

Committee: Judiciary
Hearing Date/Time: Wednesday, February 5, 2025 at 9:15am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of SB861 Relating to Expungement**

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

The ACLU of Hawai'i **supports SB861**, which authorizes the Hawai'i Criminal Justice Data Center to transmit all expungement orders to the Judiciary to effectuate the purposes of ACT 159, SLH 2023.

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. Further, we fully supported the passage of ACT 159, SLH 2023.

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 and Pacific Islanders in Hawai'i.

Proliferation of Background Checks and the Collateral Consequences of Records

As the use of background checks has grown, so has the number of laws and restrictions limiting access to jobs, occupational licensing, credit, housing, education, and other basics. People with records potentially face some 50,000 such restrictions.¹

In the digital era, with nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges² now using background checks, any record—no matter how old or minor—can put employment, housing, education, and other basics permanently out of reach.

Scope of the Problem in Hawai'i

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

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

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

Current Process Hinders Access to Actual Expungement of Records

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

Thousands of people in Hawai'i are eligible to have their records cleared through sealing or expungement. However, the majority of people who are eligible for expungement do not ever get that relief because they can't afford a lawyer, pay the court fees, or figure out how to navigate the court petition process. Many are not even aware that expungement is an option for arrests. ***In short, eligibility for expungement doesn't always mean access to expungement.***

Racial Disparities in Arrest and Court Records in Hawai'i

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

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

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

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

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

Clean Slate Laws Increase Meaningful Second Chances

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

ACLU of Hawai'i supports the enactment of "Clean Slate" laws to expand access to second chances through legislation that will expand expungement eligibility and help more eligible records access expungement. **SB861 improve and accelerate automated expungement and increase access to true second chances in Hawai'i.**

Clean Slate is Good for Our Economy

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

Clean Slate laws have been proven to help people move on with their lives and get back to work. Research from the University of Michigan finds that people are 11 percent more likely to be employed and are earning 22 percent higher wages one year after a record has been cleared.⁵

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

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

For these reasons, the ACLU of Hawai'i supports SB861 and we encourage the committee to advance the measure.

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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