



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

ON THE FOLLOWING MEASURE:

H.B. NO. 145, H.D. 1, RELATING TO EXPUNGEMENT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 11, 2025

TIME: 9:45 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 this bill.

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, however, the current draft of this bill, House Draft 1, has addressed this concern.

The Department appreciates the opportunity to provide testimony.



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

Tuesday, March 11, 2025, 9:45 a.m.
State Capitol, Conference Room 016

By

Michelle D. Acosta

Deputy Chief Court Administrator
District Court of the First Circuit

Ernest K. Delima

Deputy Chief Court Administrator
District Court of the Second Circuit

Cheryl A. Salmo

Deputy Chief Court Administrator
District Court of the Third Circuit

Ro I. Kaing

Deputy Chief Court Administrator
District Court of the Fifth Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 145, H.D. 1, 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. (HD1)



Judiciary's Position:

The Judiciary supports the revisions made to this bill by the House Committee on Judiciary and Hawaiian Affairs. 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 receipt of an expungement order issued by the Attorney General and an order of the court.

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. This can only be done manually. Further, there are significant competing constitutional considerations involved when the court is presented with a request to seal a case that includes Judiciary records that fall within the right of access under the First Amendment to the United States Constitution of the press and the public.¹ This requires all of the requests to seal court records under section 832-3.1(f) to be considered on a case by case basis.

The vast majority of criminal cases are resolved through a plea negotiation where a defendant pleads to an included offense or as charged in one (or more) count(s) in a case in exchange for the State dismissing the remaining count(s). In those cases, under section 832-3.1(a), defendants could seek an expungement order from the department of the attorney general for those arrest records relating to those dismissed count(s), but the remaining arrest records for the count(s) that resulted in the defendant's conviction could not be expunged. For example, an individual could be initially arrested and charged with four offenses: two counts of sexual assault in the first degree, kidnapping, and unauthorized entry into a dwelling. The State and the defendant could enter into a plea agreement wherein the defendant agrees to plead guilty to one count of sexual assault in the first degree and to be sentenced to a twenty-year indeterminate term of imprisonment in exchange for the State dismissing the three remaining charges. In the judiciary records of the case all counts would be intertwined – all pleadings filed in the case (the pdf documents) would contain the originally charged offenses, the minutes from each hearing may refer to one or more of the offenses, the offenses would all be listed in the charges section, etc.. If the amendments made in HD1 do not remain in the bill, then, when the sealing of the records is authorized by the court, those records must be redacted manually, by hand, requiring substantial judicial resources and leaving large swaths of black redactions on the pleadings.²

¹ See, eg, *Forbes Media LLC v. United States*, 61 F.4th 1072, 1077 (9th Cir. 2023) (noting that with certain exceptions, "[t]he public generally has presumptive access to judicial opinions, hearings, and court filings....")

² The amount of pleadings filed in a case varies, however they often times number in the hundreds and each would have to be checked for any reference to the dismissed counts and redacted accordingly.



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The Judiciary is currently working on solutions to cases involving multiple defendants where only one (or some), but not all, defendants have received an expungement order from the office of the attorney general. However this solution, if viable, will only work prospectively. To remove a single defendant from a multiple defendant case that has already been filed will require substantial manual redaction of the case files similar to those cases with multiple offenses.

In light of these issues, the Judiciary respectfully requests that the amendments made to House Bill No. 145 by the House Committee on Judiciary and Hawaiian Affairs in HD1 regarding the multiple offense and multiple defendant court records remain in the proposed legislation that will go into effect on July 1, 2025. The Judiciary continues to work on solutions to effectuate the intent of the Legislature with respect to those multiple offense and multiple defendant records and would be able to report to the Legislature prior to the start of the 2026 Legislative Session regarding that progress. However, should those provisions be removed from the bill, the Judiciary respectfully requests additional judicial clerk positions for each of the 2nd, 3rd, and 5th Circuits as well as two judicial clerk positions for the 1st Circuit in order to fulfill the obligations of Act 159 (2023).

Thank you for the opportunity to testify on this measure.

JON N. IKENAGA
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HB145 HD1 RELATING TO EXPUNGEMENT

Chair Rhoads, Vice Chair Gabbard, and Committee Members,

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

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.



Committee: Judiciary
Hearing Date/Time: Tuesday, March 11, 2025 at 9:45AM
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of H.B. 145 H.D.1
Relating to Expungement**

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

The ACLU of Hawai'i strongly supports **H.B. 145 H.D. 1** that 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 Hawai'i Criminal Justice Data Center ("HCJDC") currently lacks the explicit statutory authority to forward expungement orders to the Judiciary. In turn, this hinders the Judiciary's ability to fulfill its obligations under section HRS 831-3.2. The proposed measure will resolve this technical issue and allow the Judiciary to seal entire court cases from public view upon the filing of an expungement order issued by HCJDC.

By clearing and sealing expungement records, people will have greater access to jobs, housing and other life opportunities. We respectfully request the passage of **H.B. 145 H.D. 1**.

Sincerely,

Carrie Ann Shirota
Policy Director

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 founded in 1965 that provides its services at no cost to the public and does not accept government funds.

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, March 11, 2025

Room 016 & VIDEOCONFERENCE

9:45 AM

STRONG SUPPORT FOR HB 145 HD1 - EXPUNGEMENT

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 3,723 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation as of March 3, 2025. We are always mindful that 938 - 49.5% - of Hawai'i's male prison 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.

Mahalo for hearing this bill. Community Alliance on Prisons appreciates this opportunity to share our strong support for HB 145 HD1 that effectuates Act 159 (2023) that requires the court to seal or remove from the Judiciary's publicly accessible database any relevant information regarding arrest or case of a person for whom an expungement order has been entered and transmitted to the court by July 1, 2025.

In these times of employers and landlords using background checks, we hope the committee supports this measure that will remove the stigma of an arrest that is a barrier to so many people. This will help our families and communities!

Mahalo for the chance to testify!

¹ DCR Weekly Population Report, March 3, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/02/Pop-Reports-Weekly-2025-03-03-2.pdf>

LATE

HB-145-HD-1

Submitted on: 3/10/2025 2:44:00 PM

Testimony for JDC on 3/11/2025 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Allison	Individual	Support	Written Testimony Only

Comments:

I strongly support HB145.

LATE

HB-145-HD-1

Submitted on: 3/11/2025 6:15:22 AM

Testimony for JDC on 3/11/2025 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Oppose	Written Testimony Only

Comments:

I support this initiative.

Do the crime, do the time.