

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON S.B. No. 424
RELATING TO CRIMINAL RECORDS.**

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 1, 2019, at 9:00 a.m.

LOCATION: Conference Room 016, State Capitol

PERSON(S) TESTIFYING: KEN TAKAYAMA
Commission to Promote Uniform Legislation

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

My name is Ken Takayama, and I am a member of the state Commission to Promote Uniform Legislation (CPUL). Thank you for this opportunity to testify in support of S.B. No. 424, which enacts the Uniform Criminal Records Accuracy Act,

1. The Uniform Criminal Records Accuracy Act ([UCRAA](#)) is designed to improve the accuracy of criminal history record information that is accessed by law enforcement when deciding whether to make an arrest, to grant or set bail, and the Judiciary when sentencing. Accuracy is essential when determining a person's eligibility for employment, housing, credit, licensing and other opportunities.

2. Among other things, the Act (as developed by the Uniform Law Commission):

(a) Imposes duties on governmental law enforcement agencies and courts that collect, store and use criminal history records, to ensure the accuracy of the criminal history record information;

(b) Requires the collection of biometric information, such as finger prints,

for purposes of identification, when permitted or required by other law (Section 202);

(c) Provides a procedure to correct erroneous records;

(d) Mandates the creation and maintenance of a mistaken identity prevention registry (Section 501). Through use of a mistaken identity prevention registry, the act also provides a mechanism by which an individual, whose name is similar to and confused with a person who is the subject of criminal-history-record information, can receive a certification to minimize the possibility of a mistaken arrest. It is prima facie evidence of the fact and can be used when applying for housing, employment, credit, or other opportunities; ~~and~~

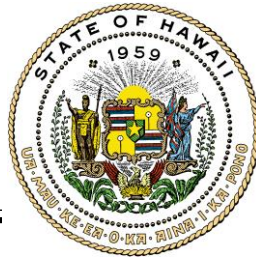
~~(4) (e)~~ _ Includes optional remedies for enforcement for non-compliance (Sections 701 and 702); and

~~(5) (f)~~ _ Requires audits of the system on a regular basis.

3. The only apparent substantive difference between SB 424 and the UCRAA adopted by the Uniform Law Commission is that the ULC version speaks of “biometric” records while this measure is limited to fingerprints. As a practical matter, this is probably not a significant difference at the moment, but could become limiting with the passage of time.

Errors in criminal history record information can result in problems for both citizens and law enforcement officials. The goal of the Uniform Criminal Records Accuracy Act is to assure the accuracy of the information contained in criminal-history-record information, and to provide a means for an individual to seek correction of inaccurate information.

Thank you very much for this opportunity to testify.



SENATE COMMITTEE ON JUDICIARY
The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice Chair

S.B. NO. 424, RELATING TO CRIMINAL RECORDS

Hearing: Friday, February 1, 2019, 9:00 a.m.

The Office of the Auditor has **no position** regarding S.B. No. 424, which creates the Uniform Criminal Records Accuracy Act. **However, with respect to proposed Section 846-EE, we have concerns about our ability to perform certain of the work and offer other suggestions.**

Proposed Section 846-EE requires “an audit to be conducted annually of a sample of criminal justice agencies and at least once every three years of [the Hawaii Criminal Justice Data Center].” More specifically, the required audit must assess, among other things:

1. The Hawaii Criminal Justice Data Center’s operational practices;
2. The integrity of each computer system and database and each physical location where criminal history record information is stored; and
3. Any data breach in the Hawaii Criminal Justice Data Center and response to the breach.

In addition, we are required to review a representative sample of criminal history record information stored by a criminal justice agency or the Hawaii Criminal Justice Data Center and determine the number of missing reportable events and missing fingerprint identification information by examining the public records of the courts.

Without additional staff, we do not have the capacity to perform, internally, the audits and other types of assessments that we currently are statutorily mandated to do, the audits and other studies that the Legislature requests each legislative session, and the annual audits required by the bill. It is very likely that we will retain a contractor to perform all or some of the work required by proposed Section 846-EE.

We suggest the criminal justice agencies and the data center be required to reimburse us their pro rata share of the costs that we incur to perform the audits, similar to the department of health’s obligation to reimburse us for the costs we incur to audit the deposit beverage container program every other year. *See* Section 342G-107, HRS.

Thank you for considering our testimony related to S.B. No. 424.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 1, 2019, 9:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 424
Relating to Criminal Records

Thank you for the opportunity to submit testimony on this bill, which would establish a Uniform Criminal Records Accuracy Act. The Office of Information Practices (OIP) takes no position on the substance of this bill, but has concerns regarding its confusing overlap with existing provisions of the Uniform Information Practices Act (UIPA), chapter 92F, HRS.

This bill would create a data collection agency similar to the already-existing Criminal Justice Data Center (which is not repealed by this bill) that would, among other things, maintain and disseminate criminal history record information. The bill also sets out extensive standards for who can access information, a subject's right to access his or her own information and right to correct that information, and the agency's review of requests to access or correct information. The proposed new Act, which appears to be a uniform law, makes no reference to the Uniform Information Practices Act (UIPA), chapter 92F, HRS, which already provides in part III for an individual's right to access and correct government-maintained records about himself or herself, and likewise makes no reference to OIP, which administers the UIPA.

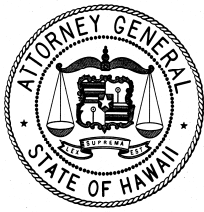
Specifically, proposed section 846-L, at bill page 8, sets out a process for an individual to access his or her own criminal history record information maintained by the new agency. Existing UIPA sections 92F-21 and -23 also provide a process for an individual to do so. Proposed section 846-O sets out a right for an individual to correct inaccurate information about himself or herself. Existing UIPA section 92F-24 also sets out a right for an individual to correct factual errors and misrepresentations or misleading entries about himself or herself. Proposed sections 846-T through -V set out the process for the new agency to respond to requests to correct information. Existing UIPA sections 92F-25 also sets out a process for a government agency to respond to an individual's request to correct. The UIPA (sections 92F-27 and -27.5) also provides the option of appealing a denial of access either to court or to OIP and of appealing a denial of a request to correct to court. By contrast, this bill does not appear to provide a right to appeal the new agency's decisions, although it does state that the Attorney General can investigate the administration and enforcement of the new Act. Finally, this bill requires the Attorney General to establish procedures for individual access to, and fees for access to, criminal history record information, whereas under the UIPA that responsibility lies with OIP.

Because the new agency would be a government agency and as such subject to the UIPA, the overlapping provisions between this bill and the UIPA are likely to cause confusion as to which set of rules applies when an individual requests access to or correction of his or her own criminal history record information maintained by the new agency. While the provisions are in many ways similar, it would still be necessary for to determine which applied as that would determine whether OIP, or perhaps the court, even had jurisdiction to consider a denial of access complaint brought against the new agency or whether the complaint should

instead have gone to the Attorney General. Since OIP also offers same-day general advice on the UIPA and Sunshine Law to agencies and the public through its “attorney of the day” service, the overlapping provisions are also likely to cause confusion whenever an affected individual or the new agency seeks OIP’s advice about a request to access criminal history record information.

OIP recommends that this Committee decide whether its intent is for requests for access and correction made under the new Act to follow a process specifically tailored to the context of access to and correction of criminal history record information and entirely separate from the right to access and correct personal records under the UIPA, or whether its intent is to take advantage of the existing UIPA provisions and reference them rather than recreating them in the new Act. Either way, OIP would be happy to work with this Committee to develop language better expressing its intent.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 0424, RELATING TO CRIMINAL RECORDS.

LATE

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 1, 2019

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Christopher D.W. Young, Administrator, HCJDC

Chair Rhoads and Members of the Committee:

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

The purpose of this bill is to adopt the Uniform Criminal Records Accuracy Act to improve the accuracy of criminal data. Although the Act is well intentioned, many activities required by the Act would significantly increase workloads and profoundly impact the operations of the Hawaii Criminal Justice Data Center (HCJDC) and agencies that contribute data to HCJDC.

HCJDC is analyzing the many provisions of the Act and hopes to provide specific changes so that the Act's provisions comply with Hawaii rules and laws. Furthermore, if the bill is to proceed forward, an analysis needs to be done to determine the level of funding that must be appropriated in order for HCJDC to comply with the requirements of the Act.

The Department of the Attorney General respectfully requests that this bill be held until a thorough analysis of its provision can be completed.