



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

House Committee on Consumer Protection & Commerce

Representative Mark M. Nakashima, Chair

Representative Jackson D. Sayama, Vice Chair

Tuesday, March 14, 2023, 2:00 p.m.

Conference Room 329 & Via Videoconference

By:

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District Court of the Second Circuit

Bill No. and Title: Senate Bill No. 410, SD1, Relating to Expungement.

Purpose: Requires the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations on a person's record, including the traffic abstract and the Judiciary's publicly accessible electronic databases. Requires the Court to automatically seal or remove from the Judiciary's publicly accessible database any information relevant to the arrest or case of a person for whom an expungement order has been entered. Takes effect 07/01/2024. (SD1)

Judiciary's Position:

The Judiciary takes no position regarding the intent of the measure and provides comments on aspects of the measure that will cause significant operational issues for the courts without adequate time to prepare.

Accordingly, in addition to the below specific proposed revisions, the Judiciary respectfully requests that this measure take effect on a set date with substantial lead time to prepare, such as July 1, 2025. Based on current rates under our software vendor contract, we estimate a one-time cost of \$70,000 for software code changes and request an appropriation to cover this cost. In short, without the revisions proposed below and additional time, the purposes of the measure can only be accomplished by shifting judicial and staff resources away from presiding over cases and operating courtrooms.

Section 2 would amend §286-172, Hawai‘i Revised Statutes (HRS) for the Furnishing of Information that is provided by the Director of Transportation in regards to traffic records. The amendment adding subsection (e) would prevent dismissed traffic citations from appearing on the judiciary’s publicly accessible electronic database. The Judiciary Information Management System (JIMS) is authorized and maintained by the Judiciary. This subsection appears to be misplaced.

The Judiciary is concerned that Section 3, amending § 286-245 HRS (within Part XIII - Commercial Driver Licensing) provides that for commercial drivers the Judiciary would not provide “any traffic citation that has been dismissed” which is very broad. Contrasted to Section 4 which amends § 287-3(a), HRS to provide that the Judiciary furnish traffic abstracts of all alleged **moving** violations, “except for any traffic citations that have been dismissed.” (emphasis added). Moving violations are specific offenses within the traffic code in which the court provides a traffic abstract of those alleged violations. As that specificity is not provided for in Section 3 this may cause confusion and may require the Judiciary to make significant modifications to the JIMS system to accommodate the masking of any dismissed traffic citation for commercial drivers and the masking of dismissed moving violations for all motorists.

The Judiciary will need time to develop, design, test and implement a system to fulfill Section 5. To this end, we respectfully request the following amendment of Senate Draft 1 on page 6, line 19 through page 7, line 3:

(f) [~~Any person for whom an expungement order has been entered may request in writing that the~~] 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 [from the judiciary’s publicly accessible electronic databases.] of any person for whom an expungement order **listing the court case number** has been entered **and transmitted to the court.** 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.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Consumer Protection & Commerce**

March 14, 2023

S.B. No. 410, S.D.1: RELATING TO EXPUNGEMENT

Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

The Office of the Public Defender strongly supports S.B. No. 410, S.D.1 which prohibits the inclusion of any traffic citation that has been dismissed on any driver’s record. S.B. No. 410, S.D.1 also automatically requires that the court seal or remove any information relevant to the arrest or case from the Judiciary’s publicly accessible database of any person for whom an expungement order has been entered.

Currently, in order to have judiciary records and other information pertaining to the arrest or case sealed or removed from the Judiciary’s publicly accessible database, an individual, for whom an expungement order was already granted, is required to avail himself/herself of yet another process – petitioning the court, via motion, to remove the relevant matters from the publicly accessible database, Judiciary Information Management System (JIMS), eCourt Kokua, and Judiciary Electronic Filing and Service System (JEFS).

The additional requirement of filing a motion with the courts to have the records removed takes time, time that many applicants for expungement do not have. Many of these individuals rely on an expeditious expungement of their cases because they have specific employment in mind and want to apply without any impediments or complications. Furthermore, because the average person may not understand the nature and process of petitioning the court for this type of relief, many people realize that they need to hire an attorney, but simply are unable to afford one. The automatic removal from JIMS, eCourt Kokua, and JEFS will streamline the process for people who needed their expungement *yesterday*, and will eliminate the expense of hiring an attorney.

In a National Public Radio special series called Criminal Justice Collaborative, in a presentation entitled “Scrubbing the Past to Give Those With a Criminal Record a Second Chance,” authors Eric Brosher and Barbara Brosher wrote, “With

background checks ubiquitous for jobs, schools, mortgage applications and more, even one conviction — and sometimes even just one arrest — can dog people for years, critics say, relegating them to permanent second-class status.” More and more, we are learning that a criminal record affects more than just job applications and employment.¹ A criminal record, or sometimes just an arrest, can affect loan applications, housing, insurance rates, education, licensing and certifications, adoptions, and federal assistance.

Because S.B. No. 410, S.D.1 will assist many in finding better employment and improve their all around quality of life, the Office of the Public Defender enthusiastically supports S.B. No. 410, S.D.1.

Thank you for the opportunity to comment on S.B. No. 410, S.D.1.

¹ <https://www.npr.org/2019/02/19/692322738/scrubbing-the-past-to-give-those-with-a-criminal-record-a-second-chance>

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Mark Nakashima, Chair

Rep. Jackson Sayama, Vice Chair

Tuesday, March 14, 2023

Room 329 & Videoconference

2:00 PM

SUPPORT w/ AMENDMENTS - SB 410 SD1 - EXPUNGEMENT

Aloha Chair Nakashima, Vice Chair Sayama 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 3,981 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 - 24.4% of the male imprisoned population² - of Hawai`i’s imprisoned people 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 testify in support of SB 410 SD1 with amendments. The SD1 requires the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations on a person's record, including the traffic abstract and the Judiciary's publicly accessible electronic databases. It also requires the Court to automatically seal or remove from the Judiciary's publicly accessible database any information relevant to the arrest or case of a person for whom an expungement order has been entered and it takes effect 07/01/2024.

We respectfully ask the committee to amend Section 1 of the bill to apply to ALL DRIVERS - not just commercial diver licensing, and to add an appropriation to the Judiciary to accomplish the intent of this measure.

¹ Department of Public Safety, End of Month Population Report, February 28, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28_George-King.pdf

² Why are 24.4% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room here: Halawa is at 75%; Halawa Special Needs Facility is at 60%; Kulani is at 44%; Waiawa is at 53% of operational capacity.