

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State
of Hawai‘i to the Senate Committee on Judiciary**

February 10, 2023

S.B. No. 410: RELATING TO EXPUNGEMENT

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

The Office of the Public Defender strongly supports S.B. No. 410 which prohibits the inclusion of any traffic citation that has been dismissed on any driver’s record. S.B. No. 410 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.

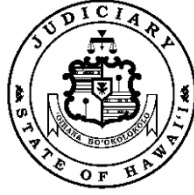
In a National Public Radio special series called Criminal Justice Collaborative, in a presentation entitled “Scrubbing the Past to Give Those With a Criminal Record a Second Chance,” authors Eric Brosher and Barbara Brosher wrote, “With background checks ubiquitous for jobs, schools, mortgage applications 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 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.

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

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



The Judiciary, State of Hawai'i

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

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

February 10, 2023, 9:35 a.m.
Conference Room 016 & Via Videoconference

WRITTEN TESTIMONY ONLY

By:

Michelle D. Acosta
Deputy Chief Court Administrator
District Court of the First Circuit

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

Purpose: 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. Requires the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations in public driver's records.

Judiciary's Position:

The Judiciary takes no position regarding the intent of the measure and provides comments on aspects of the measure that may cause operational issues for the courts.

This measure involves two different subject matters. First, Section 1 provides that the Judiciary and the Examiner of Drivers would no longer provide information regarding dismissed traffic citations with regard to Commercial Driver Licensing. The Judiciary has no comment regarding this part of the measure.

The second subject in Section 2 provides that a person who obtains an expungement order from the Department of the Attorney General would no longer need to make a written request to the court to seal or remove from the judiciary's public database information pertaining to their arrest or case. The Judiciary will need time to develop, design, test and implement a system with the Department of the Attorney General to determine the most efficient method of obtaining the orders that will not cause disruption to either entity.

The Judiciary respectfully requests that this measure take effect on a set date, such as July 1, 2024, which would give the Judiciary at least one year to prepare and if an appropriation is needed the Judiciary would have adequate time to request an appropriation.

Thank you for the opportunity to testify on this measure.

Opportunity Youth Action Hawai'i

February 10, 2023

Senate Committee on Judiciary

Hearing Time: 09:35 a.m.
Location: State Capitol
Re: SB 410, Relating to Expungement

Aloha e Chair Rhoads, and members of the Committee:

We are writing in **strong support** of SB 410, Relating to Expungement.

This bill will require 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 require the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations in a public driver's records.

Arrest records carry long-lasting consequences that can hinder a person's access to employment, housing, a professional license, and more. The removal of any information regarding an individual's arrest after they are granted an expungement order is absolutely vital to their future success and their ability to move on with their life.

Our collective, Opportunity Youth Action Hawai'i (OYAH), works to support young people under the age of 25 who are disconnected from school and work, referred to as "opportunity youth." This developmental time period is extremely consequential to the individual growth and overall life chances of our children. **We support this measure.**

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 SB 410.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Friday, February 10, 2023

Room 016

9:35 AM

STRONG SUPPORT FOR SB 410 - EXPUNGEMENT OF TRAFFIC OFFENSES

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 4,074 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 964 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 to testify in strong support of SB 410 that 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 requires the Judiciary and the Examiner of Drivers to no longer include dismissed traffic citations on a person’s record.

Last September, California Gov. Gavin Newsom signed a bill from Sen. Maria Elena Durazo, D-Los Angeles, *allowing people convicted of a felony to have their records automatically sealed if they complete their sentence and remain conviction-free for at least four years. Records of arrest that never resulted in a conviction can be sealed as well.*

The law “will give individuals the tools to turn the page on their past and an opportunity to build a new, better life while providing an economic boost in California, including an estimated \$20 billion yearly increase to our state’s gross domestic product that

¹ Department of Public Safety, Weekly Population Report, January 30, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-30_George-King.pdf

it currently misses out on from widespread unemployment and under employment of those with a conviction history,” Durazo said in a statement Thursday night.

The law will take effect July 1, and excludes registered sex offenders and people convicted of serious or violent crimes. Those individuals may still petition to have their records sealed.

Currently, California is one of six states to offer ex-felons ways to seal their records. The four-year implementation is the most progressive in the nation for automatic relief. Under the new law, law enforcement agencies and schools would have access to the sealed records. But most employers and landlords would not be able to view the records.²

It is about time for Hawai`i to acknowledge persons who have traffic offenses to be able to get on with their lives **if they complete their sentence and remain conviction-free for at least four years. Records of arrest that never resulted in a conviction can be sealed as well.**

Community Alliance on Prisons urges the committee to pass this measure and free Hawai`i’s people with traffic offenses to expunge their records so they can move on with their lives.

² Gavin Newsom signs law to seal criminal records of hundreds of thousands of Californians, Mathew Miranda, The Sacramento Bee - Sep 30, 2022.

<https://www.sacbee.com/news/politics-government/capitol-alert/article266570516.html>

SB-410

Submitted on: 2/3/2023 5:47:10 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Joshua Medeiros	Individual	Support	Written Testimony Only

Comments:

In 2021, I was denied Army Active Duty Service because of dismissed traffic citations showing up on my waiver. I am serving in the Hawaii Army National Guard and they did not consider those same dismissed with prejudice citations as the Active Duty Component.

The Army Active Duty Component used a whole person concept and stated that "those dismissed with prejudice citations looked less favorable for service.

I was also denied employment with a reputable hotel company due to a faulty background investigation check with these dismissed citations showing on my background check.

After filing a Federal Lawsuit I settled with the company that ran the report and the hotel company via Hawaii Civil Rights Commission.

Respectfully this could have avoided by not putting dismissed citations on a State of Hawai'i Citizen Abstract Report. The way the State of Hawaii list it on their reports, most companies inadvertently assume that its a conviction when that is not the case.

This bill allows people not to be discriminated against when applying for jobs, jobs people so desperately need in a time of peril like these days.

Lasty, I've been informed by Sen Shimabukuro's office that a person did not get hired because of a botched expungement attempt by themselves.

The person was considered for The Hawaii State Library but on their expungement the person was not aware on how to seal their court records. Although the person expunged the record they failed to have it sealed.

(I completely understand his scenario because I successfully expunged and sealed my record, but its not that easy for an average person unfamiliar with legal proceedings .

I am praying for relief in the Judiciary System to help our residents and citizens not have to go through this.

I ask the committee to consider the following amendments:

- 1) Expand Section 1 to apply to all drivers, and not just commercial driver licensing.
- 2) add a blank appropriation paragraph to the Judiciary.

Mahalo Nui Loa For Your Efforts!

SB-410

Submitted on: 2/8/2023 9:07:16 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

I urge the committee to pass SB410. Once there is an expungement order with regard to a crime, or a decision not to pursue criminal action, the person to whom it pertains should not be saddled for life with damaging information that is no longer current.

SB-410

Submitted on: 2/9/2023 10:52:56 AM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Yatsushiro	Individual	Support	Written Testimony Only

Comments:

SUPPORT

SB-410

Submitted on: 2/9/2023 2:57:26 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments: Aloha, I am writing in support of SB410 which requires automatic expungement of information related to an arrest or case of a person for whom an expungement order has been issued. This includes dismissed traffic citations. Expungement of a person's arrest record gives the person a chance at making a fresh start after having paid their debt to society. This is because an arrest record is a major obstacle to access to employment, housing, and home loans as well as entrance to college and the military. This process should be automatic because it is unrealistic to expect that someone who has been in prison for a while should know how to initiate the process of expungement, much less pay for it. If we truly wish for every person released from prison to successfully reenter society and achieve financial independence and stability, we need to clear away this roadblock and interrupt the cycle of recidivism. Otherwise, we pay the price for our outdated criminal justice policies and for maintaining our bloated correctional facilities. Please pass SB410. Mahalo for your consideration. Diana Bethel Honolulu

SB-410

Submitted on: 2/10/2023 6:34:16 AM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

Strong support for SB410.