



HB1782 HD1
RELATING TO EMPLOYMENT DISCRIMINATION
Senate Committee on Labor, Culture, & the Arts

March 10, 2020

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** HB1782 HD1, a measure in OHA's 2020 Legislative Package. The original version of this bill would amend Hawai'i's current "ban the box" law to **limit employers' allowable inquiry into applicants' conviction records from the most recent ten year period (excluding periods of incarceration), to five years for felony convictions, and three years for misdemeanor convictions.** By reducing the impacts of older, less relevant convictions on people seeking to obtain or maintain legitimate employment, this measure – particularly with the three- and five-year limits as originally drafted – would **discourage employment decisions that are expressly or unconsciously based on such convictions; reduce the stigma carried by former offenders; make it easier for those that have paid their debt to society to obtain legitimate employment, to support themselves and their 'ohana; and support the rehabilitation, reentry, and recidivism prevention goals of the state.** OHA notes that HB1782 purposefully does not affect state and county employment processes and state and county lookback authorities. OHA further notes that the criminal history information provided by private credit reporting agencies and limited pursuant to federal law, is also further regulated by state laws throughout the United States – including Hawai'i's own laws – and therefore should not be the basis for determining the "lookback" limits proposed in this measure.

Hawai'i's "ban the box" law seeks to limit the impact that convictions may have on the employment prospects of those who have a criminal history, but who have paid their debt to society, by limiting how far back an employer may look into an employee's or prospective employee's conviction record.¹ While progressive when adopted,² research now shows that the law's current allowable "lookback period" may be excessively long, such that it may undermine the aims of the law's underlying policy. Specifically, HRS § 378-2.5 explicitly **allows employers to "inquire about and consider" their current or prospective employees' conviction records for the past ten-year period**, exclusive of time served, and to make employment decisions based on convictions with a vaguely-defined "rational relationship" to the job at hand. With studies demonstrating **that even old and minor convictions may significantly bias employers** against those seeking

¹ See S. Stand. Comm. Rep. No. 3282, in 1998 Senate Journal at 1331; see also S. Stand. Comm. Rep. No. 862-74, in 1974 Senate Journal at 1079.

² Many jurisdictions, with Hawai'i leading the way, have since passed "ban the box" laws prohibiting employers from discriminating against current or prospective employees based on their criminal record information.

legitimate and gainful employment,³ this **ten-year lookback period may inhibit even those who have demonstrated years of continuous lawful behavior from obtaining or maintaining a job, preventing them from supporting themselves and their families through legitimate employment, and frustrating the state's goals of offender rehabilitation, reentry, and recidivism prevention.**

Notably, **the old convictions that the current “ban the box” law specifically allows employers to consider may have little bearing on an individual’s likelihood of committing a new crime, or on their overall employability.** For example, recidivism data show that former offenders who recidivate overwhelmingly do so within the first two years of release.⁴ Further, studies show that those with older conviction records (6-7 years) are about as likely to commit a new crime as those with no criminal history whatsoever.⁵ With regard to overall employability, studies show that those with conviction records tend to “have a longer tenure and are less likely to quit their jobs voluntarily than other workers,”⁶ and a significant majority of surveyed managers and human resource professionals found that the “quality of hire” of workers with conviction records was the same or better than that of those without any convictions.⁷

Accordingly, by reducing the ten-year lookback period allowed under current law – particularly to the three- and five- year lookback periods, as originally proposed under this measure – HB1782 HD1 would better serve the original intent of HRS § 378-2.5, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. This in turn may enable such individuals to better support themselves and their families, allow them to better contribute to their communities as well as the state’s economy, and encourage their continued law-abiding behavior – promoting public safety and the state’s interests in rehabilitation, reentry, and recidivism prevention over the long term.

OHA emphasizes that this bill would not affect current exceptions to the “ban the box” law’s limitations, such as those for jobs in public safety or schools, nor would it affect

³ See Dylan Minor et al., *Criminal Background and Job Performance*, 7 J. OF LABOR POLICY 8 (2018), <https://izajolp.springeropen.com/articles/10.1186/s40173-018-0101-0> (summarizing studies indicating the diminished employment prospects of individuals with criminal records).

⁴ See HAWAII STATE DEPARTMENT OF HEALTH, INTERAGENCY COUNCIL ON INTERMEDIATE SANCTIONS, 2017 RECIDIVISM REPORT Fig. 2 (2018), showing that of those in the 2014 cohort of released offenders who recidivated (were arrested for a new offense or had their probation or parole revoked), 63.2% did so within the first 12 months of release and 88.9% did so within the first two years. See also Mark T. Berg and Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Quarterly 382, 397-98 (2011).

⁵ Megan C. Kurlychek, et. al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL’Y 483, 498-500 (2006).

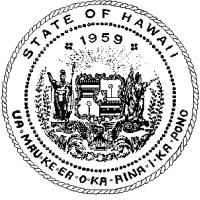
⁶ Dylan Minor et al., *Criminal Background and Job Performance*, 7 J. OF LABOR POLICY 8 (2018), <https://izajolp.springeropen.com/articles/10.1186/s40173-018-0101-0>.

⁷ Kathy Gurchiek, *Research: Employers Willing to Overlook a Criminal Record to Hire the Right Person*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT, May 17, 2018.

current statutory provisions that otherwise allow the use of conviction or related records (i.e., sex offender registry, etc.) in making employment decisions.

Finally, OHA notes that the purported seven-year “industry standard” for private consumer reporting agencies is inapplicable to the statutory provisions being proposed for amendment in this measure. Private employers typically use consumer reporting agencies, which are subject to the Fair Credit Reporting Act (FCRA). The FCRA sets baseline limits on what information can be provided to employers by consumer reporting agencies, which includes arrest records up to seven years old, and conviction records without limit, subject to exceptions. How employers can use this information is further subject to FCRA requirements and, importantly, is also further regulated by state law – including Hawai‘i’s. Hawai‘i’s existing “ban the box” law, subject to exceptions, already prohibits private employers from using any arrest records for employment decisions. Therefore the seven year “industry standard” for private reporting agencies, which is tied to what federal law allows, but further regulated by state law, is not currently applicable to the instant discussion and should not be used as a basis for determining the lookback period proposed in this measure.

Therefore, OHA respectfully urges the Committee to **PASS** HB1782 HD1, with the three- and five- year lookback periods as originally proposed. Mahalo piha for the opportunity to testify on this critical measure.



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

March 10, 2020
Rm. 224, 2:45 p.m.

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1782, H.D. 1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai'i's laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai'i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports H.B. No. 1782, H.D. 1, and urges you to return the bill to its original form amending HRS § 378-2.5(c) to reduce the “look back” limitation on employer consideration of convictions that bear a rational relationship to the job *from ten years from time of conviction to five years for felonies and three years for misdemeanors*, excluding periods of incarceration.

H.B. No. 1782, H.D. 1 amends HRS § 378-2.5(c) to reduce the “look back” limitation on employer consideration of convictions that bear a rational relationship to the job *from ten years from time of conviction to an unspecified period for felonies and an unspecified period for misdemeanors*, excluding periods of incarceration.

Under HRS § 378-2, it is unlawful to discriminate in employment on the basis of arrest and court record – this includes refusing to hire, barring from employment, discharging, or otherwise discriminating in compensation, terms, conditions, or privileges of employment.

HRS § 378-2.5 and HRS §§ 378-3 (8) and (9) provide several exceptions to the arrest and court record protection which allow Hawai‘i employers and Hawai‘i employment agencies to engage in limited inquiry or consideration of a current employee or applicant’s conviction. Under these exceptions, an employer may **only** inquire about or consider a conviction of a current employee or of an applicant for employment who has already received a conditional offer of employment, *that occurred no more than ten years before the date of application, excluding any period of incarceration*. A conviction can only be considered if it has a rational relationship to the core duties and responsibilities of the job.

Any category of Hawai‘i employer expressly listed in HRS § 378-2.5(d) as permitted to inquire into and consider an applicant’s conviction record may do so to the extent allowed by the statutory exemption.

In its original form, H.B. No. 1782 would have changed the look back window from ten years to *five years for felonies and three years for misdemeanors*, excluding periods of incarceration. This change is meant to reduce employment barriers and improve likelihood of successful reentry for workers who have records of criminal conviction(s) and have served their time and paid their debt to society. Previous testimony submitted regarding recidivism rates supports the original proposal in H.B. No. 1782.

The HCRC supports H.B. No. 1782, H.D. 1, and urges you to amend it to include a look back period of five years for felony convictions and three years for misdemeanor convictions.

ATTACHMENT: Legislative History of Hawai‘i Arrest & Court Record Law

History of Hawai'i Arrest & Court Record Law

1973 Act 54

The Hawai'i fair employment statute was first amended to prohibit discrimination on the basis of arrest and court record in 1973, when House Bill No. 656 was enacted as Act 54.

Act 54 amended the prohibited discriminatory practices section of our fair employment law, HRS § 378-2, to prohibit an employer from discriminating on the basis of arrest and court record in hiring, discharge, term and conditions, and advertising or publication, and also prohibited labor organizations from discriminating on that new protected basis.

Act 54 expressly excluded records of conviction from the definition of “arrest and court records”, in HRS § 378-1(6):

“Arrest and court records” include any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant and tried, pursuant to any law or military authority. **Convictions are not included in this definition.**

The 1973 law did not protect against inquiries into and consideration of records of conviction in employment. The House position was to include convictions within the scope of the definition and protection, but the Senate position excluding convictions prevailed.

1974 Act 205

The statute was amended the following year to expressly add protection against discrimination on the basis of record of conviction. House Bill No. 2485 was enacted in 1974 as Act 205.

Act 205 amended the HRS § 378-1(6) definition of “arrest and court records” to include conviction records:

“Arrest and court records” include any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant, tried or **convicted pursuant to any law enforcement or military authority.**

The purpose language of Act 205 is sweeping in scope:

SECTION 1. Purpose. The purpose of this Act is to encourage and contribute to the rehabilitation of convicted persons and to assist those persons in their assumption of the responsibilities of citizenship. To this end, the legislature finds it a well-established principle of American jurisprudence that an occupation and equal access thereto is “property” within the meaning of Article 1, section 4, of the Hawaii Constitution, which guarantees that, “No person shall be deprived of life, liberty or property without due process of law ...”

[L 1974, c 205, §1]

The Senate Committee on Judiciary reported:

Correctional officers and probation and parole officials emphasize that gainful employment is essential in the process of re-socializing criminal offenders.

* * * * *

Your Committee realizes that if enacted, the bill would not provide any magical cure to the employment problems of the convicted person. He will still find difficulty when seeking jobs. Passage of this bill, however, would represent a recognition by this Legislature that persons who have been in trouble are not inherently and permanently bad and that opportunities afforded other citizens should be made available to them.

The 1974 legislative history includes committee report language to the effect that employers may disqualify or refuse employment based on a conviction record that is either rationally connected or directly related to the occupation sought, but on its face the statute did not provide for an such an exception.

1998 Act 174

In 1998, House Bill No. 2967, enacted as Act 174, created a statutory exception to the arrest and court record exception. Act 174 added express exception language allowing post-offer inquiry into and consideration of records of convictions, less than ten years from date of conviction, bearing a rational relationship to the duties and responsibilities of the job:

§378-2.5 Employer inquiries into conviction record. (a) Subject to subsection (b) an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the period for which the employer may examine the employee's conviction record shall not exceed ten years.

Note: The post-offer inquiry and consideration concept was modeled after the IRCA I-9 employment authorization verification process.

2003 Act 95

In 2003, Senate Bill No. 830, which was enacted as Act 95.

Act 95 amended the arrest and court record protection in two ways:

- Periods of incarceration were excluded from the 10 year "look back" period. The concern here was that employers would not be able to consider the convictions of murderers who served more than ten years of a prison term.

- The statute was amended to make it clear that employers who have a statutory exception can make pre-offer inquiries into conviction records. These statutory exceptions vary in their terms, and are defined by statute. In our view, this express provision clarifies and codified existing law, and did not represent a substantive change. This amendment is useful in that it consolidates a list of statutory exceptions, although the list is not exclusive.

The 2003 legislation also changed the way that state and county employers can consider arrest and court record convictions: allowing the use of arrest records as the basis for public employer investigations for “suitability”; and use of the rational relationship standard for public employers, rather than the evidence of rehabilitation standard previously required.

Enacted in 2003, Act 95 amended § 378-2.5, Hawaii Revised Statutes, to read as follows:

"[E]§378-2.5[3] **Employer inquiries into conviction record.** (a) Subject to subsection (b), an employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, "conviction" means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the ~~[period for which the]~~ employer may ~~[examine]~~ consider the employee's conviction record falling within a period that shall not exceed the most recent ten years[-], excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee's or prospective employee's conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the sentence imposed for the employee's or prospective employee's conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

(1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-;

(2) The department of education pursuant to section 302A-A;

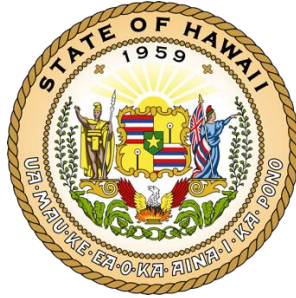
(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division pursuant to section 321-;

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846-;

- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302A-B;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-A;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I- ; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1."

Note: HRS § 378-2.5(d) has been subsequently amended since enactment of Act 95 in 2003, to add to or clarify the list of employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to federal or state law.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the Senate Committee on Labor, Culture and the Arts

In Support of HB1782 HD1
Tuesday, March 10, 2020, at 2:45 p.m. in Room 224

Dear Chair Taniguchi, Vice Chair Ihara, and Honorable Members,

The Hawai‘i State Commission on the Status of Women provides the following testimony in **support** of HB1782 HD1 and proposes an amendment to restore the bill to its original language. The bill should limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

The Commission supports shortening the current “lookback period,” or length of time that employers are able to look back into an individual’s criminal record, because this would increase access to capital and formal employment for formerly incarcerated women, including and especially transgender women. Employment discrimination based on criminal convictions can cause ramifying hardships for women, who oftentimes must rebuild their lives from scratch with little structural support.

Women are at particular risk of spiraling into cycles of abuse and exploitation if unable to secure stable employment and financial independence. Thus, this measure is an important step to remove barriers for unemployed women with criminal records and to prevent their exploitation.

Proposals for a seven-year lookback period are deficient because would continue to pose an unnecessarily high barrier to employment. This “industry standard” traces to the Fair Credit Reporting Act, which has become “another enabling mechanism of the proliferating background

check industry” and is yet another “result of misconceptions of what it means to have a criminal record.”¹ In addition:

- Unemployment is one of the most powerful determinants of re-offense because it is a critical form of stability;
- The original draft will not impact the legally mandated discrimination, i.e., the general prohibition against the use of criminal record-based employment decisions for jobs in public safety or the educational system;
- Certain felony convictions do not require supervision beyond the three and five periods proposed by the original draft of this measure; misdemeanors are sentenced to one year of probation; petty misdemeanor are sentenced to 6 months and up to a year of probation.

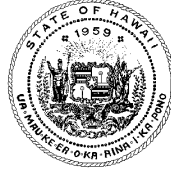
Accordingly, the Commission respectfully urges the Committee to pass HB1782 HD1 with a five year “lookback” window for felony convictions and three years for misdemeanor convictions.

Sincerely,

Khara Jabola-Carolus

¹ See Gubernick, L., *Erasing the Mark of Cain: An Empirical Analysis of the Effect of Ban-The-Box Legislation on the Employment Outcomes of People of Color*, 44 Fordham Urb. L.J. 1153 (2017).

DAVID Y. IGE
GOVERNOR



RYKER WADA
DIRECTOR

ANDREW T. GARRETT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
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March 9, 2020

**TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY**

For Hearing on Tuesday, March 10, 2020
2:45 p.m., Conference Room 224

BY

RYKER WADA
DIRECTOR

House Bill No. 1782 H.D. 1
Relating to Employment Discrimination

TO CHAIRPERSON TANIGUCHI, VICE CHAIR IHARA AND MEMBERS OF THE
COMMITTEE:

The purpose of House Bill No. 1782 H.D.1 is to limit the convictions that may be used in employment decisions from all convictions to an undetermined length of time.

As introduced, the original bill limited this “lookback” period for felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years. Current law allows for the most recent ten-year lookback excluding periods of incarceration.

DHRD **supports the intent** of this measure. We note that the industry standard for background check companies is to “lookback” at the most recent 7-year period. As such, we respectfully request that this bill be amended to reflect a 7-year “lookback” for both felonies and misdemeanors.

Thank you very much for the opportunity to testify on this measure.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

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808-241-1888 ~ FAX 808-241-1758
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**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
THE HONORABLE LES IHARA VICE CHAIR
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
Thirtieth State Legislature
Regular Session of 2020
State of Hawaiʻi**

March 10, 2020

RE: H.B. 1782, H.D. 1; RELATING TO EMPLOYMENT DISCRIMINATION.

Chair Taniguchi, Vice Chair Ihara, and members of the Senate Committee on Labor, Culture and the Arts, the Office of the Prosecuting Attorney of the County of Kauaʻi submits the following testimony in support of H.B. 1782, H.D. 1. Further, we request that the Bill be amended to the original lookback period provisions of FIVE years for felonies and THREE years for misdemeanors.

A simple comparison of recidivism rates between formerly incarcerated people who work and those who don't indicates a strong positive correlation between unemployment and recidivism. If formerly incarcerated individuals can obtain a job with a wage that meets their basic needs, the risk of reoffending significantly decreases.¹

¹ Jeremy Travis, Amy L. Solomon, Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, <https://www.urban.org/sites/default/files/publication/61571/410098-From-Prison-to-Home-The-Dimensions-and-Consequences-of-Prisoner-Reentry.PDF> at 31 (2001); Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. ST. L. REV. 1, 10 (2014) ("Providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety."); Maria Duane & Nancy La Vigne et al., *Criminal Background Checks: Impact on Employment and Recidivism*, <https://www.urban.org/sites/default/files/publication/88621/criminal-background-checks-impact-on-employmentand-recidivism.pdf> at 12-13 (2017).

Hawai'i's Adult Client Probation Service recognizes that people with certain convictions do not require supervision beyond the three and five periods similar to this measure. Except for Class A felonies,² people with low grade felonies are typically sentenced to 4-5 years of probation.³ People with a misdemeanor are sentenced to one year of probation, and people convicted of a petty misdemeanor are sentenced to 6 months and up to a year of probation.⁴

This bill would not affect current exceptions to the general prohibition against the use of criminal record-based employment decisions (such as for jobs in public safety or the educational system), nor would it affect current statutory provisions that otherwise allow the use of conviction or related records (i.e., sex offender registry, etc.) in making employment decisions.

Hawai'i would set the national standard, once again, for employment protections for people with conviction records.⁵ Also, Massachusetts recently changed its five year misdemeanor lookback period to three years.⁶

Unfortunately, there is an **“industry standard”** likely from the Fair Credit Reporting Act (FCRA), which regulates most of the private sectors background check lookback periods.⁷ The FCRA limits the “lookback period” for arrests to 7 years, and there is no limit on convictions, which is why “ban the box,” and other fair chance employment laws exist.

Businesses remain protected by the five and three year period, and benefit in many ways. Hawai'i businesses can utilize a six month federal

² Notwithstanding part II; sections 706-605, 706-606, 706-606.5, 706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, or section 707-702, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. HRS §706-659

³ See HRS §706-623 (a)-(b) (2013).

⁴ See HRS §706-623 (c)-(d) (2013).

⁵ In 1998, Hawai'i was the first state to implement “ban the box,” followed by Massachusetts in 2010. See NATIONAL EMPLOYMENT LAW PROJECT, <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>.

⁶ PRINCE LOBEL, NEW LIMITATIONS ON CRIMINAL HISTORY SCREENING TO GO INTO EFFECT IN OCTOBER, <https://princelobel.com/new-limitations-on-criminal-history-screening-to-go-into-effect-in-october/>.

⁷ 15 U.S.C. § 1681(c) (1970); see, e.g., John G. Malcolm and John-Michael Seibler, Collateral Consequences: Protecting Public Safety or Encouraging Recidivism?, The Heritage Foundation, 2017, at 1-3, <http://www.heritage.org/sites/default/files/2017-03/LM-200.pdf>.

insurance program,⁸ which insures companies that employ people with conviction records for the first six months of employment. Further, employers can utilize the Work Opportunity Tax Credit offered by the State for hiring people with felony records.⁹ Finally, research by economists confirms that hiring people with records is simply smart business.¹⁰ Retention rates are higher, turnover is lower, and employees with criminal records are more loyal.¹¹

Formerly incarcerated people are unemployed at a rate of over 27% — higher than the total U.S. unemployment rate during any historical period, including the Great Depression.¹²

Without passing this law, or *significantly* reducing the “ban the box” lookback period, people with conviction records will unnecessarily continue to struggle to find work, which hurts our community as a whole.

H.B. 1782, H.D. 1 would improve Hawai‘i’s “ban the box” law using recent research and would give our community members, who are trying to turn their lives around, a fair chance at employment.

For these reasons, the Office of the Prosecuting Attorney supports the passage of H.B. 1782, H.D. 1. Thank you for this opportunity to testify.

⁸ FEDERAL BONDING, <https://labor.hawaii.gov/wdd/home/employers/fedbond/>.

⁹ WORK OPPORTUNITY TAX CREDIT, <https://labor.hawaii.gov/wdd/home/employers/wotc/>.

¹⁰ ACLU, Back to Business: How Hiring Formerly Incarcerated Jobseekers Benefits Your Company, <file:///Users/jeniferjenkins/Downloads/ACLU%20Report.pdf> at 4 (2015).

¹¹ Daryl Atkinson, *The Benefits of Ban the Box* The Southern Coalition for Social Justice http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf (2014).

¹² OUT OF PRISON AND OUT OF WORK: UNEMPLOYMENT AMONG FORMERLY INCARCERATED PEOPLE, <https://www.prisonpolicy.org/reports/outofwork.html> (2018).

Statement Before The
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
Tuesday, March 10, 2020
2:45 PM
State Capitol, Conference Room 224

in consideration of
HB 1782, HD1
RELATING TO EMPLOYMENT DISCRIMINATION.

Chair TANIGUCHI, Vice Chair IHARA, and Members of the Senate Labor, Culture and the Arts Committee

Common Cause Hawaii comments in support of HB 1782, HD1 which would limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in a certain time period and misdemeanor convictions that occurred in a certain time period.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii understands that we need a democracy that guarantees a more equitable and just society. The mass criminalization and incarceration of the most vulnerable in our society disenfranchise and disempower our people and undermine the promise of a democracy that works for everyone.

HB 1782, HD1 will hopefully work to successfully transition people formerly incarcerated back into society. Employment is one of the biggest barriers for people who were formerly incarcerated. HB 1782, HD1 will reduce the stigma the formerly incarcerated face and still allow employers to consider recent, relevant convictions. HB 1782, HD1 is a step towards restoring people's faith in a working democracy for everyone.

Thank you for the opportunity to comment in support of HB 1782, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

HB-1782-HD-1

Submitted on: 3/7/2020 10:09:33 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support HB1782. Providing more jobs should help reduce recidivism.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei, Maui

HB-1782-HD-1

Submitted on: 3/7/2020 3:46:32 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Support	No

Comments:

The Hawai'i Friends of Restorative Justice strongly supports this measure to shorten the time employers may consider criminal convictions concerning potential employment. This law would allow more people convicted of crimes to find and maintain employment. Having meaningful employment, along with relationships with law abiding others, are the two most important variables for maintaining desistance from crime and substance abuse. Please see Shadd Maruna's seminal book on rehabilitation: [Making Good How Ex-Convicts Reform and Rebuild Their Lives](#) for more information on these and other variables that help people rehabilitate and desist from crime and drug abuse.

Industry standards as discussed in [Best Practice Standards: The Proper Use of Criminal Records in Hiring](#) (2013 p. 10) specifically state that five years is sufficient time to weigh the risks of crimes concerning serious violence and dishonesty, and that only "2 or 3 years" time is necessary for making employment decisions for less serious crimes:

"Common 'Look Back' Periods**Serious Crimes of Violence or Dishonesty: 5, 7, and/or 10 years****Less Serious Crimes: 2 or 3 years"**

Please contact me at lorenn@hawaiiifriends.org if you have any questions about our support for this much needed law in Hawai'i.

Mahalo for your public service.

Lorenn Walker, JD, MPH

Director, Hawai'i Friends of Restorative Justice

HB-1782-HD-1

Submitted on: 3/7/2020 5:26:20 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/7/2020 5:31:34 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride at Work - Hawaii	Testifying for Pride @ Work - Hawaii	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/7/2020 8:13:15 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/8/2020 2:31:07 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

I support. It's a civil right that we should consider.

HB-1782-HD-1

Submitted on: 3/8/2020 4:33:13 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/8/2020 9:17:11 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	No

Comments:

Aloha Chair Taniguchi and Honorable Committee members,

My name is Jen Jenkins, and I am your constituent in District 11. I strongly support the original version of this bill, which reduced the criminal history record check period to 5 years for felonies and 3 misdemeanors. Please put back the bill to it's original form, so that people with conviction records can turn their lives around.

Respectfully,

Jen J.

HB-1782-HD-1

Submitted on: 3/8/2020 10:36:56 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacquelyn Esser	Individual	Support	No

Comments:

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawai'i 96821

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

March 9, 2020

TO: Committee on Labor, Culture and the Arts
RE: HB 1782, HD 1
HEARING: Tuesday, March 10, 2020
TIME: 2:45 p.m.
ROOM: 224
POSITON: **SUPPORT WITH COMMENTS**

Chair Taniguchi, Vice Chair Ihara, and members of the committee:

My name is Bob Merce. I am a retired lawyer and recently served as vice chair of the House Concurrent Resolution 85 Task Force on prison reform.

I support the intent of HB 1782, HD 1, but urge this committee to restore the lookback provision in the original bill - **three years** for misdemeanor convictions, and **five years** for felony convictions.

Formerly incarcerated people need employment for the same reasons as everyone else: to support themselves and their families, pursue life goals, and strengthen their communities.¹ The first ever estimate of unemployment among the 5 million formerly incarcerated people in the U.S. found that over 27% were unemployed, a number higher than the U.S. employment rate during the Great Depression.²

A large-scale study funded by the U.S. Department of Justice found that a criminal record reduced the likelihood of a callback or job offer by nearly 50 percent, and that the stigma of a criminal records affects employment prospects for many years, regardless of whether the offense was minor or the person had never been convicted at all.³

Limiting the convictions that can be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years, and misdemeanor convictions that occurred in the most recent three years, will

¹ Lucius Couloute and Daniel Kopf, *Out of Prison, Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Policy Initiative, July 2018.

² Out of Prison, *supra*.

³ Devah Pager and Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men*, National Institute of Justice (2009).

ROBERT K. MERCE

2467 Aha Aina Place
Honolulu, Hawai'i 96821

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

reduce some of the barriers to employment for formerly incarcerated individuals and in the long run will reduce recidivism and make our communities safer.

I urge you to pass HB 1782, HD 1 with the changes indicated above.

Thank you for allowing me to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON LABOR, CULTURE, AND THE ARTS

Sen. Brian Taniguchi, Chair

Sen. Les Ihara, Vice Chair

Tuesday, March 10, 2020

2:45 PM – Room 224

STRONG SUPPORT FOR ORIGINAL VERSION OF HB 1782 - EMPLOYMENT DISCRIMINATION

Aloha Chair Taniguchi, Vice Chair Ihara 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 families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day and we are always mindful that more than 1,200 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.

HB 1782 limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years. The HD1 unspecifies the lookback years.

Community Alliance on Prisons is in **strong support of the original version** of this measure and well as its companion bill, SB 2193. Decreasing the lookback time will open up employment opportunities for those reintegrating with their communities, help our communities by increasing the number of people contributing to the tax base, and strengthening our families and communities.

Criminal records are one of the biggest barriers to employment for those who are transitioning from incarceration to their communities because of the stigma and bias that exists in society. When does someone stop paying for past mistakes?

Decreasing the look back time will open the door to a better life for so many people. Employers will still be allowed to consider recent convictions while relieving people with older convictions from the largely unjustified stigma and bias.

Community Alliance on Prisons urges the committee to pass this measure in the original version that will help so many people and communities thrive. Mahalo for this opportunity to testify.

HB-1782-HD-1

Submitted on: 3/9/2020 9:48:31 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support restoring the original version of HB1782. People who have 'paid their debt' to society must be afforded opportunities to move forward and meaningful work is an important component of successful reentry.

HB-1782-HD-1

Submitted on: 3/9/2020 10:35:01 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

taniguchi4 - Joel

From: Heather McVay <heathermcvay.law@gmail.com>
Sent: Monday, March 9, 2020 12:24 PM
To: LCATestimony; JDCTestimony
Subject: Pass HB1782 HD1!

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

taniguchi4 - Joel

From: Katherine Yvonne Mary Burke <kymburke@gmail.com>
Sent: Monday, March 9, 2020 12:47 PM
To: LCATestimony; JDCTestimony
Subject: Pass HB1782 HD1!

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1. Mahalo nui for the opportunity to testify in support of this bill. Sincerely, Katherine Burke, Palolo, O'ahu

taniguchi4 - Joel

From: Jason Lees <jlird808@gmail.com>
Sent: Monday, March 9, 2020 12:47 PM
To: LCATestimony; JDCTestimony
Subject: Pass HB1782 HD1!

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1. Mahalo nui for the opportunity to testify in support of this bill.

MAHALO NUI!!

ALOHA,
Jason

HB-1782-HD-1

Submitted on: 3/9/2020 12:22:22 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Olan Leimomi Fisher	Individual	Support	No

Comments:



March 9, 2020

The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara Jr., Vice Chair
Senate Committee on Labor, Culture and the Arts
415 S. Beretania Street
Honolulu, HI 96813

RE: HB 1782 HD 1 – Relating to Employment Discrimination

Dear Chair Taniguchi, Vice-Chair Ihara and Members of the Senate Committee on Labor, Culture and the Arts:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which brings together the shared interests of more than 350 large, medium and small broker-dealers, investment banks and asset managers - many of whom have a strong presence in Hawaii.

We appreciate the opportunity to provide feedback on HB 1782, HD 1, relating to Employment Discrimination. Current state law prohibits most employers from asking about a prospective employee’s criminal history until after the candidate has received a conditional job offer and limits the lookback period to ten years. Exemptions exist for those employers who are expressly permitted to inquire about criminal history pursuant to federal or state law. Eighteen employers are highlighted as falling under the exemption, including financial institutions and “employers in the business of insurance.”

Securities firms, including broker-dealers, are not listed among the 18 employers but legitimately fall under the broader federal or state law exemption provision. For example, the federal Securities Exchange Act precludes persons with certain felony and misdemeanor convictions from working in the industry for 10 years² and requires firms to obtain fingerprint cards that are then processed by the U.S. Attorney General or its designee.³ The Financial Industry Regulatory Authority, the industry’s self-regulatory organization, requires in Rule 3110(e) that member firms investigate and attest to “the good character, business reputation, qualifications and experience of an applicant” – and can fine firms for inadequate background checks.

There are obvious reasons why firms, which are responsible for the supervision of their associated persons, need to know the criminal histories of persons they are hiring. Hard-working Americans rely on investment professionals to help them achieve substantial life goals such as buying a house, sending children to college and saving for retirement. In many cases, these professionals have direct and frequent access to clients’ life savings. As such, a hiring process which includes access to criminal history is important.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. Our principal role is to advocate on behalf of our members’ interests before policy makers, regulators, the media and the public. Our primary focus is on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. SIFMA also serves as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit www.sifma.org.

² Securities Exchange Act of 1934, Sec. 3(a)(39).

³ Securities Exchange Act of 1934, Sec. 17(f)(2).

As you are working on this bill, we encourage you to expressly exempt broker-dealers and investment advisers from both the law and the bill's purview. HB 1782 HD 1 seeks to further restrict the ability of non-exempt employers to take criminal history into account. It, among other things, would distinguish between felony and misdemeanor convictions and shorten the lookback period in both instances to unspecified time frames. If it were to be interpreted as applying to the securities industry, especially given the shortened lookback period, it would conflict with federal obligations and undermine investor protection.

To avoid this potential outcome, we would encourage you to add broker-dealers and investment advisers to the enumerated list under Section 378-2.5(d): "(19) Broker-dealers, investment advisers and federal covered investment advisers, as defined in 485A-102."

We appreciate your willingness to consider our concerns. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,

/s/

Kim Chamberlain

Managing Director & Associate General Counsel

SIFMA

HB-1782-HD-1

Submitted on: 3/9/2020 12:55:39 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna K Santos	Individual	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/9/2020 1:01:40 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Strong	Individual	Support	No

Comments:

Please pass HB 1782 HD1 and include the original look back periods of 5 years for felonies and 3 years for misdemeanors. This is the crux of the bill and will be instrumental for formerly incarcerated folks looking for employment.

In pulling from my experience as a probation officer, employment is fundamentally crucial to the success of our community members who have been through the justice system. The ability to obtain a good job affects whether or not a person can pay rent, provide for their family, as well as maintain good mental health. All of this also impacts whether or not the individual will commit another offense. When my probationers have good jobs, they feel better about themselves and are more motivated to do well on probation, to not use drugs, and to have more purpose in their lives overall.

Employment is a huge key in reducing recidivism and if we are serious about reducing recidivism in this state, then we need to take the necessary measures to improve employment opportunities for formerly incarcerated individuals. These numbers are important because lengthy criminal history record checks are leaving folks who have paid their debt to society at a disadvantage and preventing a potential pool of job candidates from entering the workforce. Please pass HB 1782 HD 1 with the originally written look back periods of 3 years for misdemeanors and 5 years for felonies.

Mahalo!

HB-1782-HD-1

Submitted on: 3/9/2020 1:45:41 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
carlos bellotto	Individual	Support	No

Comments:

aloha my name is carlos and i am in strong support of bill hb1782 and this bill matters to me because i have alot of friends and loved ones that have been in and out of the system and its so hard with a crimminal record to get a good job that will support there family and themselves

HB-1782-HD-1

Submitted on: 3/9/2020 1:55:49 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
gabriel Kukahiwa	Individual	Support	No

Comments:

Aloha, My name is Gabriel Kukahiwa and I'm supporting HB1782 the bill that's against employment discrimination. I highly agree that there should be a limit to background checks to felons up to 5 years and misdemeanor up to 3. Why should a person be unable to receive employment based upon decisions that no longer holds sway in his or her life. There is nothing more powerful than a made up mind. So if a change of heart occurs there should no longer be a haunting of the past attached to said person I understand there should be a number of years, even the numbers stated above is a hindrance, but it will allow the employer to have a sense of comfort.

HB-1782-HD-1

Submitted on: 3/9/2020 1:56:33 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
joey alvarado	Individual	Support	No

Comments:

aloha my name is joey alvarado and i support this bill because i have a record and its hard to get a job when employers are looking into your background from 10 years ago



**Testimony to the Senate Committee on Labor, Culture, and the Arts
Tuesday, March 10, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: HB 1782 HD1, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has serious concerns with** HB 1782 HD1, which limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in a certain time period.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is concerned that the proposed look back periods of five years for felony convictions and three years for misdemeanor convictions does not provide enough time to determine rehabilitation. A 2018 U.S. Department of Justice report¹ conducted research on prisoner recidivism over a nine-year period from 2005 through 2014. This report looked at 401,288 state prisoners released in 2005 across 30 states, including Hawaii. Specifically, the report found that around 83% of state prisoners that were released were arrested at least once during the nine years following their release and that around 60% of these arrests occurred during years four through nine. Finally, we'd also note that in this study, it found that nearly 1 in 4 or 24% of prisoners that were released, were actually arrested during their ninth year following release.

Employers have shown a willingness to hire employees who have a prior conviction, but we need to also take into account costs related to hiring and training the employees, only to see them either quit or sent back to prison.

Thank you for the opportunity to testify on HB 1782 HD1.

¹ <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>

HB-1782-HD-1

Submitted on: 3/9/2020 2:32:20 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Individual	Support	No

Comments:

HB-1782-HD-1

Submitted on: 3/9/2020 2:43:32 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ululihi waton-hamilton	Testifying for citizen of hilo	Support	No

Comments:

ALOHA, MY NAME IS ULULIHI WATSON-HAMILTON, I AM A CITIZEN OF HILO,HAWAII AND I AM IN SUPPORT OF THIS BILL.

HB-1782-HD-1

Submitted on: 3/9/2020 2:49:21 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Peaches Kaupu	Individual	Support	No

Comments:

Aloha,

My name is Peches Kaupu and I am writting in strong support of HB1782 relating to employment discrimination.

I have been working with justice involved individuals for the past 5 years. The majority of these inviduals report finding it increasingly hard to secure employment due to their criminal background. I stand in strong support of HB1782 to eliminate employment discrimination. Mahalo for your consideration in this matter.

Mahalo,

Peaches Kaupu

HB-1782-HD-1

Submitted on: 3/9/2020 3:00:08 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kapoli maunakea	Individual	Support	No

Comments:

Aloha my name is Kapoli Maunakea and i am in support of bill 1782

HB-1782-HD-1

Submitted on: 3/9/2020 3:07:27 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ian paleka	Individual	Support	No

Comments:

aloha my name is ian paleka and im a member of the smart justice hawaii i reside in hilo and would like to talk to you about bill hb1782 im currently on probation with eleven felonies and a member of vetrans treatment court in kona. Part of the criteria with vet court is to find a job when allotted to move to phase 3 which entails getting a job. Being that im in the process of looking for a job it makes it challenging for me to look for a job being that i have a tragic past. It also makes me feel that im already judged when applying which makes me feel like im hopeless and brings my moral down. I feel that if my history or background check was a bit more leanit. We could produce more productive people reintergrating back into society and we will be helping both sides of the spectrem.

TESTIMONY IN SUPPORT OF HB 1782, HD 1

TO: Chair Taniguchi, Vice-Chair Ihara, and Members of the
Senate Labor, Culture, and the Arts Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: March 10, 2020 (2:45 PM)

Hawai'i Health & Harm Reduction Center (HHHRC) **strongly supports** HB 1782, HD 1, but hopes that the original language of the bill is reinstated so that that Hawaii's "ban the box" law can be improved by limiting periods where a prospective employer may look into an applicant's conviction record from the previous ten years, excluding periods of incarceration, to five years for felony convictions and three years for misdemeanor convictions.

HHHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance misuse and underlying mental health conditions. Unfortunately, those with behavioral health problems who are impoverished or unstably housed often have some level of involvement, often extensive, with the criminal legal system.

HHHRC also employs numerous individuals who have had criminal convictions and spent time in correctional facilities. Their lived experience is deeply valuable in working with persons who are currently struggling with a variety of health conditions and life circumstances. Their presence also demonstrates that even those who have struggled for long periods of time are able to get into a position where they can more adequately provide for themselves, maintain relative health and well-being, and contribute to the betterment of the community.

A criminal record for any offense, felony or misdemeanor, has a range of "[collateral consequences](#)" that impact a person's ability to participate in economic and civic life, including the ability to obtain employment, housing, education, and government assistance. In some

states this also extends to the removal of the constitutional right to vote. These barriers frustrate the ability of a person to effectively re-integrate into larger society by foreclosing their chances to obtain employment so that they may provide for themselves and their families.

Last year the [U.S. Sentencing Commission issued a report](#) finding that “harsh collateral consequences unrelated to public safety increase recidivism by limiting or by completely barring formerly incarcerated persons’ access to personal and family support.” The report recommends, in part, “Policymakers should avoid punitive mandatory consequences that bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society.”

Collateral consequences are especially severe and disproportionate in the enforcement and prosecution of drug possession crimes. Hawaii law currently provides that possession of “dangerous drug” in any amount, including unusable traces and residue, is a Class C felony that is punishable by five years in prison. See HRS Section 712-1243. A period of incarceration is typically followed by long periods of criminal legal supervision, and extensive periods of criminal legal supervision dramatically increase the likelihood of recidivism.

HHHRC strongly believes that behavioral health issues like mental illnesses and substance misuse are best dealt with by employing a therapeutic model and not a criminal justice framework. Severe criminal penalties deter people from seeking counseling and treatment outside of the criminal legal context. Human Rights Watch notes that over-criminalization increases the risks of violence, discrimination, and serious illness. The American Public Health Association underscores this point: *Substance misuse treatment is too often unavailable or unaffordable for the people who want it. A criminal justice response, including requiring arrest to access health services, is ineffective and leads to other public health problems.* (“[Defining and Implementing a Public Health Response to Drug Use and Misuse](#),” emphasis added.)

Thank you for the opportunity to testify on this measure.

HB-1782-HD-1

Submitted on: 3/9/2020 6:17:06 PM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

I am in strong support of HB1782 HD1. By reducing the impacts of older, less relevant convictions on people seeking to obtain or maintain legitimate employment, this measure – particularly with the three- and five-year limits as originally drafted – would discourage employment decisions that are expressly or unconsciously based on such convictions; reduce the stigma carried by former offenders; make it easier for those that have paid their debt to society obtain legitimate employment to support themselves and their 'ohana (family); and support the rehabilitation, reentry, and recidivism prevention goals of the state.

Mahalo for the opportunity to comment.

Benton Kealii Pang, Ph.D.

DEMOCRATIC PARTY OF HAWAII
HAWAIIAN AFFAIRS CAUCUS

TESTIMONY IN SUPPORT WITH AMENDMENT OF
HB1782, HD1 RELATING TO EMPLOYMENT DISCRIMINATION
Hearing, Tuesday, Mar 10, 2:45 p.m., Conf Room 224

Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Members, Committee on Labor, Culture and the Arts

Aloha,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly encourages your support of HB1782, HD 1, however, we urge you **to return the bill to its original form** amending HRS § 378-2.5(c) to reduce the “look back” limitation on employer consideration of convictions that bear a rational relationship to the job *from ten years from time of conviction to five years for felonies and three years for misdemeanors*, excluding periods of incarceration.

By limiting an employers’ use of conviction records to a five year period for felonies and three year period for misdemeanors, this measure will allow employers to continue basing employment decisions on more recent convictions, and will reduce the stigma and other barriers faced by people with older convictions. This in turn will reduce the disproportionate impact of conviction records and our criminal justice system as a whole on Native Hawaiians, women, and marginalized groups; enable and encourage reformed individuals to obtain and maintain legitimate employment, support their families, and contribute to their communities and the overall economy; and promote public safety through reduced criminal activity over the long term.

Me Kealoha pumehana

/s/ Leimomi Khan

LEIMOMI KHAN
Chair, Hawaiian Affairs Caucus

Sen. Brian Taniguchi, Chair
Sen. Les Ihara, Vice Chair
Tuesday, March 10, 2020
2:45pm in Room 224

Re: HB1782 HD1 Employment Discrimination - SUPPORT

Aloha Chair Taniguchi, Vice Chair Ihara and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong support of HB 1782 HD1 that clarifies our state's employment discrimination laws as it relates to the protected class of arrest and court record.

As background, I have past experience as Director for MEO's Reintegration Program on Maui, Public Defender, as a University Counselor working with students with criminal justice histories, and as an person whose family has been impacted by our criminal justice system. In addition, I have worked as an Enforcement Attorney for the Hawai'i Civil Rights Commission, the agency that enforces HRS 378. (However, please note that I am submitting this testimony in my personal capacity).

The purpose of this bill is clear. Individuals with arrest and court record histories should have meaningful opportunities to earn a living by entering the job market.

Employment is one of the key factors that supports the process of change in which individuals learn to be law-abiding and productive members of their families and society over time. This is why policies and programs that place a focus on supporting the reentry of formerly incarcerated people are so critical: they promote positive outcomes.

Through opening doors to employment, people can stay out of the justice system and realize their potential to succeed after release. However, national and state data shows that individuals with criminal histories continue to face barriers to employment.

Although Hawai'i should take pride in enacting the first "ban the box" law in the United States, our current employment discrimination protections under HRS 378 has room for improvement.

Currently, non-exempt employers are permitted to consider criminal background data within a "ten year" look back period. This ten year period is arbitrary and in fact, contravenes best evidence relating to recidivism benchmarks.

See <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/01/the-changing-state-of-recidivism-fewer-people-going-back-to-prison>

The Changing State of Recidivism: Fewer People Going Back to Prison

The share of people who return to state prison three years after being released—the most common measure of recidivism—dropped by nearly a quarter over a recent seven-year period, according to an analysis by The Pew Charitable Trusts of federal Bureau of Justice Statistics (BJS) data on prisoners released in 2005 and 2012. (August 2018)

Similarly, Hawai'i usually **three years** as a benchmark for recidivism rates. See <https://icis.hawaii.gov/wp-content/uploads/2018/08/Hawaii-Revidivism-2017.pdf>.

Here's the excerpt from the Interagency Council on Intermediate Sanctions Hawaii Recidivism study.

This study examines felony probationers, prisoners released to parole, and maximum-term released ("maxed-out") prisoners. **It tracks recidivism for each offender over a precise 36- month period.** ICIS defines recidivism as criminal arrests (most recent charge after supervision start date), revocations, technical violations, and/or criminal contempt of court. Excluded from this study (per past methodology) were probationers who were arrested within three months following their supervision start date, and did not have a reported offense date. This is due to the reasoning that some of the offenses in question were committed prior to the supervision start date.

To be consistent with evidence-based practices within this field, please limit the look back period to three years for both felonies and misdemeanors convictions, excluding the periods of incarceration. This will increase employment opportunities for individuals who have criminal justice histories and are earnestly trying to make a living and a new life for themselves and for their families.

Thank you for the opportunity to submit testimony in support of this measure that reflects our commitment to civil rights for all people.

Sincerely,
Carrie Ann Shirota, J.D.
Honolulu, Hawaii
cashirota808@gmail.com
(808) 269-3858

HB-1782-HD-1

Submitted on: 3/10/2020 12:41:05 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

Aloha Senator Taniguchi, Senator Ihara, and Members of the Committee,

HB1782 HD1 limits the convictions that are eligible for use in employment decisionmaking within certain time frames.

If a person released from prison is prevented from getting a job because of their conviction record, they will not be able to sustain themselves and may resort to criminal activity again. They will have been prevented from becoming a productive member of society and public safety will have been compromised.

Please restore the original version of HB1782. Successful reentry requires that people be able to get jobs that can sustain them. Upon release, a person has paid their debt to society. They should be able to start anew and not be handicapped by their past misdeeds.

Mahalo for your consideration.

Diana Bethel, Honolulu

HB-1782-HD-1

Submitted on: 3/10/2020 9:40:20 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Noalani Nakasone	Individual	Support	No

Comments:

Aloha to the Committee on Labor, Culture and the Arts,

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislature Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1.

Mahalo Nui for the opportunity to testify in support of this bill.

Sincerely from Kauai,

Noalani Nakasone



Testimony to the Senate COMMITTEE ON LABOR, CULTURE AND THE ARTS

**Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Tuesday, March 10, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: HB 1782 HD1, RELATING TO EMPLOYMENT DISCRIMINATION

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The mission of SHRM Hawaii is to advance the Human Resource profession's capacity to drive workplace excellence within business, education, government, and communities in the State of Hawaii. We serve our professionals through building knowledge, expanding experiences, facilitating the development of innovative ideas, and exchanging best practices for success to serve human resource (HR) professionals and advance the human resource profession.

SHRM Hawaii serves nearly 800 members statewide and provides comprehensive information and tools to human resource professionals to enable them to make informed decisions on behalf of both their organization and the employees. We believe that human resource management is a critical component to the success of every business as the HR professional is responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses' most valuable asset: human capital. This is accomplished through a statewide effort to partner with and support our members, while still recognizing the individual needs of organizations on each island.

Based on SHRM Hawaii's mission, we respectfully oppose House Bill No. 1782 in its present form. We are guided by four principles in assessing our position on proposed legislation: 1) Is there a problem? 2) Is legislation the correct solution? 3) What will it cost business/government? And 4) Is it consistent with federal law.

First, we are not aware and have seen no evidence that the ten year look back has caused any hardship much less discrimination against Native Hawaiians or any other specific group. As professionals administering employee discrimination laws, we respect and honor all of our employees and are guided by Hawaii law which requires any conviction be "rationally related" the core job duties of the position sought as detailed by the Hawaii Supreme Court in *Shimose v. Hawaii Health Systems Corporation (Hilo Medical Center)*, (2015).



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

Second, SHRM Hawaii is concerned that the proposed look back periods of five years for felony convictions and three years for misdemeanor convictions does not provide enough time to determine rehabilitation. A 2018 U.S. Department of Justice report conducted research on prisoner recidivism over a nine-year period from 2005 through 2014. This report looked at 401,288 state prisoners released in 2005 across 30 states, including Hawaii. Specifically, the report found that around 83% of state prisoners that were released were arrested at least once during the nine years following their release and that around 60% of these arrests occurred during years four through nine. Finally, we'd also note that in this study, it found that nearly 1 in 4 or 24% of prisoners that were released were actually arrested during their ninth year following release.

Third, there is no comparable federal law and numerous federal laws which prohibit recipients of federal financial assistance and monies to carry out both state and federal programs from employing anyone with felony convictions related to the job. See for example, 45 CFR Section 1301.31(b)(2) and Hawaii Civil Rights Commission Declaratory Ruling No. 07-16 (4/13/07) regarding Early Head Start Program employers.

Employers have shown a willingness to hire employees who have a prior conviction, but we need to also take into account costs related to hiring and training the employees, only to see them either quit or sent back to prison.

Thank you for the opportunity to testify on HB 1782 HD1.



John Knorek, Esq.
Legislative Affairs Committee Co-Chair



Kim Ripley
Legislative Affairs Committee Co-Chair

LATE

taniguchi4 - Joel

From: Healani Sonoda-Pale <healanipale@gmail.com>
Sent: Tuesday, March 10, 2020 12:15 PM
To: LCATestimony; JDCTestimony
Subject: Pass HB1782 HD1!

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,

taniguchi4 - Joel

From: Bronson Kalipi <bkalipi6@gmail.com>
Sent: Tuesday, March 10, 2020 4:06 PM
To: LCATestimony; JDCTestimony
Subject: Pass HB1782 HD1!

I strongly support HB1782 SD1, a bill in OHA's 2020 Legislative Package. This measure would discourage employment decisions that are based on ten year old conviction records; reduce the stigma carried by former offenders; and support the rehabilitation, re-entry, and recidivism prevention goals of the state. By reducing the ten-year lookback period allowed under current law to 5 years, HB1782 SD1 will better serve the original intent of the "ban the box" law, allowing employers to continue considering recent conviction records in their hiring and other employment decisions, while relieving people with older convictions from the largely unjustified stigma and bias they would otherwise face in seeking or maintaining legitimate employment. Therefore, I respectfully urge the Committee to PASS HB1782 SD1. Mahalo nui for the opportunity to testify in support of this bill. Sincerely,