

Comments

TESTIMONIES RECEIVED

1. County of Hawaii, Office of Housing and Community Development
2. Hawaii Island Chamber of Commerce
3. Legislative Information Services of Hawaii, Inc.
4. Hawaii Council of Associations of Apartment Owners
5. County of Hawaii, Police Department
6. Fairway Villa, Association of Apartment Owners
7. National Federation of Independent Business



HAWAII CIVIL RIGHTS COMMISSION

888 MILILANI STREET, 2ND FLOOR HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

Memorandum

November 29, 1995

To: Persons with an interest in rules relating to Arrest and Court Record Discrimination

From: Linda C. Tseu *Linda C. Tseu*
Executive Director

Re: Request for Public Input on What Should Be Contained in Rules on Arrest and Court Record Discrimination

The Commission is responsible for the enforcement and adjudication of complaints alleging discrimination in employment based on an individual's arrest and court record.

Presently, the Commission does not have administrative rules governing arrest and court record discrimination. In the near future, the Commission intends to adopt administrative rules to clarify and explain the law. (Such rules will not apply to complaints currently under investigation.)

Prior to engaging in rulemaking under the Administrative Procedures Act ("APA"), the Commission would like input from the public on what should be contained in these rules. This input would be in addition to the APA requirements of notice and opportunity for public comment on proposed rules which will be drafted as a result of the input we seek at this time. You will be provided with notice of rulemaking and the proposed rules when the Commission receives Governor's authorization to adopt rules.

The Commission staff would like to hold an informal meeting with persons who have previously provided testimony on administrative rules, groups representing the interests of complainants, respondents, persons with arrest and court records, the business community, and other interested parties.

The Commission requests that those who are interested in the content of such rules provide a short (5 minute) presentation summarizing your concerns together with a written submission, if possible, on what should be contained in the rules, which may include draft language for such rules. If there is any legal or other justification for proposing that a particular rule be adopted, it should also be provided, if possible. If you wish, you may submit written submissions without attending the meeting.

The Commission recognizes that rules governing arrest and court record discrimination may be controversial and seeks to hear from all sides on how the law can be implemented. At a minimum, there must be a balance between the Legislative directive to not discriminate against an individual with an arrest or court record with the legitimate concerns of business.

Potential areas for input include: general policy of the law, definitions, prohibited practices, legitimate inquiries, prohibited inquiries, statutory exemptions, and defenses, including business necessity and bona fide occupational qualification (BFOQ).

The meeting will be held on **Monday, January 8, 1996, at noon**, in Room 313, at the Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, Hawaii. Written submissions may be addressed to the Commission at 888 Mililani Street, Honolulu, Hawaii 96813. Please submit 3 copies of any written submissions, if possible. The deadline for written submissions is January 12, 1996.

If there are any questions, please call the Commission's Chief Counsel, John Ishihara at 586-8636.

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Prepared mail list &
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HAWAII CIVIL RIGHTS COMMISSION

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ATTENDANCE SHEET
PUBLIC MEETING
RULES RELATING TO ARREST AND COURT RECORD DISCRIMINATION

Date: January 8, 1996

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3. Connie Hestert	Hawaii Engineers Council	836-1511
4. Legni Godfrey	Olaten Staffing Services	523-3313
5. Sam Langil	PCC	293-3192, 293-3185
6. Amy Byms	HECO	543-4797
7. Alma Freitas	HSCO	548-4679
8. Elena Sen	HECO	543-4687
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11. Joyce Hedani	Liberty House	945-5145
12. Murray Towill	Hawaii Hotel Assoc.	923-0407
13. JANE SINNOTT	Liberty House	945-5929
14. JOHN MCGUIRE	CHAMBER OF COMMERCE OF HI	545-4313
15. Kendra Pratt	Suenatsh'Lee, AAL	599-4444
16. Gordon Nelson	Bank of Hawaii	531-8951
17. Dick Boffe	LITA	533-6750
18. Christina John Nguyen	NEHA	526-9884
19. WAYNE OGINO	SHERATON HOTELS	931-8557
20. Desmundi Bzant	Hon. Info Sv.	732-8778



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ATTENDANCE SHEET PUBLIC MEETING

RULES RELATING TO ARREST AND COURT RECORD DISCRIMINATION

Date: January 8, 1996

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7. MARY ANANIAN	CONDOMINIUM ASSOCIATIONS	923-5659
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17. Martin Quiney	Sheraton Waikiki Hotel	931-8131
18. Arlene Odagiri	Sheraton - Royal Hawaii	931-7941
19. Philia Lau	Sheraton Hotels	931-8592
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21. Jody O'Brien	Nurse finders of Hi	522-6050
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CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

January 7, 1996

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John Ishihara, Esq.
Hawaii State Civil Rights Commission
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Re: Rules Pertaining To Arrest And Court Records Discrimination

Dear Ms. Tseu and Mr. Ishihara:

The Afro-American Lawyers Association strongly supports Section 378-2, Hawaii, Revised Statutes, which makes it a discriminatory practice for an employer to discriminate against a person on the basis of arrest and court record.

When a person has served his or her punishment given by the court system, they should be able to obtain gainful employment the same as the rest of the population. Otherwise, a person who is arrested and/or convicted will be wearing a stigma for the rest of his or her life. If they are unable to find employment, they will have to resort to crime against and may end up back in prison. The judicial and penal system will be doomed to failure because the element of rehabilitation will be a false hope.

Unfortunately, in our society, the judicial and penal system practices institutionalized racism. Attached for your review is an article written by journalist William Raspberry in 1993 and an article recently published in the Economist. Fifty-one percent of all American inmates are black. This is greatly disproportionate to the percentage of African-Americans in American society (12%). In Hawaii, unfortunately, 52% of the inmates are Hawaiian or part-Hawaiian. Most of the people who are serving time in prison are there due to drug addiction. If they are unable to get a job when they are released from prison and become meaningful members of society, they will return to

drugs and theft as a means to support their habits.

Recently, the National Center on Institutions and Alternatives issued a report saying that America incarcerates more people than any other nation in the world. The figures keep getting higher and higher with stricter sentencing penalties such as "three strikes, you're out." In a recent case, a man who shoplifted some food from a store in California was sentenced to life in prison because he had a criminal record. Prisons are the fastest growing industry in America today.

A person who is arrested is still presumed innocent of all crimes under the United States Constitution. The mere fact of arrest should not be any grounds for refusing to hire a person. The term "criminal record" can include littering, illegal camping (which a lot of the homeless people are charged with) and other types of offenses which really have no bearing on whether a person will be a good employee or not.

In Hawaii, there have been people with criminal court records who have gone on to contribute much to society, *i.e.*, Chuck Norwood who served on the School Board of Education (manslaughter conviction), Milton Holt, State Representative (spousal abuse), Judge Aileen Richardson (drunk driving), just to name a few. There are many others who are hardworking individuals. The mere fact that the person has a criminal record does not mean they should automatically not be able to get a job and are undeserving of protective status. Indeed, some people who encounter the criminal justice system can go on to be mayors of major cities. A criminal record should not be a scarlet letter forever banishing a human being to inferior status. Our society must include all kinds of people in active, positive, meaningful work. If a person has been punished through the judicial or criminal system and wants to return to the mainstream and contribute something of value, he or she should be able to do so without encountering discrimination. This is especially true when there is a disproportionate amount of economically disadvantaged and minority persons who are incarcerated.

We urge the Civil Rights Commission to strengthen all rules prohibiting this type of discrimination and to enforce this law zealously.

Sincerely,



DAPHNE E. BARBEE

Attorney At Law

DEB:lko
Enclosure

Getting out

WASHINGTON, DC

ADD three Republicans to the long list of senators who have decided not to seek re-election next year. The decisions by Nancy Kassebaum of Kansas, Mark Hatfield of Oregon and Alan Simpson of Wyoming take the number of retirements from the Senate to 12 (eight Democrats and four Republicans). The last time there were so many retirements was in 1896, before the days when senators were directly elected.

This has prompted mournful mutterings about the decline in civility in the Senate, which is supposedly driving some sensitive souls out, and about the loss of lawmakers prepared to work

across party lines. Some of the departing senators will indeed be a loss. But, if they are sensible enough to recognise that after many years of service (18, on average, for the departing dozen) they no longer have the enthusiasm for the job, so much the better. Retirements can also replace hot air with fresh air.

Some senators still seem to find the life invigorating. Strom Thurmond of South Carolina turned 93 on December 5th, and has every intention of running for re-election in 1996. One of this political season's more entertaining buttons reads: "Thurmond & Helms in '96: Don't waste 200 years of experience."

Fighting crime

The case for emptier prisons

AMERICA now imprisons more people than Russia. According to statistics released on December 3rd, 565 out of every 100,000 Americans are behind bars. And although blacks comprise only 13% of the population, they account for almost half the country's 1.4m inmates.

It is true that America has more crime than other places, and that black Americans commit too much of it. But these two facts do not explain everything. Black Americans commit about the same share of violent crime as they did in 1976, and the total crime rate has actually fallen since 1980. Over the same period, the number of inmates has tripled, and the proportion of black prisoners has increased.

Why, then, do Americans continue to vote for those who vow to lock yet more people away? One reason is that fear of crime does not diminish, even when the incidence of crime falls. Another is that although total crime rates have fallen since 1980, violent crime has increased by about a third. Law-abiding people naturally want murderers, rapists and muggers caged. But this does not explain why the prison population has risen almost ten times faster than the rate of violent crime.

It is not crime that has changed, but punishment. A study of why the prison population has grown attributed about a third of the growth to demographics, the increase in violent crime, more arrests and longer sentences. The other two-thirds came from jailing people for offences that did not require prison sentences in the past. In particular, the war on drugs has crammed America's prisons with non-violent petty criminals. In all, the number imprisoned

for drug offences tripled between 1986 and 1991, and has grown since; in Washington state, the number of prisoners in for drugs crimes has risen almost 1,000% since 1980.

As a result, violent criminals are a decreasing share of the prison population. In 1991, according to the Cato Institute, only one out of five drug offenders in state prisons, and one out of three in federal ones, had a violent history. And the increase in the number of drug offenders in prison comes at a time when usage of all illegal drugs is lower than it has been for years, although it remains high in the inner cities.

Black Americans have been disproportionately hit by the war on drugs because

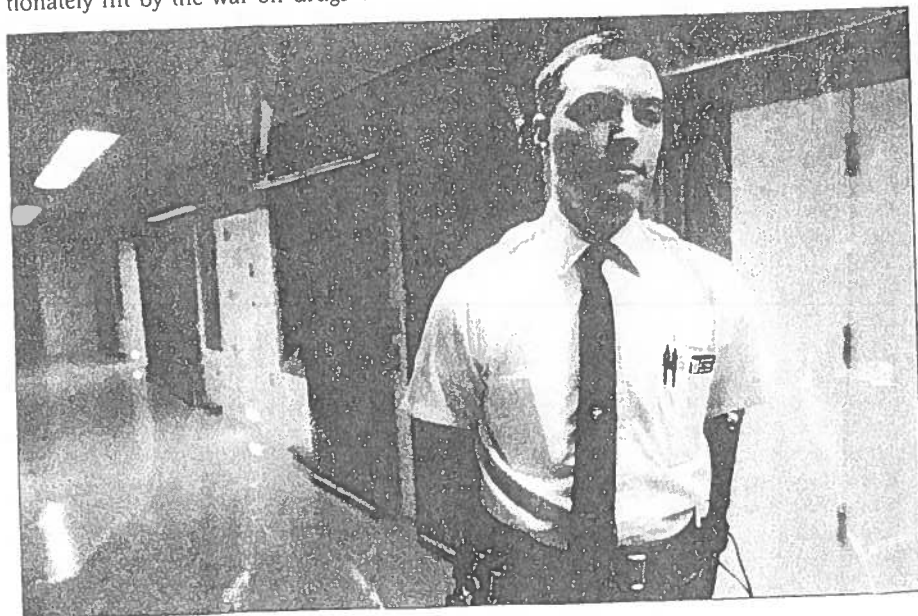
they tend to commit the wrong kinds of drug crime. For example, under federal law the possession of five grammes of cocaine powder is a misdemeanour that carries a maximum prison sentence of a year. Possession of five grammes of crack cocaine, though, is a felony that carries a mandatory five-year sentence. Blacks are much likelier to smoke crack: the result is a large increase in the number of blacks in prison.

Such mandatory minimum sentences, at both federal and state level, are filling up prisons faster than new ones can be built; more than a dozen states also have "three-strikes" rules, which require long prison stretches for a third felony. Mandatory sentences, in either form, are crude. In particular, they do not distinguish between levels of seriousness of different types of crime; the federal minimum sentence for possession of a small amount of LSD is ten years, much more than for kidnapping, rape or attempted murder.

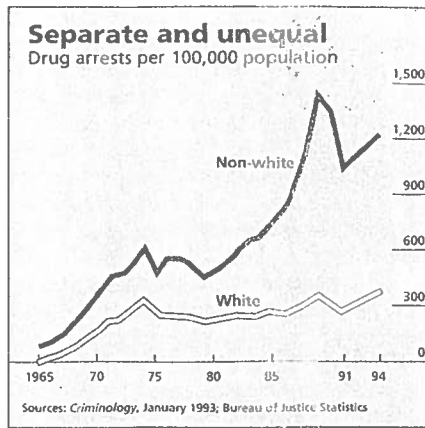
The basic aim of the war on drugs has been to remove anyone involved in the drug trade from the street to the cells. Yet demand for drugs remains high in the inner cities, and the history of the trade demonstrates that supply always meets demand. Locking up a drug courier does not mean there is one courier the less at large: only that an aspiring, often under-age, one gets his chance.

Mandatory minimums thus do not inhibit the operations of the drug trade; but they ensure that lots of non-violent, low-level drug offenders sit in prison for a long time. In 1990, almost 90% of first-time drug offenders in federal courts went to prison, with an average sentence of more than five years. First-time violent offenders went to jail less often and for shorter periods. No wonder that the proportion of drug prisoners in federal prisons goes on rising.

Much of this rampant incarceration is



Five grammes of crack, five years inside



pointless. Drug-users do not need to spend five years in jail to know they have offended; like most petty criminals, most grow out of their bad habits quickly enough. Besides, most give up crime, and hardly anyone starts, after the age of 30. But mandatory sentences mean that more minor villains will stay in prison well past their criminal prime. At a cost of \$21,000 a year for each

increasingly creaky inmate, that is a waste of money that could be better spent on deterring the dangerous young.

America is good, and getting better, at locking up the worst and most incorrigible criminals. But it casts too wide a net. The 1995 crime bill, with its proposed \$12.2 billion in prison construction and extension of mandatory sentences, is very much in this mould. There are better and more creative ways of dealing with many criminal misfits.

One would be to try to cut the demand for drugs rather than the supply. The latter has never worked, as the stable or falling street price of drugs makes clear. A Rand Corporation study found, however, that a dollar of drug treatment lowers consumption as much as \$7-worth of law enforcement does. Treatment lowers the volume of drugs consumed; the less the consumption, the fewer the drug-related crimes.

There is also a case for insisting on prison for violent first offenders and tougher treatment for violent juveniles. A study by the National Bureau of Economic Research found that the cost of locking up a

violent criminal was much less than the cost of the mayhem he would probably have committed. The great majority of violent criminals in state prisons have at least one violent conviction in their pasts.

And there is a case for developing forms of punishment that stop short of prison (see box). Technical parole or probation violations, such as being caught drinking or in the wrong district, are the most common reasons why people go to prison. That can be an over-harsh—and hugely expensive—punishment for people considered non-threatening enough to be on the streets.

It is not just criminals who are paying an exaggerated price for America's addiction to incarceration. The criminal minority, in effect, consumes an increasingly disproportionate share of the public purse. State spending on prisons has increased more than sixfold in real terms since 1979, using money that could have been spent on education, parks and hospitals. Getting tough on crime is punishing not just the bad guys, but law-abiding citizens as well.

If not jail, what?

THE clumsy phrase for punishments short of being sent to jail is "intermediate sanctions". Such measures do not work miracles: those subjected to them have about the same re-arrest rates as those who go to prison. But they cost much less (except for boot camps, whose running costs are about the same). They also allow greater leeway to dispense justice as well as punishment. Minnesota and Vermont, for example, are experimenting with "restorative justice" in which offenders appear before a board of citizens to work out a suitable punishment, emphasising apologies and restitution to the victim. A few other promising ideas:

- In New York, the Community Service Sentencing Project is aimed at chronic lesser offenders such as petty thieves. Instead of a few weeks in prison, they perform 70 hours of supervised community service. If they do not show up, or fail at their assigned work, they go to jail. The 70% who finished in 1994 provided \$370,000 in services and avoided a total of 42.5 years in jail, saving about \$2.5m.
- Another New York programme, the Court Employment Project, is for young men facing their first felony conviction. Instead of jail, the offenders undergo six months of supervision and evaluation, including drug treatment and counselling. Re-arrest rates for CEP participants were significantly lower than for comparable offenders; the programme costs

about half what prison would.

- New Hampshire has devised a network of programmes for non-violent, non-habitual offenders. They are required to stay in a secure house; some go to modest versions of boot camps. While there, they have access to computer-assisted learning, job preparation and the like. If corrections staff think that the offender has done well, the prison sentence is reduced to time served in the secure house.
- Georgia has a scheme of escalating sanc-



A monitor on your sock

tions for parole and probation violators. A small violation, such as drinking or missing an appointment, brings stricter supervision. If the behaviour continues, the offender is placed under house arrest, perhaps with electronic monitoring to track his movements. Another infraction means a stint in a probation detention centre. More offences mean boot camp and, finally, prison.

- In Springfield, Massachusetts, well-behaved inmates of county jails can have their sentences shortened by six months if they agree to stay at home, look for work and report to the authorities every day. Several other states are experimenting with daily reporting, sometimes as a form of pre-trial detention.

- Drug treatment, whether voluntary or mandatory, saves more money than it costs. A long-term study by the state of California of 3,000 people who had finished treatment programmes found that every dollar of treatment yielded \$7 in benefits. People who have been through drug treatment commit two-thirds less crime than they did before treatment; they also use hospitals less.

Alternatives to prison work best when they are designed for narrowly-defined groups of offenders, and when they are used as a genuine alternative to prison time. The savings come when the alternatives serve so many people that no new prisons are needed. But prisons remain the most popular form of crime control, and Congress offers no money for alternative sentencing experiments in the 1995 crime bill.

Is there any hope for young black men?

DAILY REGRESS 1.2.93

There was a brief cry of anguish and outrage last March with the revelation that some 42 percent of young black men in Washington, D.C., were under some form of criminal justice restriction.

Now comes a new report that 56 percent of Baltimore's black males between the ages of 18 and 35 are behind bars, in parole or probation, out on bond pending disposition of their cases or being sought on arrest warrants.

Nor, says Jerome G. Miller, whose National Center on Institutions and Alternatives issued the reports, is there anything unique about Baltimore and Washington. "We're also looking at Philadelphia, Los Angeles, Detroit and Chicago," he told me, "and while the studies are not complete yet, initial figures suggest that all these cities are very much in line with Washington and Baltimore — somewhere between 45 and 55 percent. And all indications are that the trend is up."

The implications are disastrous — not merely for the young men whose lives already have been disrupted by time but also for their crime-free peers. When well over half the young black men in your city are certified criminals, the safest assumption may be that all young black men are criminals and they individually prove otherwise. You're not actually accusing anyone, and you, but do you want these people working around you, living in your neighborhood, or browsing in your store?

As a matter of fact, some people who don't like to think of themselves as rac-



William Raspberry

cists have just about reached that conclusion. Some are merchants, who assign staff to follow black male shoppers around the store. Some are cops, who assume the worst about any black kid who crosses their path. Some are judges, who see the black youths before them as dangerous people who would misread a sentence of probation as softness.

Are these reactions unreasonable, given the numbers Miller reports?

Well, yes they are, says Miller, whose Alexandria center has been urging alternatives to imprisonment. He makes two interrelated points: that America has come to rely too much on the criminal justice system "to deal with a wide range of personal problems and social pathologies," and that we vastly underestimate the cumulative effect of discriminatory treatment of young black offenders.

As for the first, he cites the "war on drugs," which, from its inception, has made criminal sanction — arrest and imprisonment, rather than treatment and rehabilitation — the approach of choice.

His second, subtler point is that at

virtually every stage of the criminal justice process, young black males — particularly those from low-income neighborhoods — are subjected to harsher treatment. In the case of drugs, for instance, they are more likely to be arrested than are white or middle-class youngsters committing the same offense; they are more likely to be charged with a felony (possession with intent to distribute as opposed to simple possession), less likely to be referred for treatment or released on personal recognizance, more likely to be indicted and convicted, and less likely to escape with a non-prison sentence.

"Every step along the process can be explained in non-racial terms," Miller says, "but the cumulative effect is overwhelming. It leads these youngsters to believe — just as the rap artists keep telling us — that their lives are not valued."

He cites a study of Florida's habitual-offender law that allows prosecutors to press for stiffer sentences for repeat offenders. "The study showed prosecutors 'habitualizing' black offenders at two or three times the rate for whites." A California study, he said, showed the "majority of drug treatment slots going to white guys, even though most of the drug offenders are black or Hispanic."

At least, most of those convicted of drug offenses. The National Institute on Drug Abuse estimates that some 77 percent of drug users are white, 15 percent black, 8 percent Hispanic — roughly proportionate to their incidence in the population. But only a tiny frac-

tion of the arrests and convictions on drug charges are of whites.

Of course, one of the reasons for the increasingly harsh treatment of young black men is the growing fear of their violence. The accounts of automatic-weapons shoot-outs and turf wars and drive-by killings are not merely stories made up by racists to make African-Americans look bad. They happen.

But they don't really account for the startling numbers in Miller's report. Only 8 percent of Baltimore's arrests in 1991 were for violent crimes. About a quarter were for drug violations and the balance — 68 percent — were for non-drug, non-violent offenses. Miller won't quibble about incarcerating the 8 percent. But he thinks it's time to look for alternative ways of dealing with the rest.

One reason we do it the way we do is a belief, unshaken by evidence to the contrary, that cracking down hard on minor offenses is the best way to prevent major offenses later on.

Wrong. The best thing we could do for these young non-violent offenders — and for ourselves — is to get them out of the criminal justice system as soon as we can. Countless studies have shown that diversion, by helping youngsters to avoid being certified as criminals, reduces their lawlessness. And for the budget-conscious: It's a darned sight cheaper.

William Raspberry is a columnist syndicated by the Washington Post Writers Group.

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FOR PRESS RELEASE

The African American Lawyers Association of Hawaii announces the 4th Annual AALA Pamela Boyd Essay Contest on Civil Rights. This essay is named after "Pamela Boyd", an attorney with the Civil Rights Commission, and a former Deputy Public Defender and AALA member who recently passed away.

The topic for the Essay is:

Describe the Historical Needs and Benefits of Affirmative Action.

The Essay should be no more than 4-5 typewritten pages.

First Prize \$ 250.00, Second Prize \$ 150.00, Third Prize \$75.00

This Contest is open to all high school and junior high school students. Deadline is the end of Black History Month, February 1996. Essays should be sent to :

AALA Pamela Boyd Essay Contest
P.O. Box 4068
Honolulu, HI 96812



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At February's hearing before the House Committee on Labor and Public Employment on H.B. No. 3008 regarding the use of arrest and court record information by Hawaii employers, you presented testimony on behalf of the Hawaii Civil Rights Commission in opposition to this legislation. We are writing to share our comments about the Commission's testimony and our concern for the forthcoming proposed regulations.

In today's changing workplace, businesses need to take pro-active steps to ensure a safe and secure environment. One effective tool is to use felony conviction information that is substantially related to the job responsibilities of the position sought or at issue. H.B. No. 3008 would have enabled Hawaii employers like us to obtain such conviction information and to use that information to protect our legitimate financial interest and the physical safety of our customers, the public and our employees. Although H.B. No. 3008 is no longer being considered by the 1996 Hawaii Legislature, we are hopeful that the Commission will address the concerns of Hawaii's business community which led to the proposition of this legislation.

We oppose any attempt by the Commission to limit the ability of Hawaii employers to use felony conviction information that is substantially related to the job responsibilities of the position sought or at issue. We do not use arrest and court record information to "screen out" applicants and have always considered such information only for the limited purposes permitted by HRS Chapter 378. Your proposal to permit employers to inquire about felony conviction information only from the applicant to whom a job offer has been made will unnecessarily complicate our hiring process. Moreover, it will frustrate and anger applicants who make it through the final cut only to find themselves without the job because of their felony conviction record. Simply stated, the arrest and court record provision of HRS Chapter 378 worked fine under the aegis of the Hawaii Department of Labor and Industrial Relations, and there is no valid reason for the Commission to tamper with it now.

Please know that we, like the Commission, seek to protect the right of rehabilitated persons with felony convictions to obtain employment. However, if we can show that the conviction record of an individual is substantially job-related, we must be able to use such information for the legitimate employment purpose to maintain a safe and secure workplace. We seek to avoid situations that may give rise to a negligent hiring or retention claim.

Your suggestion that Hawaii employers may be required to determine whether an applicant/employee with a felony conviction record has been "rehabilitated" is completely unworkable. We know of no means to determine whether a convicted felon has been successfully "rehabilitated." Will the State of Hawaii indemnify employers for damages to victims when they make a good-faith determination that a convicted felon has been "rehabilitated" but a violent act occurs? If not, the Commission cannot burden Hawaii employers with this unrealistic requirement.

Thank you for taking this opportunity to consider our views. If you have any questions, please call me.

I do believe strongly that your office's proposals to limit employers ability to use felony conviction information is misguided and potentially dangerous.

You or any member of the Commission may call me to discuss it.

**Testimony in Opposition to
Proposed Hawaii Civil Rights Commission Regulations
on Arrest and Court Record
January 8, 1996**

My name is Bob Lee, I am employed by American Savings Bank as a Sr. Vice-President of Human Resources. I am testifying on behalf of my employer to express our concern that the Commission respect the legitimate non-discriminatory business needs for Hawaii companies to use conviction information for employment purpose.

American Savings Bank has 47 branches situated on the islands of Oahu, Maui, Molokai, Kauai, and the Big Island. Our workforce consist of 845 employees, 77.7% of which are represented by women. We have identified 85 positions that are unsupervised and are placed in a position of supervision, trust amongst our employees, customers and the public. In addition to the 85 positions the majority of our other positions have direct contact with external customers and some of these positions have access to company vehicles.

If we are unable to have access to information about an applicant who has a record of committing violent crimes against individuals, we may be unable to exercise our duty to our employees and customers to exercise reasonable care in the hiring and retention of persons who, by the nature of their employment, may pose a threat of injury to others. Like most employers, we are concerned that if the Commission prevents us from inquiring about an individual's conviction record, we may be liable for increased claims of negligent hiring and retention.

American Savings Bank is committed to ensure equal employment opportunity and recognizes that a convicted individual has paid his/her debt to society and should not be further penalized. Presently, we use conviction information to determine on a case-by-case basis whether an individual's criminal offenses are substantially job-related. Only after we make a careful determination that an individual's criminal offenses is related to the functions and responsibilities of the employment in question do we use the conviction record to make an employment decision.

As a federal depository we have the responsibility to insure our employees create and maintain the position of trust we have with respect to our customers and the public. Therefore, American has a high hiring standards and we cannot maintain this public trust unless we maintain our right to make informed decisions on our employment practices and are able to maintain the standards of hiring that presently exist.

We strongly oppose any change in enforcement policy that would create a blanket prohibition on the use of conviction information by Hawaii employer. We requests that the Commission proposed regulations address and allow employers to consider the following conviction record to make employment decisions:

1. **Violent Crimes.** including but not limited to murder, homicide, assault (with or without a deadly weapon), rape or sexual assault. American's workforce is composed of 77.7% women and while violent crimes are also committed against males statistically women are most likely to be raped or sexually assaulted. a conviction record for violent crimes should disqualify that person for jobs that require unsupervised employee or customer contact.
2. **Substantially Related Crimes.** We feel that we have the right and need to know if an applicant has been convicted of a crime substantially related to the position in question. Employers could identify in advance, the types of crimes related to each particular position, and applicants or employees should be required to provide conviction information for these crimes. Employers should be permitted to use such information to deny employment.
3. **Repeat Offenders.** Employers also have the right and need to know if an applicant is a repeat offender, for misdemeanors or felonies substantially related to the employment. Unless employers are protected from claims of negligent hiring/retention, hiring a repeat offender is an open invitation to plaintiffs' attorneys to collect punitive damages for intentional or reckless disregard.

We feel that any policy which denies employers the ability to use any conviction record for employment purpose is in direct

contravention of our duty to exercise reasonable care in hiring and retaining persons. We repeat and emphasize that employers have been held accountable for negligent hiring or retention of employees based upon past criminal activity. Caselaw clearly indicate that courts and juries have punished employers who failed to inquire or have hired individuals who committed crimes that were substantially related to the position filled.

We ask once again that the Commission exercise its authority with discretion and take into consideration the health, safety and welfare of the community and public as a whole in promulgating its regulations.

Thank you.

Arrest and Court Record Issues

January 8, 1996

My name is John McGuire. I am the Vice President, Government Affairs, for the Chamber of Commerce of Hawaii. The Chamber thanks the Commission for this opportunity to share our concerns about arrest and court record issues.

When it added "arrest and court records" to HRS Chapter 378 in 1973, the legislature sought to prevent employment discrimination against persons with arrest or court records solely based on their past criminal activity. After a convicted individual has paid the debt to society, the individual should not be further penalized by making it more difficult to obtain employment.

However, the legislature also recognized the legitimate concerns of business to use job-related conviction information for employment purposes. The legislative history makes clear that the amendment to add "arrest and court records" was not intended to preclude an employer from refusing employment or from discharging if the arrest or court record had a substantial relationship to the functions and responsibilities of the employment. Senate Journal 1973, page 967.

Until very recently, the Commission and its predecessor, the Department of Labor and Industrial Relations, administered and enforced HRS Chapter 378 under a policy that it was lawful for a private employer to take into account convictions which have a reasonable or substantial relationship to the employment in question. This enforcement policy was consistent with HRS §831-3.1 (b), which allows the state and its political subdivisions or agencies to consider a conviction record when making hiring or retention decisions.

The Commission now appears to have adopted a new and markedly different enforcement policy regarding "arrest and court records" which prohibits Hawaii employers from inquiring or basing any employment decision on any prior conviction, even if it related directly to the job in question. The Chamber strongly opposes any such blanket prohibition on the use of conviction information by Hawaii employers. Not only is this new policy in direct contravention to the legislative history of HRS Chapter 378 and an employer's duty to exercise reasonable care in hiring and retaining persons, but also it violates the constitutional right of Hawaii employers to equal protection under the law.

If the Commission enforces its new "arrest and court record" policy only against private sector employers, it will create a "double standard" by prohibiting private employers from using conviction information for employment purposes when the state is permitted to do the very same thing. The Chamber believes that this "double standard" violates the right to equal protection under the law. *Hasegawa v. Maui Pineapple Co.*, 52 Haw. 327 (1970). There is no justification to allow the state to use conviction information for employment purposes but bar private employers from



using the same information when the offenses are shown to be substantially job-related. We urge the Commission to treat Hawaii employers on an equal basis as the state, so businesses, too, can use conviction information for employment purposes.

The Commission also must be cognizant of the growing concern of Hawaii employers about the tort of negligent hire and retention. Under this legal theory, an employer may be liable to a third party for negligence in hiring or retaining an employee who is incompetent or unfit, who the employer knew or reasonably should have known was a potential risk to others.

In Hawaii, employers have a duty to exercise reasonable care in hiring and retaining persons who, because of the nature of their employment, may pose a threat of injury to members of the public. *Janssen v. American Hawaii Cruises*, 69 Haw. 31, 34 (1987). Although the court found that the defendant owed no duty to the plaintiff in the *Janssen* case, it noted that "[t]his is not a case where an employer knew its employees would have access to homes, or where the employees roomed together as a condition of employment." 69 Haw. at 35.

Increased liability for negligent hiring and retention requires a thorough review of a person's criminal record for those offenses that are job-related. A conviction record of assault and battery, sexual assault, or rape should disqualify any person for positions which expose co-employees or the public to the potential for such crimes to be repeated against them. The Commission must acknowledge the legitimate non-discriminatory business need for Hawaii employers to use conviction records for employment purposes to avoid the risk of needless negligent hiring and retention litigation.

Should the Commission find it necessary to promulgate administrative rules on arrest and court records, they must, at minimum, allow Hawaii employers to deny the hiring or retention of persons who have a record of certain job-related felony convictions. The Chamber believes that to be qualified for any position involving unsupervised public contact or working conditions (i.e., where one-to-one contact with the public or co-workers is likely), an individual should not have any record of felony convictions for the past seven years (excluding periods of incarceration) for any of the following categories of state offenses against the person: criminal homicide, criminal assaults and related offenses, kidnapping and related offenses, sexual offenses, child abuse, extortion (HRS Chapter 707), or prostitution and promoting prostitution (HRS Chapter 712, Part I).

To be qualified for any position involving unsupervised access to the property of customers or the company, including cash, an individual should not have any record of any felony convictions for the past seven years (excluding periods of incarceration) for any of the following categories of state offenses against property rights: burglary and other offenses of intrusion, theft, robbery, forgery, computer crime, credit card offenses, money laundering (HRS Chapter 708), or offenses related



to drugs and intoxicating compounds (HRS Chapter 712, Part IV). Of course, other employers may wish to include other offenses for different jobs.

We believe that these enforcement exclusions to the arrest and court record law must be codified in the administrative rules to ensure that the legitimate non-discriminatory business concerns of Hawaii employers are addressed. These exclusions are limited in time and effect, because only felony convictions for certain types of offenses that have occurred within the past seven years may be considered by employers for employment purposes. Of course, any applicant or employee may challenge an employer's action if the duties and responsibilities of the position cannot be shown to be substantially related to the offenses.

In summary, the Chamber asks the Commission to allow private employers to use conviction information to the same extent that the state of Hawaii and its political subdivisions and agencies can use the same information. If a private employer can show that certain offenses are substantially job-related, consideration of such conviction information must be allowed. Hawaii employers have a legitimate, non-discriminatory business need to use certain conviction information to make employment decisions.

We thank the Commission for this opportunity to share our views. Attached for your consideration are proposals for rules on arrest and court records that respond to the concerns raised in this testimony.



PROPOSED RULES ON ARREST AND COURT RECORDS

§12-46-__

It shall not be an unlawful discriminatory practice for an employer, employment agency or labor organization to require an employee or applicant to disclose whether the employee, applicant or member has been convicted of a felony in the preceding seven (7) years (excluding any period of incarceration) if the felony is substantially related to the actual job duties of the employment sought or at issue.

§12-46-__

It shall not be an unlawful discriminatory practice for an employer, employment agency, or labor organization to refuse to employ or discriminate against an employee, applicant or member because that person is unqualified for the position due to a felony conviction substantially related to the position sought or at issue.

§12-46-__

The following criminal offenses, and any similar criminal offense under federal or other state offenses, are substantially related to any employment requiring access to the cash, finances or property of the employer of the employer's customers, clients, or patrons.

- Burglary and other offenses of intrusion;
- Theft;
- Robbery;
- Forgery;
- Computer crime;
- Credit card offenses or money laundering;
- Hawaii Revised Statutes, Chapter 708 or offenses related to drugs and intoxicating compounds, Hawaii Revised Statutes Chapter 712, Part IV.

§12-46-__

A person shall be deemed unqualified, within the meaning of HRS §378-3(2), for any position involving access to the cash, finances, or property of the employer of the employer's customers, clients or patrons if the person has been convicted of any felony offense substantially related to the duties of the employment defined in §12-46-__, above, in the preceding seven (7) years (excluding any period of incarceration).

§12-46-__

The following criminal offenses, and any similar federal or other state offenses, are substantially related to any employment requiring unsupervised contact with co-employees, customers, clients or the public:

- Criminal homicide;
- Criminal assaults and related offenses;
- Kidnapping and related offenses;
- Sexual offenses;



Child abuse or extortion, Hawaii Revised Statutes Chapter 707; or,
Prostitution and promoting prostitution, Hawaii Revised Statutes
Chapter 712, Part I.

§12-46-__

A person shall be deemed unqualified, within the meaning of HRS §378-2(2), for any position involving unsupervised contact with co-employees, customers, clients or the public, if the person has been convicted of any offense substantially related to the duties of employment as defined in §12-46-__, above, in the preceding seven (7) years (excluding any period of incarceration).

§12-46-__

More than one misdemeanor or felony offense substantially related to any employment in the preceding twenty (20) years shall render the employee or applicant unqualified for the employment within the meaning of HRS §378-3(2).

§12-46-__

It shall not be an unlawful discriminatory employment practice to suspend any employee who has been arrested, taken into custody or charged with an offense substantially related to the employment at issue.



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REMARKS

Enclosed is legislative history of the arrest and court record prohibition and recent case authority regarding negligent hiring liability.

By John L. Knorek
JOHN L. KNOREK

the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded, and a legislative bill appropriating funds necessary to replenish the criminal injuries compensation fund for the compensation awarded."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary, for the purpose of establishing the criminal injuries compensation fund. The moneys existing in the criminal injuries compensation emergency payment fund on the effective date of this Act shall be paid into the criminal injuries compensation fund.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 10, 1974.)

ACT 205

H.B. NO. 2485-74

A Bill for an Act Relating to the Employment and Licensing of Convicted Persons.

Be It Enacted by the Legislature of the State of Hawaii:

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 I, section 4, of the Hawaii Constitution, which guarantees that, "No person shall be deprived of life, liberty or property without due process of law . . ."

SECTION 2. Chapter 731, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 731- Prior convictions; criminal records; noncriminal standards.

(a) A person shall not be disqualified from employment by the State or any of its political subdivisions or agencies, or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime.

(b) The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:

*Edited accordingly.

- (11) When the licensee, being a real estate salesman, fails to file with the commission a written statement setting forth the name of the real estate broker by whom he is employed;
- (12) Violating this chapter or the rules and regulations promulgated pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided, that a licensed broker may pay a commission to a licensed broker of another state if such broker does not conduct in this State any of the negotiations for which a commission is paid;
- (14) Commingling the money or other property of his principal with his own;
- (15) Adjudicated insane or incompetent.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

30. Section 471-10 is amended by amending subsection (b) to read:

"(b) Revocation and suspension. The board may revoke or suspend the license of any veterinarian for any of the following causes:

- (1) Professional misconduct, gross negligence or manifest incapacity;
- (2) Violation of this chapter or any other law which applies to him as a practicing veterinarian;
- (3) Making any false representations or promises through advertising or otherwise or in any manner dealing fraudulently or dishonestly in connection with the practice of veterinary medicine;
- (4) Habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic or dangerous substances;
- (5) Mental incompetence.

No license shall be suspended for longer than two years."

SECTION 4. Section 378-1, Hawaii Revised Statutes, is amended to read:

"**Sec. 378-1 Definitions.** As used herein:

- (1) "Person" means one or more individuals, and includes partnerships, associations, or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (2) "Employment agency" means any person undertaking to procure employees or opportunities to work.
- (3) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.
- (4) "Employer" means any person having one or more persons in his employment, and includes any person acting as an agent of an employer, directly or indirectly.
- (5) "Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into.

- (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, tried, or convicted pursuant to any law enforcement or military authority.

SECTION 5. All laws and parts of laws heretofore enacted which are in conflict with this Act are amended to conform to this Act. All acts passed during this regular session of 1974, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved June 10, 1974.)

ACT 206

H.B. NO. 2378-74

A Bill for an Act Relating to the Licensing of Acupuncture Practitioners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
ACUPUNCTURE PRACTITIONERS**

Sec. -1 Practice of acupuncture defined. For the purposes of this chapter the practice of acupuncture means insertion of needles into the human body by piercing the skin of the body for the purpose of controlling and regulating the flow and balance of energy in the body.

Sec. -2 License required. Except as otherwise provided by law, no person shall practice acupuncture in the State either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce himself, either publicly or privately, as prepared or qualified to so practice, without having a valid license obtained from the board of acupuncture.

Sec. -3 Qualifications for examination. No person shall be licensed to practice acupuncture unless he has passed an examination and has been found to be possessed of the necessary qualifications as prescribed in the rules adopted by the board of acupuncture in accordance with chapter 91.

Before any applicant shall be eligible for such examination he shall furnish satisfactory proof to the board that:

*Edited accordingly.

THIRD READING

The following bills, which were on the calendar for Third Reading were read throughout and the following actions taken:

H. B. No. 2428-74

On motion by Representative Kato, seconded by Representative Sakima, **H. B. No. 2428-74** passed Third Reading by a vote of 51 ayes.

H. B. No. 2591-74

On motion by Representative Yap, seconded by Representative Yuen, **H. B. No. 2591-74** passed Third Reading by a vote of 51 ayes.

H. B. No. 2188-74

On motion by Representative Kawakami, seconded by Representative A. Chong, **H. B. No. 2188-74** passed Third Reading by a vote of 51 ayes.

The Chair directed the Clerk to note that **H. B. Nos. 2428-74, 2591-74 and 2188-74** had passed Third Reading not earlier than 1:27 o'clock p.m.

At 1:28 o'clock p.m., the Chair declared a recess, subject to the call of the Chair.

At 1:29 o'clock p.m., the House of Representatives reconvened.

H. B. No. 2466-74

Representative Lunasco moved that action on **H. B. No. 2466-74** be deferred until tomorrow, March 13, 1974 and the Chair, noting that there were no objections, so ordered.

UNFINISHED BUSINESS

Stand. Com. Rep. No. 159-74 on H. B. No. 639, as amended, deferred from March 11, 1974:

Representative Wakatsuki moved that action on **Stand. Com. Rep. No. 159-74 on H. B. No. 639**, as amended, be deferred until tomorrow, March 13, 1974 and the Chair, noting that there were no objections, so ordered.

Stand. Com. Rep. No. 177-74 on H. B. No. 2485-74, as amended, deferred from March 11, 1974:

Representative Wakatsuki moved that **H. B. No. 2485-74**, as amended, having been read throughout, pass Third Reading, seconded by Representative Kato.

Representative Cobb then rose and stated:

"Mr. Speaker, I rise to speak in favor of **H. B. No. 2485, H. D. 2.**

The purpose of this bill is to encourage

rehabilitation by eliminating job disqualifications unless **the past crime is related to the job.**

The basic idea is that once a person has paid his debt to society, we should no longer continue to penalize him, especially in a job or license that is not related to his past crime. Already, there is a great deal of supporting law for this argument, including constitutional law, case law and legislative history.

By way of constitutional background, our Hawaii State Constitution was amended in 1968 and approved by the voters of our State that a person convicted of a felony could vote 'upon his final discharge or earlier as provided by law' and not only upon a pardon of the Governor. This interpretation was confirmed by an Attorney General's opinion issued in January of 1969. So, already, we have said that the loss of civil right for a felon was not permanent after his final discharge.

Secondly, in the matter of case law, the U.S. Supreme Court held in 1956 that State imposed qualifications for an occupation must be job related, in the case of *Schwarv vs. Board of Bar Examiners*. In addition, the importance of job related licensing standards was also noted in a recent decision by the District of Columbia Court of Appeals. In this 1972 case, *Miller vs. District of Columbia Board of Appeals and Review*, a licensing agency had denied a vendor's license to a former offender because it had found that he was not rehabilitated. Reversing the agency and finding that he was rehabilitated, the court not only ordered the agency to grant the man a license, but also went on to express 'serious concern' about the agency's lack of standards. The court said, in part, and I quote: 'Unless there are some standards relating the prior conduct of an applicant to the particular business activity for which he seeks a license, the power to deny a license inevitably becomes an arbitrary, and, therefore, unlawful, exercise of judgment by one official, a graphic example of which is so clearly revealed by the record in this case.'

Third, in the case of legislative history, I note that last year this legislature passed Act 54 which was **H. B. No. 656, H. D. 1**, which prohibited discriminatory practices in employment and made it unlawful for a private employer and I quote: 'To refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color, ancestry, or arrest and court record which does not have a substantial relationship to the functions and responsibilities of the prospective or continued employment, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question.'

In the case of 'good cause' in Section 378-2, the term is even less restrictive than what is proposed in H. B. 2485, for the bill before us will allow the denial of employment for any crime related to the job, in addition to the ability to do the work. The end result, Mr. Speaker, is to increase the control of employment for the protection of society, while at the same time allowing rehabilitated offenders to acquire jobs not related to their past crime. Now, does that sound like a radical goal?

It should also be noted that our recent legislative history is not unique in the field of employment offenders.

The states of Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Oregon and Washington have all recently enacted laws to remove restrictions on the licensing of offenders. In Maryland, the Attorney General issued an opinion letter to state licensing agencies informing them that they cannot refuse a license to an ex-offender based on his criminal record alone, but must take into account all the circumstances surrounding his conviction in deciding whether to grant or deny a license.

In at least ten other states, bills have been introduced or are being prepared to alleviate restrictions on the licensing of offenders, and in Maine, Governor Curtis issued an executive order in 1973 prohibiting state agencies from discriminating against ex-offenders in their employment practices.

The latest background information came in a letter from Mr. James W. Hunt, Project Director of the American Bar Association's National Clearinghouse on Offender Employment Restrictions.

We might question then, whether or not the ABA stands alone on this subject and the answer is, of course, they do not. Here I would like to quote the testimony of Mr. Robert L. Stevenson, Chairman of the Board of First Insurance Co., given before our Committee and I quote: 'For the past several years, the United States government, through the Law Enforcement Assistance Administration, has spent literally millions of dollars bringing together the finest minds and the most experienced practitioners of the American criminal justice system. Two hundred of these persons—police, judges, professors, wardens, the whole gamut—formed the National Advisory Commission on Criminal Justice Standards and Goals, and they have just published a series of reports on the entire spectrum of criminal justice. In their report on this subject, here is what they said: 'Each state should enact by 1975, legislation repealing all mandatory provisions depriving persons convicted of criminal offenses of civil rights or other attributes

of citizenship. Such legislation should include:

(a) Repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government.

(b) Repeal of all statutory provisions prohibiting the employment of ex-offenders by State and local governmental agencies. However, statutory provisions may be retained or enacted that authorize a procedure for the denial of a license or governmental privilege to select criminal offenders when there is a direct relationship between the offense committed or the characteristics of the offender and the license or privilege sought.'

That, Mr. Speaker, is exactly what this bill does. In addition, the Honolulu Police Department testified in favor of this bill, and I would like to briefly quote the heart of that testimony: 'The general provisions of the bill are consistent with past recommendations of the Police Department to the extent the prohibitions connected with the hiring of persons with criminal records are being repealed in several statutes. We have maintained that criminal offender records of the Police Department should be for the sole use of law enforcement purposes under our Criminal Justice System. They should never be used for disseminating information relating to the arrest and/or conviction for employment or licensing purposes.'

In short, Mr. Speaker, all of this goes back to the basic premise that to accomplish rehabilitation, we need to remove the irrational bars to employment that do so much to thwart its accomplishment. We also need to ask ourselves, at what point has a man paid his debt to society or must he go on paying that debt for the rest of his life?

Today, we can say that once the debt has been paid, the sentence served and the final discharge granted, that a man can have an equal chance for a job not related to his past offense. We can say that by voting for H. B. No. 2485, I wonder, Mr. Speaker, is that too much to ask?"

Representative J. Garcia then requested a roll call vote on H. B. No. 2485-74.

The motion was put by the Chair and carried, and the report of the Committee was adopted and roll call having been requested, H. B. No. 2485-74 passed Third Reading by a vote of 41 ayes to 10 noes, with Representatives Ajifu, Fong, Hapai, Kunimura, Medeiros, Morioka, O'Connor, Poepoe, Saiki and Soares voting no.

The Chair directed the Clerk to note that H. B.

assistance. Your Committee finds that the curbing of abuses in general assistance should be handled through a process of elimination of persons from general assistance on the basis of their seeking employment or accepting employment from the State. Act 177, Session Laws of Hawaii 1973, provided a means by which the department of social services and housing could require a person receiving assistance to gain employment. Under the public service employment program, the department is responsible for providing employment on public works projects for persons who: (1) receive full or partial public assistance from the State or (2) receive unemployment compensation benefits from the State, and are in the last two weeks of such unemployment compensation benefits after which they would be eligible for full or partial public assistance. However, persons qualifying under (1) and (2) must also reside on an island where the primary economic base providing employment for such persons is lost or in danger of being lost.

Your Committee feels that Act 177, if extended on a statewide basis, would provide the department of social services and housing with an avenue by which they may eliminate persons receiving general assistance who do not accept employment. The intent here is to offer able-bodied persons jobs through public works projects. Any refusal of such a public works job would mean immediate disqualification from assistance benefits.

In pursuing the approach to provide general assistance payments to eligible able-bodied persons and to insure safeguards from abuses, your Committee has amended H. B. 2428-74 by deleting the provision which disqualifies able-bodied persons from general assistance. In addition, your Committee has included a new section to the bill which would amend section 346-102(a) to extend public service employment to all persons on partial or full public assistance regardless of their area of residence. This amendment to section 346-102(a) in no way interferes with the original intent of Act 177, Session Laws of Hawaii 1973.

Your Committee found through testimony that the funds appropriated for Act 177, Session Laws of Hawaii 1973, have never been allotted for expenditure. Such unilateral decisions by the administration to withhold funds is in direct conflict with the intent of the Act and presumes the executive branch to be the policy-making body when in effect the legislature is the policy-making body in the State and the executive is the implementing arm.

Under the amendments made to H. B. 2428-74, your Committee finds it imperative that funds under Act 177, relating to public service employment be released for use by the department of social services and housing. Non-release of such funds for the program could result in greater costs in payment of general assistance benefits without any benefit to the State. Establishing public works projects for employment of able-bodied persons on general assistance would allow the State to be

repaid for general assistance payments through services rendered by persons on such assistance.

Your Committee on Public Health and Welfare is in accord with the intent and purpose of H. B. No. 2428-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2428-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 176-74 Consumer Protection on H. B. No. 2591-74

The purpose of this bill is to delete unnecessary provisions relating to credit life and disability policies.

When Chapter 435, Hawaii Revised Statutes, was enacted in 1969 it permitted, for a one-year period, or for such longer period as the insurance commissioner feels is required to produce credible mortality and morbidity data, the creditors to charge debtors maximum premiums set by the statutes. Inasmuch as the data are presently available, the maximum interim rates are no longer necessary according to the insurance commissioner.

Your Committee upon further consideration of the bill has made two additional changes. These are technical amendments which are necessary to make the affected sections consistent.

Your Committee on Consumer Protection is in accord with the intent and purpose of H. B. No. 2591-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2591-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 177-74 Judiciary and Corrections on H. B. No. 2485-74

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from employment or licensure by the State or its political subdivisions solely by reason of a prior conviction of a crime. Under the bill, employment or occupational licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime when the offense directly relates to the occupation in which the convicted person seeks or holds employment or for which he seeks or holds a license. The bill adds a new section to the Hawaii Revised Statutes to provide for the above, and repeals all contrary provisions.

Your Committee, upon further consideration, has amended the bill by deleting a provision calling for the repeal of Section 28-55, H. R. S.

Section 28-55 deals with reports by the department of the attorney general to county clerks of

convictions of citizens of this State in the United States District Court for the District of Hawaii. The reports are for the purpose of enabling county clerks to determine voting eligibility. Accordingly, the repeal or modification of Section 28-55 is not properly within the scope of this bill which relates to employment and occupational licensing.

We have also amended the bill to provide for the repeal of H. R. S. Section 437-28(b) (23), as being unnecessary in light of the general provisions of this Act. Section 437-28(b) (23) provides that the license of an automobile dealer may be revoked or suspended upon conviction of violating Section 291-38, making it an offense to tamper with odometers. The board still has this power under this bill.

We have also made minor amendments to correct clerical mistakes.

Your Committee on Judiciary and Corrections is in accord with the intent and purpose of H. B. No. 2485-74, H. D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H. B. No. 2485-74, H. D. 2.

Signed by all members of the Committee.

SCRep. No. 178-74 Water, Land Use and Development on H. B. No. 2188-74

The purpose of this bill is to correct the terminology contained in section 213(h) of the Hawaiian Homes Commission Act. The term lease is deleted and replaced by the term license in order to conform with the provisions of Section 207(c) (1) (B), which provides for granting of licenses, and not leases, to theaters, garages, service stations, markets, stores and other mercantile establishments.

Your Committee on Water, Land Use and Development is in accord with the intent and purpose of H. B. No. 2188-74 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 179-74 Federal-State-County on H. B. No. 2466-74

The purpose of this bill is to change the procedure for notifying the owner failing to maintain or repair his sidewalk by requiring a publication of the notice in a newspaper or by mailing a copy of such notice to the abutting owner. Existing law provides for notice by publication or by posting the notice on the premises.

Your Committee has made a technical amendment to this bill to bracket certain words which were meant to be bracketed but which were

inadvertently not bracketed.

Your Committee on Federal, State and County Relations is in accord with the intent and purpose of H. B. No. 2466-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2466-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 180-74 Legislative Management

Informing the House that **House Resolution Nos. 323 to 329, House Concurrent Resolution No. 51, and Standing Committee Report Nos. 181-74 to 190-74**, have been printed and distributed.

Signed by all members of the Committee.

SCRep. No. 181-74 Judiciary and Corrections on H. B. No. 1273

The purpose of this bill is to require implementation of the State's correctional master plan by amending the Hawaii Revised Statutes relating to an operational portion of the overall Correctional Master Plan. The bill, if enacted, would place the administrative responsibility for the operation of the intake service centers under the director of social services and housing instead of under the office of the governor.

Your Committee found that from a management standpoint the intent of the bill indicates a proper course of action. The 1969 study entitled "Corrections in Hawaii" which was undertaken by the survey services section of the National Council on Crime and Delinquency recommended that all correctional services be combined administratively under one department. The very comprehensive Correctional Master Plan promulgated by the State Law Enforcement and Juvenile Delinquency Planning Agency, which the legislature endorsed by passage of Act 179 of the 1973 session, stated that "Operation of the Intake Service Center under the auspices of the Department of Social Services would appear to be the best possible choice since this permits the center to function within the framework of neutrality necessary to assure its maximum effectiveness." And finally, the Report on Corrections which was just issued by the National Advisory Commission on Criminal Justice Standards and Goals strongly recommends the unification of all correctional programs, specifically including those offered by the intake service center, under one statewide correctional services agency — in Hawaii's case, the Department of Social Services and Housing.

Your Committee has therefore amended H. B. No. 1273 by making the intake service center advisory board advisory to the Director of Social Services and Housing rather than to the Governor, and retained the provisions whereby the advisory board nominates three candidates to the director

in the form attached hereto as H.B. No. 2968-74, H.D. I, S.D. I.

Signed by all members of the Committee.

SCRep. 861-74 Judiciary on H.B. No. 2190-74

The purpose of this bill is to clarify the law concerning marriage by repealing section 572-14 relating to marriage certificates which is no longer applicable, and by transferring to Chapter 572 appropriate sections of the vital statistics law which pertain to marriage license applications, solemnizations, and certification. This will consolidate all laws pertaining to marriage under one chapter of the Hawaii Revised Statutes.

Your Committee has amended the bill by:

(1) Changing the title of Sec. 572-13 from "Record of solemnization" to "Record of solemnization; marriages, reported by whom; certified copies." This makes more specific the purpose of the section and designates what it refers to.

(2) Amending Sec. 572-13(c) so that in effect, law will require the department of health to issue automatically certified copies of marriage. In the original bill, certified copies would be issued only by request. It is the opinion of your Committee that when one is married, he or she is entitled to a certificate of marriage. In addition, the department of health, shall upon request furnish to any applicant additional certified copies of the certificate of marriage which should be on file in the department. The department of health may also prescribe reasonable fees, if any, to be paid for certified copies of certificates under the proposed amended form of H.B. No. 2190-74, S.D. I.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2190-74, as amended in the form attached hereto as H.B. No. 2190-74, S.D. I, and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. 862-74 Judiciary on H.B. No. 2485-74

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from employment or licensure by the State or its political subdivisions solely by reason of a prior conviction of a crime. Under the bill, employment or occupational licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime where the offense directly relates to the occupation in which the convicted person seeks or holds a license. The bill adds a new section to the Hawaii Revised Statutes to provide for the above, and repeals all contrary provisions.

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

Despite these expectations, securing employment is often difficult for the ex-con. In one particular area it is especially frustrating. This involves those professions for which a license must be obtained. The convicted person usually finds that he cannot engage in these professions, no matter what his skills or talents are, because the statutes require "good moral character," or disqualify persons with criminal records.

This bill addresses this particular problem and offers worthy solutions. Upon the bill's enactment, convicted persons would have the possibility of entry into these licensed professions; whereas, at present, they are barred.

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.

Corrections have been made by your Committee to conform the bill to the statutes, as published. These are only corrections to typographical deletions and mistakes.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2485-74, H.D. 2, as amended in the form attached hereto as H.B. No. 2485-74, H.D. 2, S.D. 1, and recommends that it pass second reading and be referred to your Committee on Ways and Means for further consideration.

Signed by all members of the Committee.

SCRRep. 863-74 Judiciary on H.B. No. 2480-74

The purpose of this bill, as amended herein, is to make several modifications to existing chapter 294, Hawaii Revised Statutes relating to No-Fault Insurance. Chapter 294 which was enacted by the Legislature in 1973 as Act 203, Session Laws of Hawaii 1973, created a comprehensive system of reparations for injuries and loss suffered by motor vehicle accidents. It provided for compensation to persons without regard to fault, and it provided for partial abolition toward liability for motor vehicle accidents. While the basic purpose and intent of Act 203 remains valid, it is recognized that there is a need to make further modifications to Act 203 in order to improve and refine the motor vehicle accident reparation system.

Your Committee has studied and reviewed this bill together with several other bills introduced in the Legislature relating to the no-fault law. Your Committee has heard testimonies from all interested parties concerning this matter. Although your Committee is proposing several changes to Act 203, we believe that these changes will promote and enhance the intent and purpose of Act 203. Most of the major provisions of the existing no fault law will remain. Thus, the no-fault law will continue to provide a basic, comprehensive, equitable and reasonably priced auto insurance premium. It will continue to provide for a speedy, adequate and equitable reparation for those injured or otherwise victimized. It will provide for the stabilization and reduction of motor vehicle liability insurance premium rates. Its compulsory insurance system, under strong regulatory control by the Commissioner, will assure all persons reasonable benefits at minimum cost.

Your Committee has amended the bill in the following major areas:

(1) State Auto Insurance Commissioner:

Act 203, as enacted in the 1973 legislative session provided for a new automobile insurance commissioner whose full-time job would be devoted to the regulation of this industry and the general supervision of the relations of the insurers and insured.

Several sound reasons prompted this provision of the Act and your Committee believes this officer is needed for these reasons:

- (a) Any new general law naturally entails problems and this is particularly true of our no-fault statute which is changing some 800 years of practice and precedent.
- (b) Because of the nature of this change, the fact that it is going to affect the potential liabilities and actual expenditures of every family in the State, your Committee believes the problems attendant and the interests of our citizenry require prompt attention and resolution of problems.
- (c) Your Committee is of the belief that the active, aggressive leadership of a full-time individual devoted to the full implementation of this Act and the no-fault program will be a major contribution to the common good. Such direction is required to bring together the talents necessary for implementation. These skills include the legal, actuarial, and statistical expertise in an actively cooperative and integrated fashion to permit this accomplishment. The finest of these skills will be necessary to educate and to elicit the cooperation of the public and the interested work of the industry in an utterly new market.
- (d) Further, the Committee realizes the need for such leadership is magnified in that the public, though favoring no-fault legislation and a reduction in insurance costs, is wholly unaware of the massive changes in its liability picture or of the potential for greater costs built into any no-fault program if not properly run.
- (e) A need exists for this new commissioner to provide the education of the public in its new or changed responsibilities, liabilities, and partial exoneration of former liabilities. Unlike a no-fault divorce law, this Act will directly affect every family in the State on Sunday morning, September first. We cannot rely upon advertising or the insurance agent to provide this. If we could, the need for this legislation

Your Committee requests that a progress report on the development of the master plan be submitted to the 1975 legislature twenty days prior to the convening of the session.

Your Committee on Ways and Means is in accord with the intent and purpose of H.B. 2302-74, H.D. 1, as amended in the form attached hereto as H.B. 2302-74, H.D. 1, S.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

SCRep. 996-74 Ways and Means on H.B. No. 2456-74

The purpose of the bill is to permit reasonable fees established by ordinance by the councils of the counties of Hawaii, Maui, and Kauai and the City and County of Honolulu, to be assessed against owners of animals which have been impounded by the poundmaster.

Your Committee has learned that the laws affected by this bill, Sections 142-66 and 142-70, Hawaii Revised Statutes, were last amended in 1947, establishing fees of \$1.50 and \$2.50 respectively to be assessed for impounded animals. This bill would permit the councils of the various counties to establish realistic fees geared to present-day operational costs. Moreover, this delegation of authority to the county councils would be in keeping with the concept of home rule as established in Article 7 of the State Constitution which relates to constitutional charters.

Your Committee has made minor technical changes to the bill without affecting any of the substantive provisions therein.

Your Committee on Ways and Means is in accord with the intent and purpose of H.B. No. 2456-74, as amended in the form attached hereto as H.B. No. 2456-74, S.D. 1, and recommends that it pass Third Reading.

Signed by all members of the Committee.

SCRep. 997-74 Ways and Means on H.B. No. 2431-74

The purpose of this bill is to clarify Chapter 96, Hawaii Revised Statutes, with regard to the jurisdiction of the ombudsman, his term of office, the salary of the first assistant, delegation of duties, funding of the office, and his duty to investigate complaints.

Upon due consideration, your Committee has amended the first paragraph of section 963, Hawaii Revised Statutes, in section 3 of the bill to retain the assistant's salary at its present level as provided by statute.

Your Committee on Ways and Means is in accord with the intent and purpose of House Bill No. 2431-74, H.D. 1, S.D. 1, as amended in the form attached hereto as House Bill No. 2431-74, H.D. 1, S.D. 2, and recommends that it pass third reading.

Signed by all members of the Committee.

SCRep. 998-74 Ways and Means on H.B. No. 2485-74

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from employment or licensure by the State or its political subdivisions solely by reason of a prior conviction of a crime. Under the bill, employment or occupational licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime where the offense directly relates to the occupation in which the convicted person seeks or holds a license. The bill adds a new section to the Hawaii Revised Statutes to provide for the above, and repeals all contrary provisions.

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

Despite these expectations, securing employment is often difficult for the ex-con. In one particular area it is especially frustrating. This involves those professions for which a license must be obtained. The convicted person usually finds that he cannot engage in these professions, no matter what his skills or talents are, because the statutes require "good moral character", or disqualify persons with criminal records.

This bill addresses this particular problem and offers worthy solutions. Upon the bill's enactment, convicted persons would have the possibility of entry into these licensed professions; whereas, at present, they are barred.

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.

In addition to various technical amendments, your Committee has made the following amendments to the bill in order to better effectuate its purposes and intent:

- (1) Deleted the requirement of "good moral character" on line 3, page 4 of the bill.
- (2) Changed the age reference from twenty years to eighteen years in lines 6 through 9, page 10 of the bill.
- (3) Deleted the reference to "good moral character" in line 17, page 51 of the bill.
- (4) Deleted the reference to "good moral character" in line 2, page 52 of the bill.

Your Committee on Ways and Means is in accord with the intent and purpose of H.B. No. 2485-74, H.D. 2, S.D. 1, as amended in the form attached hereto as H.B. No. 2485-74, H.D. 2, S.D. 2, and recommends that it pass Third Reading.

Signed by all members of the Committee.

SCRep. 999-74 Public Employment on H.B. No. 445

The purpose of this Bill is to improve the benefit payable under ordinary disability retirement.

Under existing law, the ordinary disability benefit consists of 25 percent of average final compensation for service of 10-15 years, plus 1 percent for each full year of service over 15. This benefit is low when compared to the liberal benefit for service retirement provided by the 1965 Legislature consisting of 2 percent of average final compensation multiplied by the number of years of creditable service.

In order to provide a retirement benefit for ordinary disability which is more comparable to that for service retirement, this Bill would provide an allowance of 1-3/4 percent of average final compensation multiplied by the number of years of creditable service but in no event shall the benefit be less than 30 percent of average final compensation. Thus, under this Bill, a member of 20 years of service who qualifies for ordinary disability retirement will receive 35 percent of average final compensation as compared to 30 percent under existing law.

Your Committee on Public Employment is in accord with the intent and purpose of H.B. No. 445, H.D. 1 and recommends that it be referred to your Committee on Ways and Means for further consideration.

Signed by all members of the Committee.

SCRep. 1000-74 Legislative Management

Informing the Senate that S.C.R. No. 55, S.R. Nos. 256 to 269, Conf. Com. Rep. No. 1-74, and Stand. Com. Rep. Nos. 898-74 to 999-74 and 1001-74 to 1041-74 have been printed and are ready for distribution.

Signed by all members of the Committee.

SCRep. 1001-74 Education on S.R. No. 232

The purpose of this resolution is to request that the Department of Education develop a program in which students may earn academic credit for participation in election campaigns.

Your Committee on Education believes that there are many advantages to our youth to be derived by their active participation in the electoral process and that involvement

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

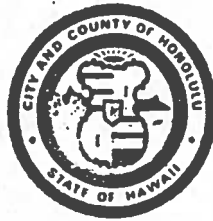
HONOLULU, HAWAII 96814

FRANK F. FASI
MAYOR

PAUL DEVENS
MANAGING DIRECTOR

FRANCIS KEALA
CHIEF

CHARLES DUARTE
DEPUTY CHIEF



OUR REFERENCE

WS-LF

YOUR REFERENCE

February 26, 1974

Honorable James H. Wakatsuki, Chairman
Committee on Judiciary and Corrections
House of Representatives
Seventh State Legislature
Honolulu, Hawaii 96813

Dear Representative Wakatsuki:

H. B. NO. 2485-74

RELATING TO THE EMPLOYMENT AND LICENSING OF CONVICTED PERSONS

The Honolulu Police Department is in agreement with the intent of this bill and recommend that it be given favorable consideration.

The general provisions of the bill are consistent with past recommendations of the Police Department to the extent that prohibitions connected with the hiring of persons with criminal records are being repealed in several statutes. We have maintained that criminal offender records of the Police Department should be for the sole use of law enforcement purposes under our Criminal Justice System. They should never be used for disseminating information relating to the arrest and/or conviction for employment or licensing purposes.

It is therefore our recommendation that those statutes which require government agencies to deny a license or similar certificate based on past convictions be amended to eliminate such requirements. We suggest for the purpose of clarification, that the words "necessary for employment" be added after the word "certificate" on line 8, page 2.

Respectfully submitted,

William Snead
WILLIAM SNEAD

Assistant Chief of Police

APPROVED:

[Signature]
Chief of Police

TESTIMONY

re H.B. 2485 (Employment and Licensing of Convicted Persons)
by the John Howard Association of Hawaii and the
Legislative Committee, Hawaii Correctional Association
House Judiciary & Corrections Committee
February 26, 1974

The John Howard Association is a private, non-profit agency concerned with criminal rehabilitation. The Hawaii Correctional Association is a Statewide organization composed of professionals in the field of corrections. It includes in its membership juvenile probation and parole officers on all islands and others who work with juvenile offenders.

The John Howard Association and the Hawaii Correctional Association both support H.B. 2485. Both of these organizations believe that gainful employment is an element essential in the process of rehabilitating criminal offenders. A good job is necessary if a person (unless he is independently wealthy) is to achieve financial and social stability, self-respect and the respect of his fellow citizens.

However, both of these organizations submit that securing permanent and stable employment is often a frustrating experience for an ex-offender. He often finds that private employers want no part of him, that the government will be suspicious of him, and that he may be forever barred from entering many licensed professions merely because of the fact that he has been convicted of a crime.

H.B. 2485 addresses these problems that a job-seeking offender faces and proposes worthy solutions, that conviction records be statutorily barred from use unless they relate directly to possible performance on the job; that records of arrest without conviction and certain other records be barred statutorily from any use in these considerations; and that the law recognize that an ex-offender can be rehabilitated, as evidenced by the lack of further convictions after a substantial period of time.

This bill, if enacted, will not provide any magical cures to the employment problems of the ex-offender. He will still find difficulty when applying for jobs. Passage of this bill, however, would represent a recognition by this Legislature, embodied in our law, 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.



STATE OF HAWAII
DEPARTMENT OF SOCIAL SERVICES AND HOUSING
Honolulu

February 25, 1974

MEMORANDUM

To: The Honorable Steve Cobb, Subcommittee Chairman
House Subcommittee on Corrections

From: Myron B. Thompson, Director
Department of Social Services and Housing

Subject: H.R. No. 99, Relating to a Legislative Re-examination of All
Statutory Restrictions upon the Issuance and Continued
Possession of All Occupational Licenses by Convicted Citizens

H.B. No. 2485-74, Relating to the Employment and Licensing of
Convicted Persons

The successful placement of paroled persons from Hawaii's corrections programs is one of the goals of this department. Limitations imposed by unnecessary restrictions to employing a parolee or an ex-offender need to be reduced. Both H.R. No. 99 and H.B. No. 2485-74 address to this problem. It is the position of this department that further study is needed in this area, as well as specific legislation enacted.

H.B. No. 2485-74, if enacted, would repeal certain H.R.S. section restrictions that prohibit the issuance of any permit, license, registration or certificate that are necessary for the employment of parolees or ex-offenders. This Bill does provide for exceptions wherein after justifying investigation and proof, an ex-offender may not be hired.

The department is in accord with the intent of H.R. No. 99 and H.B. No. 2485-74.

Myron B. Thompson
Director

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

A BILL FOR AN ACT

<u>Bill No.</u>	<u>Introduced by</u>	<u>Status</u>
House Bill 2485-74	Cobb plus 8 others	Act 205

PURPOSE

Prohibits Discrimination Based on Conviction Record.

This act makes it an unlawful employment practice for a private employer or employment agency to discriminate against a job applicant or employee with a conviction record which does not have a substantial relationship to the functions and responsibilities of the employment. It also prohibits disqualification from state or county employment and disqualification from practicing in any profession or business for which a state or county permit or license is required, based solely on a prior conviction record. Only if the conviction directly related to the applicant's possible performance in the profession or business for which the permit or license is sought can a refusal be justified.

SUPPORTING John Howard Association of Hawaii and the Legislative Committee,
TESTIMONY: Hawaii Correctional Association

Both of these organizations believe that gainful employment is an element essential in the process of rehabilitating criminal offenders. A good job is necessary if a person (unless he is independently wealthy) is to achieve financial and social stability, self-respect and the respect of his fellow citizens.

However, both of these organizations submit that securing permanent and stable employment is often a frustrating experience for an ex-offender. He often finds that private employers want no part of him, that the government will be suspicious of him, and that he may be forever barred from entering many licensed professions merely because of the fact that he has been convicted of a crime.

H.B. 2485 addresses these problems that a job-seeking offender faces and proposes worthy solutions, that conviction records be statutorily barred from use unless they relate directly to possible performance on the job; that records of arrest without conviction and certain other records be barred statutorily from any use in these considerations; and that the law recognize that an ex-offender can be rehabilitated, as evidenced by the lack of further convictions after a substantial period of time.

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

H.B. 2485-74 (Cont.)

SUPPORTING
TESTIMONY:

This bill, if enacted, will not provide any magical cures to the employment problems of the ex-offender. He will still find difficulty when applying for jobs. Passage of this bill, however, would represent a recognition by this legislature, embodied in our law, 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.

OPPOSING
TESTIMONY:

None.

* * * *

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

A BILL FOR AN ACT

<u>Bill No.</u>	<u>Introduced by</u>	<u>Status</u>
House Bill 656, H.D. 2	Lee plus 15 others	Act 54
Senate Bill 624	Yoshinaga plus 8 others	Judiciary Committee - 1st reading

PURPOSE

Prohibits Discrimination Based on Arrest and Court Records.

This Act makes it an unlawful employment practice for a private employer to discriminate against a job applicant or employee with an arrest and court record which does not have a substantial relationship to the functions and responsibilities of the job. "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 or tried.

SUPPORTING
TESTIMONY:

(The following testimony was on H.B. 656, H.D. 1, which would have included records of trials and convictions in the definition of "arrest and court records".)

Department of Labor and Industrial Relations, Robert K. Hasegawa,
Director

The department agrees with the intent and purpose of the bill. Discrimination against an individual because he has been arrested or involved in court proceedings should not be permitted, unless such arrest or proceedings are related to the future or continued performance of the job involved. We therefore support the enactment of H.B. 656, H.D. 1.

Other Significant Information

The department presently has only one full-time person handling this program on a statewide basis. While at the present time we do not anticipate the need for additional staff resources should this bill be enacted, we do wish to point out that the present staff member is fully occupied under current workload and would be unable to handle any significant increase in number of complaints resulting from this legislation.

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

H.B. 656, H.D. 2, S.B. 624 (Cont.)

SUPPORTING
TESTIMONY:

John Howard Association, Emmett Cahill, Executive Director

It is the general experience that a vast number of qualified persons are regularly denied employment because of the disclosure of an arrest record. The fact that the arrest may have been for a trivial cause, or thrown out of court, or a false arrest, often is not considered; and the applicant is penalized on the basis of his having been arrested. This is a reflection of society's attitude, which stigmatizes all arrestees and blocks honest endeavor to obtain gainful employment. One unfortunate result of this is the possibility of the applicant, out of futility and frustration, resorting to activities bordering on crime.

We believe this amended bill would provide protection to an individual's right to fair and equitable treatment, and that any departure from this guarantee would be divisive and unjust. We fully concur with the recommendation that arrest and court records should include "trials and convictions."

In addition to our desire to aid the person with an arrest or court record, we believe the bill provides protection to the employer in that the law would not apply in cases where there was a substantial relationship to the functions of the potential or continuing employment.

We draw your attention to similar legislation in California, whereby licenses to do business cannot be denied an applicant because of any arrest/court records unless it is determined that there exists a substantial relationship between the reason for arrest and the nature of the licensee's responsibilities. Such legislation was signed by Governor Reagan on August 15, 1972.

We think that this legislature will be taking a major step forward in the area of labor and social reform by the passage of this bill.

National Council on Crime and Delinquency, Donald Moore, State Director

I am concerned with H.B. 656, because it addresses a myth that is central to the administration of justice. That is the myth of rehabilitation.

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

H.B. 656, H.D. 2, S.B. 624 (Cont.)

SUPPORTING
TESTIMONY:

In previous times, the released convict was given a prison suit and a few dollars before he was sent through the gate. Today, more sophisticated programs have been instituted to "re-integrate" the offender back into community life. The same mythology, however, remains essentially unaltered. The offender, at the completion of his sentence, is told -- as the cliché goes -- that his debt to society is paid and that he should go forth and sin no more.

He will learn, with increasing bitterness and frustration, that this is not so. The debt is not paid. Society has constructed an invisible prison which continues to punish him relentlessly long after he has left the cellblock. Employment opportunities are denied him directly or indirectly through his exclusion from licenses and certificates required for many occupations. Such exclusions, more often than not, are couched in vague terms of "fitness and moral character." The problem with such standards, as the American Bar Association has pointed out, is that they are not standards at all. They mean different things to different people. To the ex-offender, however, they generally mean unemployment, frustration and an understandable temptation to return to criminal activity. These unjust barriers to employment -- components of an invisible and pervasive prison -- constitute a major inconsistency in state programs to rehabilitate offenders. We might devise the best correctional programs possible. Yet they could be defeated by practices which, denying legitimate employment, seem almost designed to keep persons involved in a life of crime.

H.B. 656 seems to address this problem. Certainly, the passage of such legislation will not automatically terminate job discrimination against ex-offenders any more than federal civil rights acts automatically ensured social justice for minorities. It will, however, make the responsibility and intent of the State clear. And it will provide a platform for litigation that may strike a significant blow in breaking the vicious cycle of the revolving door of justice.

The Reverend Robert R. Mackey

It is unfortunate that this amendment is needed; for we claim that no person is presumed guilty before he is convicted and that no person should ever carry any burden of arrest or court action after his case is settled. The fact is, however, that

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

H.B. 656, H.D. 2, S.B. 624 (Cont.)

SUPPORTING
TESTIMONY:

employers do discriminate against persons with arrest or court records, even though these records have no relationship with job requirements. The proposed amendment would give the person discriminated against, grounds for legal action to get redress.

A major preoccupation of those who work with ex-offenders or with persons who have had any kind of brush with the law is to find suitable employment for their clients. A good job is essential to any kind of rehabilitation. The proposed amendment (H.B. 656) will remove one obstacle to the efforts of these counselors and their clients.

I like the even broader amendment (H.D. 1) that includes "trials and conviction records." Once a person has satisfied the demands of justice by serving time or by completing probation or parole, he should no longer suffer from his "trials or conviction records."

Without blowing the horn of the St. Louis-Chaminade Education Center, of which I am the Chancellor, I would like to say that we do not discriminate in our employment practices on the basis of arrest, court or correction records. We employ persons who have been arrested, convicted, placed on probation or parole, and under treatment for narcotic addiction. We know that many of these persons need an understanding supervisor, but we also know from experience that they are good employees. We believe that this act of trust on the part of a reputable secondary school and four-year college is important therapy for the ex-offender.

OPPOSING
TESTIMONY:

Hawaii Employers Council and Pineapple Growers Association of Hawaii, Jared H. Jossem, Attorney

The original purpose of Part I of Chapter 378 is to make it unlawful for an employer to refuse to hire an individual or to discharge an employee or discriminate against him in compensation or condition of employment because of race, sex, age, religion, color or ancestry. It also prohibits making inquiries as to race, sex, age, religion, color or ancestry in connection with prospective employment unless based on bona fide occupational qualification.

In short, employers may not (and should not) discriminate against individuals because of what they are.

H.B. 656 would add to these six factors a seventh, namely, "arrest and court records."

LABOR RELATIONS AND DISPUTES,
EMPLOYMENT PRACTICES

H.B. 656, H.D. 2, S.B. 624 (Cont.)

OPPOSING
TESTIMONY:

The definition of "arrest and court records", which is now contained in Section 1(6) at page 2 of the bill, clearly includes not only arrest and other actions not leading to convictions but also actual convictions of crimes. Thus, if an employer refused to hire an individual because he had a record of conviction of crime, it would violate the statute unless that employer could show that the criminal conviction had a "substantial relationship to the functions and responsibilities of the prospective employment." Who is to say whether or not 10 convictions of theft or one conviction of murder have a "substantial relationship to the functions and responsibilities" of the job of installing appliances in homes for example. Yet, this bill would prohibit an employer from refusing to hire such a person unless he sustained that burden of proof. Thus, the amendment to the law generally outlaws rational hiring practices based on what an employee or applicant DID.

We believe that a law designed to eliminate discrimination on the basis of race, sex, age, religion, color and ancestry should not be expanded so as to accord the same blanket of protection to ex-convicts or even to those individuals with long arrest records or to people who admit they have broken the law but are given immunity from prosecution. We believe that the justifiable end of rehabilitating such persons can and should be accomplished in other ways than by imposing civil penalties or even criminal penalties of fines and imprisonment (Section 378-10) upon persons who choose not to employ such individuals and hire, instead, persons who have a clean record.

Other Programs

Agriculture 810 (Food and Drugs, Test and Certification): In order to comply with federal meat inspection requirements, your Committee has added nine positions to the program, including the three existing PEP positions and four existing part-time positions. The additional positions are included with the understanding that the State will continue to inspect all meat and poultry in lieu of federal inspection.

Judiciary 201 (District Court, Pre-Trial Processing): Two additional positions have been provided for the island of Oahu to help collect and process the large number of delinquent traffic citations. It is the intent of your Committee that these new positions are not used to clear the backlog but to prevent any additional backlog from accumulating.

Judiciary 221 (District Court): In order to maintain the current level services, it was necessary to add an additional position to Maui, Hawaii, and Kauai courts to provide bailiff services previously provided by the respective county police departments.

Military and Civil Defense. Your Committee requests the department of budget and finance to scrutinize the salary structure of the department of defense as well as to examine items budgeted for "other current expenses." It has been reported that such "other current expenses" include expenditures for special mess personnel for the headquarters detachment. It appears to be an anomaly that, while other State agencies (aside from schools) are not allowed special cafeteria workers, this particular organization should receive such treatment.

Collective Bargaining Agreements

Your Committee has provided for the implementation of the various collective bargaining agreements received by the legislature. Included in the bill is a 5.5 percent wage increase effective September 1, 1972 for the appropriate bargaining units of the department of education.

Budget Summaries

Summaries of the appropriations intended by your Committee are included in the tables attached to this report.

Your Committee on Finance is in ac-

cord with the intent and purpose of S. B. No. 1295, S. D. 1, as amended herein, and recommends that it pass second reading in the form attached hereto as S. B. No. 1295, S. D. 1, H. D. 1, and be placed on the calendar for third reading.

Signed by all members of the Committee.

SCRep. No. 733 Judiciary on H. B. No. 656

The purpose of this bill is to amend Chapter 378, Hawaii Revised Statutes, by adding that employment discrimination based upon an individual's arrest and court records is prohibited.

The amendment is an addition to Chapter 378 which presently prohibits discriminatory employment practices based upon race, sex, age, religion, color, or ancestry.

The amendment's prohibition of discriminatory employment practices does not preclude any employer from refusing employment or discharge if the arrest or court records has a substantial relationship to the functions and responsibilities of the employment.

Your Committee has amended this bill so as to exclude "or convicted" from the definition of "arrest and court records".

Your Committee on Judiciary is in accord with the intent and purpose of H. B. No. 656, H. D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H. B. No. 656, H. D. 2.

Signed by all members of the Committee.

SCRep. No. 734 Judiciary on H. B. No. 60

The purpose of this bill is to clarify Chapter 12, Part III of the Hawaii Penal Code relating to gambling offenses.

The intent of the Legislature in the enactment of the Hawaii Penal Code during the Sixth Legislative 1972 Session and as directed to that portion regarding gambling offenses, was to impose heavy penalties on promoters of institutionalized gambling and at the same time to recognize that society no longer condemns as criminal, casual gambling in a social context.

Your Committee on Judiciary is in accord with the intent and purpose of H. B. No. 1097 and recommends its passage on third reading.

Signed by all members of the Committee except Senator Forbes.

SCRep. 850 Judiciary on H. B. No. 1254

The purpose of this bill is to expand the coverage of motion picture operators to include 16 mm film or larger and video tape.

Commercial operators are presently using 16 mm in place of the larger millimeter films and projectors. There are approximately to date five theaters in Honolulu utilizing 16 mm film. It is believed that in the future almost all film will be replaced by video tape machinery. For the protection of the public, commercial operators as well as 35 mm operators should be licensed.

After consideration your Committee believes that this chapter should apply only in those instances where the operation of the motion picture is for commercial purposes to a theater or audience and is not intended to apply in those instances not operated for purely commercial purposes. For example, a movie projector operator who operates the film projector solely for educational purposes or in an educational institution as part of its program even when admission is charged would not come within the purview of this chapter.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1254, H.D. 1 and recommends its passage on third reading.

Signed by all members of the Committee except Senator Forbes.

SCRep. 851 Judiciary on H. B. No. 656

The purpose of this bill is to amend Chapter 378, Hawaii Revised Statutes, by adding that employment discrimination based upon an individual's arrest and court records is prohibited.

The amendment is an addition to Chapter 378 which presently prohibits discriminatory employment practices based upon race, sex, age, religion, color, or ancestry. It does not include convictions in the definition of "arrest and court record."

The amendment's prohibition of discriminatory employment practices does not preclude any employer from refusing employment or discharge if the arrest or court records has a substantial relationship to the functions and responsibilities of the employment.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 656, H.D. 2 and recommends its passage on third reading.

Signed by all members of the Committee.

SCRep. 852 Judiciary on H. B. No. 1162

The purpose of this bill is to establish rights of divorced persons to dower and curtesy in their former spouse's estates when the divorce decree does not finally divide the property of the parties.

This bill proposes a major amendment to Section 580-56 which now relate only to forfeiture of dower. It is proposed to provide for statutory control in those instances where a Decree of Divorce relates only to the dissolution of the marriage and does not finally divide the property of the parties. The divisible divorce, that is where the marriage is dissolved but the other rights of the parties have not been adjudicated, is quite common. Under present law, in the event one party to that divorce were to die before the division of the property was completed, intervening rights of a new spouse could have attached. This hiatus should be eliminated by statutory enactment.

The proposed language reserves to a former spouse the rights to dower and curtesy presently granted by Hawaii Revised Statutes until the entry of a Decree which finally divides the property of the parties to the former marriage. The proposed language further bars the rights of dower and curtesy to a subsequently acquired spouse until the property of the parties of that prior marriage has been finally divided, and then provides that after such division of the property of the parties to the prior marriage is accomplished that dower and curtesy attach to such property as is vested in the new spouses's spouse.

the benefit of the employee and the employer." This provision which was enacted in 1970 was intended to provide for the sharing of attorney's fees and costs by the employee and the employer. While this intent was expressed in the committee reports accompanying the legislation, **Senate Stand. Com. Rep. No. 255-70**, **Senate Stand. Com. Rep. No. 287-70**, **House Stand. Com. Rep. No. 638-70**, and **House Stand. Com. Rep. No. 695-70**, it has been held by a court that this intent is not expressed in the statutory provision involved. The pertinent portion of **House Stand. Com. Rep. No. 638-70** from the Committee on Labor reads as follows:

"Your Committee also agrees that it would be equitable that where the employer effectuates a third party recovery he should be able to deduct his costs and attorney's fees, as well as his compensation outlays, from the proceeds before he turns the excess over to the employee; that where the employee effectuates a third party recovery he should be able to first deduct his costs and attorney's fees before he pays over the employer's reimbursement for his compensation outlays over to him, and that the employer should reasonably share in the costs and attorney's fees; and that where both employee and employer effectuate the recovery their costs and attorney's fees should be a first charge on the proceeds before distribution respectively to the employer and employee (underscoring added)."

This bill proposes to explicitly re-state the intent of the legislature to require an employer or insurance carrier to share in the payment of attorney's fees and costs in cases where an injured employee brings a third party action and there is a recovery from a third person which benefits both the employee and the employer. The court's interpretation which created a windfall for the employer was not intended by the legislature and legislation to explicitly provide a sharing of attorney's fees and costs is presently required.

Your Committee on Labor and Employment is in accord with the intent and purpose of **H. B. No. 577** and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Signed by all members of the Committee.

Representative Ajifu did not concur.

SCRep. No. 376 (Majority) Labor and Employment on H. B. No. 656

The purpose of this bill is to amend Chapter 378, Hawaii Revised Statutes, to prohibit discriminatory employment practices based upon a person's arrest or court records.

Chapter 378 presently prohibits a number of employment practices on the part of employers, labor unions, employment agencies, and others if the practices discriminate against a person because of his race, sex, age, religion, color, or ancestry.

This bill proposes to amend said chapter to also prohibit discriminatory employment practices based upon a person's arrest or court record. In a case where the arrest or court records bear a substantial relationship to the functions and responsibilities of the employment, however, a refusal of employment or discharge would not be prohibited by the bill.

Your Committee agrees that discrimination in employment because a person has been arrested or involved in court proceedings should not be permitted, unless the arrest or court proceeding bears a relationship to the continued or future performance of the job involved. The director of labor and industrial relations in his testimony supporting the bill suggested that it be clarified in several respects. He suggested a clarification of the definition of the term "arrest or court records" and an amendment of Section 378-2(1) to protect those already employed, as well as prospective employees. Your Committee has therefore amended **H. B. No. 656** by defining "arrest and court records" to include records of "trials and convictions". It has also amended Section 378-2(1) to extend the intended protection of this bill to those already employed, as well as prospective employees.

Your Committee on Labor and Employment is in accord with the intent and purpose of **H. B. No. 656**, as amended herein, and recommends that it pass Second Reading in the form attached hereto as **H. B. No. 656, H. D. 1**, and be referred to the Committee on Judiciary.

Signed by all members of the Committee.

Representative Ajifu did not concur.

**SCRep. No. 377 Labor and Employment
on H. B. No. 218**

The purpose of this bill is to amend the Workmen's Compensation Law by amending the sections covering "temporary partial disability" and "payment after death".

Section 386-32(b) now provides that an injured worker who is temporarily partially disabled is entitled to receive benefits equivalent to 66-2 3% of the difference between his average weekly wages before the injury and the weekly wages he is "capable of earning" during the temporary disability period, up to \$50 per week. The bill proposes to amend section 386-32(b) so that a temporarily partially disabled worker would be entitled to receive benefits equivalent to 70% of the difference between his average weekly wages before the injury and his "earnings" during the temporary disability period. The proposed language change is intended to provide an easily ascertainable base for computing his temporary partial disability compensation as the present language is difficult to apply. What an injured worker is "capable of earning" is difficult to determine in most cases and is subject to much conjecture.

Section 386-34 now provides that in a case where an injured worker is awarded permanent partial or permanent total disability benefits and subsequently dies from another cause before he collects his full award, the unpaid balance of the award, to the extent of his employer's liability, shall be paid to his dependents. As Act 42, Session Laws 1972, removed the limitation to an employer's maximum aggregate liability for compensation benefits, the balance of an award for total disability which should be paid to his dependents cannot now be ascertained. This bill proposes to set the maximum amount of an employer's liability for the purpose of determining the balance of a permanent total disability at that amount specified in section 386-32(a) for non-scheduled disabilities, which is presently \$35,100. This proposal does not affect the benefit rights of any other claimants and is only intended to provide a basis for determining the balance of an injured worker's award for permanent total disability in case the claimant dies from another cause and the balance must be paid to his dependents.

Your Committee agrees with the director of labor and industrial relations that the proposed language changes would improve the administration of the Workmen's Compensation Law. It is of the opinion, however, that the proposal to raise the compensation rate for temporary partial disability from 66-2 3% to 70% would make section 386-32(b) inconsistent with other sections of the law. The compensation rates for temporary total, permanent partial, and permanent total disability are presently 66-2 3% of a claimant's average weekly wages. This consistency should be maintained in the law. Your Committee therefore recommends that **H. B. No. 218** be amended by deleting the proposal to raise the compensation rate for temporary partial disability to 70% and by retaining the present 66-2 3% rate. The bill has been amended in accordance with the foregoing recommendation.

Your Committee on Labor and Employment is in accord with the intent and purpose of **H. B. No. 218**, as amended herein, and recommends that it pass Second Reading in the form attached hereto as **H. B. No. 218, H. D. 1** and be referred to the Committee on Finance.

Signed by all members of the Committee.

**SCRep. No. 378 Labor and Employment
on H. B. No. 230**

The purpose of this bill is to amend the Hawaii Occupational Safety and Health Law to bring it into conformity with standards expressed in the Federal Occupational Safety and Health Act.

Public Law 91-596, the Federal Occupational Safety and Health Act, prescribes standards on occupational safety and health that are applicable throughout the country. However, it allows a state to administer and enforce occupational safety and health standards under its own law if it is deemed as "as effective" as the federal law. Act 57, Session Laws of 1972, was enacted in an attempt to retain state authority in the area. The Office of the Assistant Secretary of Labor for Occupational Safety and Health has now reviewed Act 57 and has suggested several amendments to make it "as effective" as P. L. 91-596 and these suggestions are embodied in **H. B. No. 230**.

(D) For the purposes of this paragraph (5), wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the dates on which the employing unit by which such wages or other remuneration as provided in section 383-1(19) were paid has satisfied the conditions of section 383-1(9) with respect to becoming an employer."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 7, 1973.)

ACT 54

H. B. NO. 656

A Bill for an Act Relating to Arrest and Court Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended as follows:

(a) Section 378-1, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 378-1 Definitions. As used herein:

- (1) "Person" means one or more individuals, and includes partnerships, associations, or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (2) "Employment agency" means any person undertaking to procure employees or opportunities to work.
- (3) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.
- (4) "Employer" means any person having one or more persons in his employment, and includes any person acting as an agent of an employer, directly or indirectly.
- (5) "Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into.
- (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 enforcement or military authority. **Convictions are not included in this definition.**

*Edited accordingly.

SECTION 2. Section 378, Hawaii Revised Statutes, is amended as follows:

(a) Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 378-2 Discriminatory practices made unlawful; offenses defined.
It shall be unlawful employment practice or unlawful discrimination:

- (1) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color, ancestry, or arrest and court record which does not have a substantial relationship to the functions and responsibilities of the prospective or continued employment, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;
- (2) For an employer to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, ancestry, or arrest and court record;
- (3) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, sex, age, religion, color, ancestry, or arrest and court record unless based on a bona fide occupational qualification;
- (4) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer, or employees because of race, sex, age, religion, color, ancestry, or arrest and court record;
- (5) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified, or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;
- (6) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the practices forbidden by this part, or to attempt to do so;
- (7) For any employer or labor organization to refuse to enter into an apprenticeship agreement, as defined in section 372-2, because of the race, sex, age, religion, color, or ancestry of an apprentice; provided that no apprentice shall be less than sixteen years of age."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

*Edited accordingly.

ACT 55

SECTION 4. This Act shall take effect upon its approval.
(Approved May 7, 1973.)

ACT 55

H. B. NO. 862

A Bill for an Act Relating to Fees for Service of Process.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 607-4(d), Hawaii Revised Statutes, as amended, is further amended to read:

"Sec. 607-4 District court costs. * * *

(d) Sheriff's or police officer's fees:

- (1) For serving any criminal summons, warrant, attachment, or other criminal process, \$5 from and after the effective date of this Act until July 1, 1974, and \$6 thereafter.
- (2) For serving any civil summons, warrant, attachment, or other civil process, \$3.
- (3) For every copy of an attachment and inventory of the property attached, served upon the defendant, \$1.50.
- (4) For serving any execution, 12 cents for every \$1 collected up to \$50, and 7 cents for every \$1 over \$50.
- (5) For serving subpoena or garnishee summons, \$2 for each person.
- (6) For every mile of travel, more than one, in serving any process, 12 cents; provided that (A) no such allowance shall be made where such serving officer uses a conveyance furnished him by the State, or any political or municipal subdivision thereof; (B) where the serving officer serves more than one person in the course of one trip, he shall not charge, in the aggregate for all such services, more than the mileage for the entire trip; and (C) as far as practicable, in order to minimize the mileage fees for such service, the sheriff or other chief of the serving officers, where service of process is to be made upon an island other than that upon which is situated the court issuing such process, shall cause such process to be transmitted to a deputy, the chief of police or other serving officer upon the island of service, who shall make such service upon receipt of such process; and such service shall be valid, notwithstanding that the process may be addressed to the officer actually making such service or to his superior."

SECTION 2. Section 607-8, Hawaii Revised Statutes, as amended, is further amended by amending the second paragraph thereof (only) to read:

"Sec. 607-8 Sheriff's or serving or levying officer's fees in circuit or supreme courts. * * *

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith . . . \$5 from and after the effective date of this Act until July 1, 1974, and \$6 thereafter."

SECTION 3. Statutory material to be repealed is bracketed. New ma-

Nicholas A. FOSTER
v.
The LOFT, INC. et al. [FN1]

FN1. Gino Rida. David Miller was also named as a defendant. The jury in effect found in his favor, and the plaintiff did not appeal.

No. 87-513.

Appeals Court of Massachusetts,
Middlesex.

Argued Jan. 20, 1988.

Decided Aug. 12, 1988.
Further Appellate Review Granted Oct. 3,
1988.

Customer brought action against employer alleging negligent retention of its employee, who injured customer. The Superior Court, Middlesex County, James P. Lynch, Jr., J., entered judgment in favor of customer and denied employer's motion for judgment notwithstanding verdict. Employer appealed. The Appeals Court, Smith, J., held that employer was negligent in retention of its employee, who injured customer, since jury could find that employer made no attempt to check on employee's background or experience and made no inquiry of him as to job or character references, and jury could infer that atmosphere in which employee worked was volatile and that there was high potential for violence.

Affirmed.

[1] MASTER AND SERVANT ⇨ 303
255k303

Under doctrine of negligent hiring or negligent retention of employee by employer, employer whose employees are brought in contact with members of public in course of employer's business has duty to exercise reasonable care in selection and retention of his employees.

[2] MASTER AND SERVANT ⇨ 330(3)
255k330(3)

Employer was negligent in retention of its

employee, who injured customer; jury could find that employer made no attempt to check on employee's background or experience and made no inquiry of him as to job or character references, and jury could infer that atmosphere in which employee worked was volatile and that there was high potential for violence; however, fact that employee had criminal record was in itself not enough to establish as matter of law employer's negligence.

****1310 *289** John D. Boyle, Boston, for Loft, Inc.

Elliott J. Mahler, Boston, for plaintiff.

Before BROWN, KAPLAN and SMITH, JJ.

SMITH, Justice.

The plaintiff brought an action in the Superior Court against The Loft, Inc. (Loft), and two of its former employees, Gino Rida and David Miller. The complaint set forth several counts which included counts against the employees for assault and battery and counts against Loft for negligent *290 hiring and retention of its employees Rida and Miller. In its answers to special questions, the jury found that Loft failed to use reasonable care in deciding to retain Rida as an employee and that such negligence was the proximate cause of the plaintiff's injuries. [FN2]

FN2. The jury also found against Rida. It returned a verdict in favor of Loft on a count that alleged vicarious liability for an assault and battery committed by its employees.

Loft moved at the close of the plaintiff's evidence and again at the close of all the evidence for a directed verdict on the negligent retention count. Its motions were denied. After the verdict was returned against it on that count, Loft moved for judgment notwithstanding the verdict. Mass.R.Civ.P. 50(b), 365 Mass. 814 (1974). Its motion was denied, and that action by the judge is the sole issue raised on appeal by Loft.

(Cite as: 26 Mass.App.Ct. 289, *290, 526 N.E.2d 1309, **1310)

The plaintiff's theories of liability--negligent hiring or negligent retention of an employee by an employer--have been recognized by a number of jurisdictions, including Massachusetts. *Carson v. Canning*, 180 Mass. 461, 62 N.E. 964 (1902). [FN3] Also see *Hathcock v. Mitchell*, 277 Ala. 586, 173 So.2d 576 (1965); *Colwell v. Oatman*, 32 Colo.App. 171, 510 P.2d 464 (1973); *Mallory v. O'Neil*, 69 So.2d 313 (Fla.1954); *C.K. Sec. Sys. v. Hartford Acc. & Indem. Co.*, 137 Ga.App. 159, 223 S.E.2d 453 (1976); *Murray v. Modoc State Bank*, 181 Kan. 642, 313 P.2d 304 (1957); *DiCosala v. Kay*, 91 N.J. 159, 450 A.2d 508 (1982). See generally 53 Am.Jur.2d *Master & Servant* § 422 (1970).

FN3. In *Carson v. Canning*, supra, the plaintiff brought an action against the defendant, a pawnbroker, for negligence. He claimed that he had pledged his property to the defendant and that the defendant's manager had absconded with it. The plaintiff was allowed to recover on the ground that the manager was an unfit person for his trust and that the defendant could and would have found that out if he had used ordinary care.

[1] The doctrine states that an employer whose employees are brought in contact with members of the public in the course of the employer's business has a duty to exercise reasonable care in the selection and retention of his employees. These principles have been explained in the following manner: "An employer must use due care to avoid the selection or retention of an employee whom he knows or should know **1311 is a person unworthy, *291 by habits, temperament, or nature, to deal with the persons invited to the premises by the employer. The employer's knowledge of past acts of impropriety, violence, or disorder on the part of the employee is generally considered sufficient to forewarn the employer who selects or retains such employee in his service that he may eventually commit an assault, although not every infirmity of character, such, for example, as dishonesty or querulousness, will lead to such result." Annotation, *Liability of Employer, Other Than Carrier, For a Personal Assault Upon Customer, Patron, or Other Invitee*, 34 A.L.R.2d 372, 390 (1954), quoted in

Hersh v. Kentfield Builders, Inc., 385 Mich. 410, 412-413, 189 N.W.2d 286 (1971).

It is the negligent retention aspect of the doctrine that formed the basis of the jury's verdict against the defendant. "Negligent retention ... occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge or reassignment." *Garcia v. Duffy*, 492 So.2d 435, 438-439 (Fla.Dist.Ct.App.1986). Also see *Carson v. Canning*, 180 Mass. at 462, 62 N.E. 964. [FN4]

FN4. Most of the jurisdictions that have recognized the existence of this cause of action have held that liability exists on the part of the employer entirely independent of the employer's liability under the principles of respondeat superior. *Porter v. Thompson*, 357 Mo. 31, 206 S.W.2d 509 (1947). *DiCosala v. Kay*, 91 N.J. at 172, 450 A.2d 508. *Eifert v. Bush*, 51 Misc.2d 248, 272 N.Y.S.2d 862 (N.Y.1966). *Dempsey v. Walso Bureau, Inc.*, 431 Pa. 562, 246 A.2d 418 (1968). Also see *Restatement (Second) of Torts* § 317 (1963); Annotation, *Employer's Knowledge of Employee's Past Criminal Record as Affecting Liability For Employee's Tortious Conduct*, 48 A.L.R.3d 359, 360 (1973). Thus, whether the employee's wrongful conduct was within the scope of his or her employment is generally not an issue in a negligent hiring or negligent retention action. In any event, that issue has not been raised here. Cf. *Davis v. DelRosso*, 371 Mass. 768, 771-772, 359 N.E.2d 313 (1977).

In this case, the plaintiff contended that Loft was negligent because the evidence demonstrated that Loft knew that Rida had a criminal record and did nothing to determine its nature or extent, or to assure itself that Rida's past criminal activities were not such, in the circumstances, as to present a danger to customers. According to the plaintiff, those circumstances included *292 Rida's duties as a bartender and his work environment. Loft agrees that it owes a duty of care to its customers but argues that the only evidence presented by the plaintiff on the issue of negligence was that it knew, prior to the

(Cite as: 26 Mass.App.Ct. 289, *292, 526 N.E.2d 1309, **1311)

incident, that Rida had a criminal record. It contends that, even if it had known the nature of Rida's criminal record, that knowledge, by itself, cannot support a finding of negligence. Loft claims, therefore, that the judge erred when he denied its motion for judgment notwithstanding the verdict.

The standard governing a motion for judgment notwithstanding the verdict is the same as that applicable to a motion for directed verdict. *D'Annolfo v. Stoneham Housing Authy.*, 375 Mass. 650, 657, 378 N.E.2d 971 (1978). The standard is "whether 'anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the plaintiff.' *Poirier v. Plymouth*, 374 Mass. 206, 212, 372 N.E.2d 212 (1978)." *Miles v. Edward O. Tabor, M.D., Inc.*, 387 Mass. 783, 786, 443 N.E.2d 1302 (1982), quoting from *Abraham v. Woburn*, 383 Mass. 724, 727-728, 421 N.E.2d 1206 (1981). "In applying this standard, we examine the evidence in the light most favorable to the plaintiff." *Forlano v. Hughes*, 393 Mass. 502, 504, 471 N.E.2d 1315 (1984). We note that "[u]sually 'the question of negligence is one of fact for the jury. Only when no rational view of the evidence warrants a finding that the defendant was negligent may the issue be taken from the jury.'" *Mullins v. Pine Manor College*, 389 Mass. 47, 56, 449 N.E.2d 331 (1983), quoting from *Zeuski v. Jenny Mfg. Co.*, 363 Mass. 324, 327, 293 N.E.2d 875 (1973). Also see *Irwin v. Ware*, 392 Mass. 745, 764-765, 467 N.E.2d 1292 (1984).

The evidence examined in the light most favorable to the plaintiff would have permitted **1312 the jury to find the following facts. The incident that resulted in the plaintiff's injuries occurred in Worcester on October 14, 1984, at a bar owned by Loft. At that time, the bar was actually a complex of five different bars, providing disco music for dancing on the premises. It had a seating capacity of five hundred people. Loft employed two uniformed police officers to control any disturbance. In addition, Loft hired four individuals whose functions were to

check identifications and help maintain order. It was *293 also part of the two managers' duties to walk around the premises and to prevent or quell any disturbances. There had been disturbances at Loft prior to October 14, 1984.

Loft had assumed ownership of the business in September, 1984. It retained as its employees Rida and a number of other individuals, including Miller. Rida was employed as a bartender. In that role he met members of the public on a regular basis. His duties included taking orders for drinks from customers, making drinks, and handling customer complaints.

[2] Sometime after Loft had acquired the business, and before October 14, 1984, its co-manager, James Flynn, had a conversation with a Worcester police officer, one Alan Stuart, who was employed by Loft on a part-time basis. Flynn was concerned about a possible shortage in receipts from the bars and asked Stuart for suggestions on how to deal with the problem. Stuart told Flynn that Flynn should check his help and be careful about them, that Loft employed people who had problems in their past. He advised Flynn to check on Loft's bartenders, particularly those who had past problems. Flynn then told the police officer that he knew that Rida had a criminal record. [FN5] The jury could find that neither Flynn nor anyone else in Loft's management made any attempt to check on Rida's background or experience, made no inquiry of him as to job or character references, and did not ask him to fill out an employment application.

FN5. Rida's criminal record was placed in evidence. It consisted of a series of offenses that arose out of a single incident that occurred on July 19, 1981. The record showed that Rida had pleaded guilty on January 8, 1982, to charges of (1) assault and battery by means of a dangerous weapon, to wit, a knife, (2) assault with intent to commit rape, and (3) kidnapping. He received a one-year sentence on the first charge and was placed on probation for two years on the other charges, the probation to commence after he had served his prison term. He was on probation at the

(Cite as: 26 Mass.App.Ct. 289, *293, 526 N.E.2d 1309, **1312)

time of the incident that was the basis of the plaintiff's complaint.

The incident that involved Rida and the plaintiff occurred in the following manner. In the late evening of Saturday, October 13, 1984, the plaintiff, accompanied by one Kohler and others, went to Loft. There they proceeded to the second floor, where there was dancing. Because there was standing room *294 only, the party moved to the third floor, where Rida was the bartender. It was after midnight. The plaintiff and his companion Kohler ordered drinks. Kohler complained to Rida that his drink was improperly mixed and asked him to make a new drink. Rida responded with obscene language and gestures. Kohler then threw his drink at Rida. Rida jumped over the bar and punched Kohler. The plaintiff, who had been standing next to Kohler, had his arm pinned behind his back by Miller, a doorman at Loft. As Miller held the plaintiff, Rida punched him in the face, fracturing the plaintiff's cheekbone and injuring his right eye.

The evidence disclosed that Loft, prior to the incident, knew that Rida had a criminal record. That fact, by itself, is not enough to establish, as matter of law, Loft's negligence. See *Evans v. Morsell*, 284 Md. 160, 395 A.2d 480, 484 n. 4 (1978). [FN6] Rather, negligent retention in this case depends upon the nature of the record and all the circumstances. [FN7] The evidence disclosed **1313 that Loft was not a quiet cocktail lounge but rather a large complex of bars that served alcoholic beverages to a large, young crowd. Loft employed a considerable number of personnel, including police officers, to maintain order. The jury from that evidence could infer that the atmosphere in which Rida worked was volatile and that there was a high potential for violence. In that environment, Rida's duties, including the handling of customer complaints, presented situations that the jury could reasonably infer might deteriorate into heated confrontations. In these circumstances it was open to the jury to find that Loft *295 was negligent in retaining Rida in his position as bartender, and that its action in doing so was the proximate cause of the plaintiff's

injuries. Assuming, as Loft asks us to do, that Loft had knowledge of the nature of Rida's criminal record, it was open to the jury to find that Loft "took a risk with respect to the plaintiff's safety that a person of ordinary prudence would not have taken, and that the plaintiff suffered a resulting injury that was within the foreseeable risk." *Irwin v. Ware*, 392 Mass. at 765, 467 N.E.2d 1292, quoting from *Cimino v. Milford Keg, Inc.*, 385 Mass. 323, 330, 431 N.E.2d 920 (1982). It follows that the denial of Loft's motion for judgment notwithstanding the verdict was not error.

FN6. For us to hold that an employer can never hire a person with a criminal record or retain such a person as its employee "at the risk of being held liable for his tortious assault flies in the face of the premise that society must make a reasonable effort to rehabilitate those who have gone astray." *Williams v. Feather Sound, Inc.*, 386 So.2d 1238, 1241 (Fla. Dist. Ct. App. 1980).

FN7. Obviously, the nature of the employee's criminal record is important. An employee's past conviction of larceny by check would not make the employer liable, on the basis of the doctrine of negligent hiring or negligent retention, for the employee's subsequent rape of a customer. *Evans v. Morsell*, 395 A.2d at 484 n. 4. In the instant case, Rida's record consisted of violent acts, and his similar acts caused the plaintiff's injuries.

We emphasize again that our decision does not mean that an employer cannot hire or retain a person known to have a criminal record. [FN8] Circumstances will differ from case to case, and what might be a perfectly acceptable hiring or retention under one set of circumstances might be highly unreasonable under another.

FN8. We agree with the majority of jurisdictions that hold that there is no requirement, as matter of law, that the employer make an inquiry with law enforcement agencies about an employee's possible criminal record, even where an employee is to deal regularly with the public. *Garcia v. Duffy*, 492 So.2d at 441. *Evans v. Morsell*, 395 A.2d at 484. That was not the situation here, however, as the evidence showed that Loft knew that Rida had a criminal record.

526 N.E.2d 1309

(Cite as: 26 Mass.App.Ct. 289, *295, 526 N.E.2d 1309, **1313)

Page 5

Judgment affirmed.

END OF DOCUMENT

**TALLAHASSEE FURNITURE
COMPANY, INC., a Florida corporation,**
Appellant,
v.
Elizabeth Holland HARRISON, Appellee.

No. 89-2163.

District Court of Appeal of Florida,
First District.

July 31, 1991.

Rehearing Denied Aug. 30, 1991.

Customer attacked in her home by employee brought personal injury suit against employer. The Circuit Court, Leon County, William L. Gary, J., entered summary judgment in favor of employer, and customer appealed. The District Court of Appeal, 529 So.2d 790, reversed and remanded. On remand before Charles McClure, J., jury returned general verdict for customer, awarding compensatory and punitive damages. Employer appealed. The District Court of Appeal, Smith, J., held that: (1) question of whether employer judged employee's employability upon single criterion of whether employee's capacity as laborer was sufficient to satisfy employer's economic interests, rather than upon whether his character, conduct and mental condition insured safety of employer's customers was for jury; (2) customer's gift of television set to employee and customer's consent, approximately three months later, to employee's entering apartment to use bathroom after employee had returned on premise of needing receipt for television, were not intervening "personal contacts" relieving employer of liability for employee's attack on customer; (3) doctrine of respondeat superior was inapplicable to hold employer liable on theories of either actual or apparent agency; and (4) trial court properly allowed jury to consider punitive damages.

Affirmed.

Nimmons, J., filed concurring and dissenting opinion.

[1] APPEAL AND ERROR ⇔ 1136
30k1136

Favorable verdict for plaintiff had to be upheld if evidence supported recovery on any of several theories alleged, as the several issues were submitted to jury for consideration and return of general verdict without specifying theory of recovery upon which liability was based.

[2] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

Where facts are sufficient to show existence of legal duty, reasonableness of employer's efforts to inquire into prospective employee's background, and reasonableness of subsequent decision to allow employee to enter customer's home, are jury questions in actions for negligent hiring or retention.

[3] MASTER AND SERVANT ⇔ 303
255k303

In negligent hiring or retention cases, ultimate question of liability to be decided is whether it was reasonable for employer to permit employee to perform his job in light of information about employee which employer should have known.

[4] MASTER AND SERVANT ⇔ 303
255k303

Duty to "independently investigate," for purposes of negligent hiring or retention claims, entails something other than personal interview of employee, obtaining employment application, or evaluation based upon actual observation and experience with employee.

See publication Words and Phrases for other judicial constructions and definitions.

[5] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

It is not necessary to assume as matter of law that unless employee is given free and independent access by means of passkey to enter customers' homes, employment must be considered to involve only "incidental contact" with customers requiring no independent

investigation for purposes of negligent hiring or retention claims.

See publication Words and Phrases for other judicial constructions and definitions.

[6] MASTER AND SERVANT ⇔ 303
255k303

Employer did not satisfy duty to evaluate employee's fitness for deliveryman job based upon actual employment experience with employee, as prior employment experience, involving work as laborer on out-of-town construction site and yard work, was not similar.

[7] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

Question of whether employer judged employee's employability upon single criterion of whether employee's capacity as laborer was sufficient to satisfy employer's economic interests, rather than upon whether his character, conduct and mental condition insured safety of employer's customers, was for jury on negligent hiring claim asserted by customer assaulted by employee.

[8] MASTER AND SERVANT ⇔ 303
255k303

"Negligent retention" of employee occurs when, during course of employment, employer becomes aware or should have become aware of problems with employee that indicate his unfitness, but employer fails to take further action, such as investigation, discharge or reassignment.

See publication Words and Phrases for other judicial constructions and definitions.

[9] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

Issue of whether employer negligently retained employee who violently attacked customer in her home was for jury in customer's action against employer for damages; there was evidence that employer was aware that employee had been subjected to grand theft charge and had undertaken to

drive truck without valid license, that employee's drug and alcohol use on job was commonplace, and that one of employer's principals was aware of employee's prior psychiatric hospitalization.

[10] TRIAL ⇔ 105(2)
388k105(2)

Hearsay evidence not objected to becomes part of evidence in case and is usable as proof just as any other evidence, limited only by its rational, persuasive power.

[11] APPEAL AND ERROR ⇔ 232(2)
30k232(2)

Appellate court may consider only objections to admissibility of evidence on grounds specifically stated at trial, and will not consider those objections to admissibility urged for first time on appeal.

[12] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

Whether employment-related contact and later event in which injuries are inflicted by employee are so separated by time or other circumstances that employment-related contact cannot reasonably be said to be substantial factor in producing result complained of depends upon facts in each case.

[13] MASTER AND SERVANT ⇔ 332(1.1)
255k332(1.1)

Formerly 255k332(1)

Issue of proximate cause in negligent hiring and retention cases is generally one for jury unless reasonable persons cannot differ, in which case it becomes matter of law for court.

[14] MASTER AND SERVANT ⇔ 307
255k307

Customer's gift of television set to employee delivering furniture and customer's consent, approximately three months later, to employee's entering apartment to use bathroom after employee had returned on premise of needing receipt for television, were not intervening "personal contacts" relieving employer of liability for employee's attack on customer; employee's sole means of access to customer's residence was through indicia of

authority conferred upon him by his status as employee, and visit on day of attack had no legitimate purpose, personal or otherwise, and was not chance encounter.

[15] NEGLIGENCE ⇔ 62(1)
272k62(1)

In order for intervening cause to relieve negligent party from liability, such intervening cause must be truly independent of and not set in motion by original negligence.

[16] MASTER AND SERVANT ⇔ 307
255k307

Element of foreseeability was established in action for negligent hiring and retention brought by customer violently attacked by employee; customer established correlation between employee's history of unlawful and violent behavior, drug abuse and mental illness and employee's propensity for future dangerousness.

[17] MASTER AND SERVANT ⇔ 300
255k300

To recover under theory of vicarious liability such as actual or apparent agency, it must be shown that agent or apparent agent's conduct was motivated, at least in part, by purpose of serving employer.

[18] MASTER AND SERVANT ⇔ 307
255k307

Doctrine of respondeat superior was inapplicable to hold employer liable for employee's attack on customer in her home on theories of either actual or apparent agency; employer had not instructed employee to obtain receipt for television set given to employee by customer but, rather, request for receipt was ruse or pretext used to gain consent to enter customer's apartment and his assault upon her could not be said to be within scope of his employment as furniture deliveryman.

[19] MASTER AND SERVANT ⇔ 330(2)
255k330(2)

Evidence of employee's adult arrest and conviction records were properly admitted in negligent hiring and retention action brought

against employer by customer attacked by employee; evidence established both availability to employer and insignificant expense involved in obtaining records.

[20] MASTER AND SERVANT ⇔ 303
255k303

Rule that, if employer makes adequate inquiry or otherwise has sufficient basis to rely on employee, there is no need to inquire about possible criminal record is not rule of admissibility of evidence in negligent hiring or retention cases, nor does rule mean that duty of reasonable inquiry can never be said to encompass investigation of employee's criminal record; rather, rule merely provides that employer's failure to check with law enforcement agencies concerning criminal records cannot be considered, in and of itself, as establishing negligence as matter of law.

[21] WITNESSES ⇔ 219(5)
410k219(5)

Hospital records pertaining to employee's psychiatric illness were admissible in action for negligent hiring and retention brought against employer by customer who was attacked by employee in her home, in light of release signed by employee with respect to those records. West's F.S.A. § 394.459.

[22] MASTER AND SERVANT ⇔ 330(2)
255k330(2)

Hospital records pertaining to employee's psychiatric illness were obtainable by employer with employee's consent and, thus, were not necessarily unavailable to employer, so as to preclude admission of records in action against employer for negligent hiring and retention brought by customer who was attacked by employee in her home.

[23] MASTER AND SERVANT ⇔ 330(2)
255k330(2)

In order for hospital records pertaining to employee's psychiatric illness to be admissible in action for negligent hiring and retention brought by customer attacked by employee, it was not necessary to show that employee would have signed written release with respect to records so as to allow employer to discover them.

[24] MASTER AND SERVANT ⇔ 303
255k303

Employer should not be held responsible in actions for negligent hiring or retention for information contained in records of employee's juvenile arrest or dispositions which are confidential and under court seal. F.S.1989, § 39.12(5, 7).

[25] APPEAL AND ERROR ⇔ 1051.1(2)
30k1051.1(2)

Even if trial court abused its discretion in allowing jury to have access to rap sheet disclosing employee's juvenile records in action against employer for wrongful hiring and retention brought by customer who was attacked by employee, error was harmless in view of other evidence disclosing employee's unfitness for employment or retention, which rendered disclosure of juvenile arrests cumulative. F.S.1989, § 39.12(5, 7).

[26] EVIDENCE ⇔ 538
157k538

Evidence supported trial court's ruling that associate professor of criminology with law enforcement background including work as law enforcement officer, prosecuting attorney and special prosecutor was qualified as expert in fields of public and private security, and in fields of criminal law about which he testified, including factors involved and criteria used in determining risk or potential for future dangerous behavior, offered in action for negligent hiring and retention.

[27] APPEAL AND ERROR ⇔ 1050.1(12)
30k1050.1(12)

Admission of expert's testimony concerning "iceberg effect," referring to statistics indicating that reported criminal incidents probably reflected only one third of total crimes committed, was not reversible error in action for negligent hiring and retention; testimony related to other testimony by expert concerning significance of arrest and conviction information on reasonable employment and hiring practices for jobs in which risk of harm to customers or public was consideration.

[28] MASTER AND SERVANT ⇔ 332(1.1)

255k332(1.1)
Formerly 255k332(1)

Trial court properly allowed jury to consider punitive damages in action for negligent hiring and retention brought by customer who was attacked by employee.

[29] MASTER AND SERVANT ⇔ 307
255k307

While employer could not be held vicariously liable for acts of employee which occurred outside scope of his employment, such as attack on customer, employer could be held liable for its own acts in negligently hiring and retaining employee which rose to level of extreme misconduct within standard previously adopted by court.

[30] MASTER AND SERVANT ⇔ 303
255k303

"Twenty/twenty hindsight" did not so refocus trial of negligent hiring and retention claims on employee's bad character as to render it impossible for jury to make rational judgment about employer's legal obligations at time of hiring and retention.

*747 Robert Scott Cox of Messer, Vickers, Caparello, French & Madsen, P.A., and David H. Burns of Huey, Guilday, Kuersteiner & Tucker, P.A., Tallahassee, for appellant.

W. Dexter Douglass and John C. Cooper of Douglass, Cooper, Coppins & Powell, Tallahassee, for appellee.

Richard M. Davis, Sr. Vice President and Gen. Counsel of Associated Industries, Inc., Tallahassee, for amici curiae/Associated Industries of Florida, Inc., Florida Chamber of Commerce, Inc., Florida Retail Federation, Inc., Florida Ass'n of Ins. Agents, Inc., Nat. Federation of Independent Business, Inc., and Florida Movers & Warehousemen's Ass'n, Inc.

SMITH, Judge.

Appellant, Tallahassee Furniture Company, Inc., appeals from a jury verdict finding it liable for personal injuries suffered by the appellee, Elizabeth Holland Harrison, and awarding compensatory and punitive

damages. For the reasons discussed below, we affirm.

On January 1, 1986, Harrison was brutally attacked in her home by John Allen Turner, a furniture deliveryman employed by Tallahassee Furniture. The attack left Harrison with permanent scarring and disfigurement, loss of one eye, and partial paralysis in both hands. Harrison filed suit, alleging in her complaint that Tallahassee Furniture was negligent in hiring and retaining Turner, and that Tallahassee Furniture was also liable on an agency theory. A summary judgment in favor of *748 Tallahassee Furniture was reversed on appeal, *Harrison v. Tallahassee Furniture Co., Inc.*, 529 So.2d 790 (Fla. 1st DCA 1988), when this court held that the existence of numerous issues of fact made summary judgment inappropriate. On remand, after a six-day trial at which Harrison presented the testimony of 21 witnesses, the jury returned a general verdict in favor of Harrison for \$1,900,000 in compensatory damages, and \$600,000 punitive damages. This appeal followed.

Tallahassee Furniture argues for reversal primarily upon five grounds: (1) that the trial court erred in submitting the theories of actual or apparent agency to the jury; (2) that Tallahassee Furniture satisfied its duty of reasonable care in hiring and retaining Turner, and was thus entitled to judgment as a matter of law; (3) that the trial court reversibly erred in admitting into evidence Turner's psychiatric and criminal records, including juvenile offenses; (4) that Tallahassee Furniture did not proximately cause Harrison's injuries; and (5) that the court erred in submitting the issue of punitive damages to the jury.

I. FACTUAL BACKGROUND

The evidence at trial established that prior to being employed in the job he held at the time Harrison was injured, John Allen Turner had performed some work as a laborer on construction projects for a company owned in part by a managing agent of Tallahassee

Furniture, and he had performed odd jobs and yard work for the managers of Tallahassee Furniture. As a result of this experience with Turner, he was then hired to work part-time for Tallahassee Furniture at what was referred to as the "fairground sale," a semiannual event involving the sale of household furniture and other merchandise at the local fairgrounds. Sometime in the spring of 1985, after working part-time for approximately three months, Turner was hired to work full-time as a furniture deliveryman. Although this job entailed the delivery to customers' homes on a daily basis at times prearranged with the customers, no job interview was conducted, no references were requested, and Turner was not asked to complete a job application form. Turner was first hired to work as a junior member of a two-man delivery crew, in which the driver was the lead employee. By the late summer of 1985, Turner became a driver and was allowed to drive a company truck home.

Harrison was a student at Florida State University, living alone in an apartment. For her birthday, Harrison's father, a stockholder in Tallahassee Furniture, offered to buy her a couch of her choice. She picked out a couch from Tallahassee Furniture and made arrangements to have it delivered. Turner and another employee delivered the couch sometime in October 1985, at which time the delivery crew also assisted Harrison in moving a bed and a few other belongings to a new apartment, the place where Turner's attack upon Harrison later took place. During this moving process, Harrison offered the deliverymen a broken television set, which she said she wanted to discard, but was unable to carry it down three flights of stairs. Turner accepted it. Harrison later discovered the couch was defective, a new couch was ordered, and Harrison was told that it would arrive around Christmas.

On New Year's Eve, Harrison fell asleep while watching television on her couch. She was awakened the next morning, on New Year's Day, by a knock on her door. She recognized the man at the door as one of the men who delivered her couch. Turner told

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Harrison that he needed a receipt for the television set she had given him, because "they," which Harrison assumed meant Tallahassee Furniture, thought he had stolen it. Harrison agreed to write a receipt and left the door ajar. While she was writing the receipt, Turner looked inside and asked if he could use the bathroom. Harrison told him he could. After Turner entered the house, he went into the kitchen area, then suddenly reappeared with a knife in the living room, where Harrison was writing the receipt, and attacked Harrison, threatening to kill her. When Harrison pleaded with him, he suddenly released her and said he was sorry and that he was "screwed up" and on *749 drugs, and told her to go call the police. Instead, Harrison, terrified, ran into the bathroom and locked the door. Unfortunately, Turner pursued her, broke the door open, savagely stabbed her with the knife, and bludgeoned her into unconsciousness while she lay bleeding on the bathroom floor. Miraculously, Harrison regained consciousness after Turner left the apartment, and was able to reach the front door, where her cries for help were heard by neighbors.

When police officers arrived at the scene of the attack, Harrison told the officers that her assailant was John Allen Turner, a Tallahassee Furniture employee. At this time, Turner reappeared at the apartment driving a Tallahassee Furniture delivery truck. Police approached the driver and asked for a driver's license. Seeing the name John Allen Turner, Turner was arrested.

During the presentation of plaintiff's case, Harrison presented extensive evidence establishing Turner's unfitness for employment for duties involving the entry of customers' homes. This included proof that Turner had a juvenile record for armed robbery and burglary in 1976; adult records of arrest for assault and battery; a charge of aggravated battery in 1979; a conviction for battery involving cutting his former wife in the face with a knife; additional charges of battery on his wife in 1981; and voluntary hospitalization for psychiatric problems on two occasions, in 1979 and 1981, with a diagnosis

of paranoid schizophrenia, including reported delusions of voices telling him to kill himself and to kill other people. Turner had been heavily using drugs preceding both periods of hospitalization. Further, Turner had been using cocaine intravenously for about a year prior to his attack on Harrison, and had been using heroin intravenously for about two months. In addition, Turner had been fired by his prior employer. At the time of his arrest, Turner had clearly visible "track marks" on both arms, indicating heavy intravenous drug use, which were still apparent at the end of January 1986. He was examined by two court-appointed psychologists and was found incompetent to stand trial in January and even as late as March 1986. One of the psychologists testified that in March, Turner was making bizarre comments, hearing voices, and seeing people when there was no one present.

Although much of the trial and argument below dealt with proof of Turner's unfitness for employment and continued retention in the job he held on the day of his attack on Harrison, as the trial progressed this became less of an issue, given testimony by the representatives of the management of Tallahassee Furniture that had they known of Turner's prior criminal record, his drug addiction, and psychiatric illness, Turner would not have been hired as a deliveryman.

Tallahassee Furniture's standard employment application form, which was never submitted to Turner, included a question requesting the applicant to disclose whether he or she had a personal history, even if slight, of drug addiction, nervous disorders, or psychiatric care, among other things. The form also included the question, "Have you ever been convicted of a crime?" and "If Yes, please explain." The form also requested a "yes" or "no" answer to the question, "Have you ever been arrested?" followed by the instruction, "If Yes, give details (omit minor traffic violations)." At least two of Tallahassee Furniture's representatives testified that it could be assumed that if the employment application had been requested, Turner would have furnished the information

requested.

II. GENERAL VERDICT

[1] As above noted, the case was submitted to the jury upon three alleged bases for liability: actual or apparent agency, negligent hiring, and negligent retention of the employee, Turner. However, since the several issues were submitted to the jury for consideration and return of a general verdict, without specifying the theory of recovery upon which liability was based, a favorable verdict for the plaintiff must be upheld if the evidence supports recovery on any one of the several theories alleged. *Whitman v. Castlewood International *750 Corp.*, 383 So.2d 618 (Fla.1980); *Dean Witter Reynolds, Inc. v. Hammock*, 489 So.2d 761 (Fla. 1st DCA 1986); *Maser v. Fioretti*, 498 So.2d 568 (Fla. 5th DCA 1986). Therefore, even if it is assumed, as appellant argues, that the case was improperly submitted to the jury on the issue of actual or apparent agency, the jury verdict must nevertheless be upheld if the evidence was sufficient to submit the issues of negligent hiring or retention to the jury. Further discussion of the agency issue will be deferred until later in this opinion, and we will turn our attention to the issue of negligent hiring or retention.

III. NEGLIGENT HIRING OR RETENTION

The concept of employer liability for negligent hiring or retention of an employee is not of recent vintage in the law of Florida, having found clear expression at least by 1954 in *Mallory v. O'Neil*, 69 So.2d 313 (Fla.1954) (complaint alleged agent and caretaker of apartments, known to have prior record of charge and trial for assault to commit murder, but nevertheless kept on premises by owner, secured a gun and shot a tenant). Finding that the complaint stated a cause of action, the court stated that liability in such cases is grounded on negligence of the defendant in knowingly keeping a dangerous servant on the premises which defendant knew or should have known was dangerous and incompetent and liable to do harm to the tenants.

Subsequent Florida decisions, beginning most notably with *Williams v. Feather Sound, Inc.*, 386 So.2d 1238 (Fla. 2d DCA 1980), rev. denied, 392 So.2d 1374 (Fla.1981), and including *Abbott v. Payne*, 457 So.2d 1156 (Fla. 4th DCA 1984), and *Garcia v. Duffy*, 492 So.2d 435 (Fla. 2d DCA 1986), have explored the cause of action in greater depth. Although few in number, these cases have contributed a substantial commentary on the elements of this cause of action and the factors to be considered in determining liability. Although both appellant and appellee in their respective briefs rely heavily on these cases, their interpretations of the rules and principles discussed differ somewhat, and their arguments as to the applicability to the particular facts in this case vary widely.

The basic underlying rule of employer liability was stated in *Williams*, 386 So.2d at 1239-1240:

Most jurisdictions, including Florida, recognize that independent of the doctrine of respondeat superior, an employer is liable for the willful tort of his employee committed against a third person if he knew or should have known that the employee was a threat to others. (footnotes omitted).

All authorities appear to agree, as stated in *Williams*, that central to the task of judging the employer's responsibility to investigate an employee's background is consideration of "the type of work to be done by the employee." *Id.* at 1240. Stated in terms of the "standard of care" required of an employer, the court in *Garcia* formulated the following test:

In general, the test is whether the employer exercised the level of care which, under all the circumstances, the reasonably prudent man would exercise in choosing or retaining an employee for the particular duties to be performed. (citations omitted).

492 So.2d at 440.

[2] Where the facts are sufficient to show the existence of a legal duty, the reasonableness of an employer's efforts to inquire into the prospective employee's background, and the reasonableness of the subsequent decision to allow the employee to enter a customer's home, are jury questions. *Abbott*, 457 So.2d at

1157; see also, Williams, supra (summary judgment for employer reversed and case remanded for trial); cf. Garcia (no legal duty under facts alleged; dismissal of complaint affirmed).

Of particular concern in negligent hiring and retention cases is the basis for holding employers liable for employees' acts for which no liability would attach under the doctrine of respondeat superior. As explained in Garcia, if employers are to be exposed to liability for acts of their employees outside the scope of their employment, *751 there must be some rational basis for limiting the boundaries of that liability. That limitation is explained by the Garcia court as follows:

Only when an employer has somehow been responsible for bringing a third person into contact with an employee, whom the employer knows or should have known is predisposed to committing a wrong under circumstances that create an opportunity or enticement to commit such a wrong, should the law impose liability on the employer. (citations omitted).
492 So.2d at 439.

In a similar vein, the court in Ponticas v. K.M.S. Investments, 331 N.W.2d 907, 911 (Minn.1983), further explained while referring to cases involving landlord's duty to use reasonable care in hiring employees:

The rationale employed in those cases, as well as in similar cases involving deliverymen or others who gain access to a dwelling by virtue of their employment, is that since plaintiff comes in contact with the employee as the direct result of the employment, and since the employer receives some benefit, even if only a potential or indirect benefit, by the contact between the plaintiff and the employee, there exists a duty on the employer to exercise reasonable care for the protection of the dwelling occupant to retain in such employment only those who, so far as can be reasonably ascertained, pose no threat to such occupant.

As the Williams court pointed out, the more difficult questions presented by these cases is

"What, if any, responsibility does the employer have to try to learn the pertinent facts concerning his employee's character?" Id. at 1240. The Williams court gave the following considerations for trial of this issue: (1) what kind of inquiry "would have been reasonable under the circumstances"; (2) what is the information the employer "would likely have obtained had it made such inquiry"; and (3) what was "the cost of obtaining such information." Williams, 386 So.2d at 1241.

[3] Answering the first of these questions, as to the duty of inquiry where an employee is given the authority to enter the living quarters of others, the Williams court stated the following rule:

If an employer wishes to give an employee the indicia of authority to enter into the living quarters of others, it has the responsibility of first making some inquiry with respect to whether it is safe to do so. Id. at 1240. The court then concluded that the employer, Feather Sound, did not carry out this responsibility since it made no effort to contact prior employers and did not seek advice from the employee's references. The court held, accordingly, that the trial court should not have granted a summary judgment in favor of the employer. From the foregoing discussion, we conclude, paraphrasing Williams, 386 So.2d at 1241, that the ultimate question of liability to be decided is whether it was reasonable for the employer to permit the employee to perform his job in the light of information about him which the employer should have known.

Addressing this ultimate issue, appellant presents two basic arguments: first, that appellant had no legal duty to independently investigate Turner's background because the job for which he was hired involved only incidental contact with customers; and, second, appellant contends that, as a matter of law, it met and exceeded its duty to evaluate Turner for the deliveryman position based upon appellant's actual experience with Turner in similar jobs. We find these arguments unavailing for several reasons.

[4] As to the duty to "independently

investigate," we readily accept appellant's acknowledgment that this entails something other than a personal interview of the employee, obtaining an employment application, or evaluation based upon actual observation and experience with the employee. Consequently, to simply say that there was no legal duty on the part of the employer in this case to make an "independent" investigation, does not mean that there was no duty to investigate before hiring Turner. In this case, by Tallahassee Furniture's own admission, there was no *752 "independent investigation" of Turner's fitness for employment as a deliveryman. Indeed, there was no "investigation" at all. Tallahassee Furniture conducted no job interview, nor did it obtain a written employment application from Turner, notwithstanding the fact that the company had on hand application forms which it generally used.

[5] As to the claim that Turner's job involved only "incidental contact" with customers, we find no hard and fast rule in the case law classifying a retail furniture deliveryman job as involving "incidental contact," so as to relieve the employer of any "independent investigation." For this proposition, appellant relies upon dicta in the Williams case, in which the court said that when the employer in that case hired the employee to do outside work on the grounds of properties consisting of condominiums and residential home sites, during which he would only have "incidental contact" with the tenants, "we cannot see how [the employer] had any obligation on behalf of his company to make an independent inquiry concerning [the employee's] past if he did not want to." 386 So.2d at 1240. We do not find this language pertinent given the facts of this case. Even accepting the proposition that "outside work on the grounds" of a residential condominium community necessarily involves only "incidental contact" with tenants, it does not necessarily follow that a retail furniture store deliveryman entering customers' homes on a daily basis must also be so classified. Nor do we find it necessary, as appellant argues, to assume as a matter of law that unless an employee is given free and independent access

by means of a passkey to enter customers' homes, the employment must be considered only "incidental contact," requiring no independent investigation.

In both Williams and Abbott, upon which appellant heavily relies, the employees had access to passkeys, and in both cases, the courts found a duty to conduct an investigation of the employees' background before hiring them. In neither case, however, did the court lay down the rule that unless passkey access was present, the employment should be considered as involving mere "incidental contact," and therefore not requiring investigation. As a practical matter, a review of the facts of both Williams and Abbott demonstrates the fallacy of appellant's argument on this issue. In Williams, the employee initially gained entry to the residence by ringing the doorbell and being voluntarily allowed to enter by the plaintiff. The assault on the plaintiff did not occur on that occasion, however, but occurred four days later when the employee again entered, but without permission. [FN1] In Abbott, the court found the complaint sufficient to state a cause of action based upon allegations that a pest control employee who had access to passkeys was allowed by the plaintiff to enter her home on one occasion, and that after the alleged employment had ended, the employee broke into the plaintiff's home at night and physically assaulted her. It is apparent from the foregoing that in neither Williams nor Abbott was the risk of harm to the tenants dependent upon passkey entry. On the other hand, in those cases, as in the case before us, the initial entry was gained by virtue of the "indicia of authority" conferred upon the employee and the assault or injury took place on a subsequent occasion. In the case before us, as in Williams and Abbott, the facts clearly show that entry and contact with the plaintiff was gained initially by virtue of the employment, with consent of the victim. It is apparent that the subsequent entry at the time of the assault in this case was also gained by virtue of the "indicia of authority" conferred upon the employee by his employment, while in Abbott the employee simply broke into the plaintiff's residence.

Liability in these cases cannot logically be said to depend on the existence of passkey access.

FN1. The employee claimed that he entered through a back door he found ajar; the plaintiff contended that he used a passkey.

[6] *753 Appellant's second major argument regarding the claim of negligent hiring, as above noted, is that, as a matter of law, it "met and exceeded" its duty to evaluate Turner based upon actual employment experience with Turner in similar jobs. We disagree. Prior to being employed in the deliveryman position, Turner had done work as a laborer on an out-of-town construction site for one of the principals of Tallahassee Furniture and had done yard work at the home of another. These jobs do not remotely approach the customer-contact level of the "outside work on the grounds" mentioned in Williams, since there is no evidence that in these jobs Turner had any exposure whatsoever to customers or to the public generally. Turner had also been employed part-time on two occasions by appellant to assist in its fairground sales, which involved Turner's loading and unloading of furniture at the fairground warehouse and his assisting in placing purchased merchandise in customers' cars. Although this employment involved limited "customer contact," it was contact which might also be accurately described as "incidental contact" as the term is used in Williams. In any event, it is apparent that the fairground job did not involve intimate customer contact such as that involved in the entry of customers' homes.

[7] Appellant's claim that it satisfied its duty to evaluate Turner's fitness for the deliveryman job, as a matter of law, must fail because the prior employment experience with Turner was not similar. Upon consideration of all the evidence relating to Tallahassee Furniture's knowledge of and experience with Turner, the jury could reasonably have concluded that Tallahassee Furniture judged Turner's employability upon the single criterion of whether his capacity as a laborer was sufficient to satisfy appellant's economic

interests, rather than upon whether his character, conduct, and mental condition were such as to ensure the safety of its customers.

Our holding that the evidence was sufficient to go to the jury on the negligent hiring charge makes it unnecessary to decide whether the evidence was also sufficient to support the charge of negligent retention. However, in view of the serious consequences flowing from the appellant's negligent hiring of Turner, we deem it appropriate to also discuss appellant's contentions regarding the charge of negligent retention. Appellant urges, again, that it met its obligation to exercise reasonable care in its retention of Turner as an employee having access to customers' homes and that it, accordingly, is entitled to judgment as a matter of law on this issue. Again, we disagree.

[8][9] Negligent retention of an employee occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicate his unfitness, but the employer fails to take further action, such as investigation, discharge, or reassignment. Garcia, 492 So.2d at 438, and cases cited therein. Appellant urges that, here, there is no evidence that it had notice of Turner's unfitness during his employment. Appellant reviews the evidence concerning two episodes during the employment which, to some extent, indicate unlawful activity on the part of Turner. The first incident involved Tallahassee Furniture's knowledge that Turner had been arrested for violation of probation received in connection with a charge of grand theft. The offense arose out of an incident in which he failed to return a rent-to-own television set. During his employment, appellant's management became aware of his arrest for violation of his probation for failure to make restitution as ordered, and the company advanced money to Turner to pay this obligation. The second incident involved Tallahassee Furniture's discovery, in the late fall of 1985, after Turner had been permitted to drive a truck, that Turner had no driver's license. In fact, Turner had not had a license for five years. Appellant urges that these two

incidents, even accepting the fact that Tallahassee Furniture became aware of them during the course of Turner's employment, are not of such a serious nature that Tallahassee Furniture was on notice of Turner's unfitness for employment.

*754 We are inclined to agree that, standing alone, mere knowledge that the employee had in the past been subjected to a charge of grand theft in connection with failure to return a television set, and that he had undertaken to drive a truck without a valid license, does not appear to be sufficient to place Tallahassee Furniture on notice that Turner was unfit for employment as a deliveryman. On the other hand, Harrison presented the testimony of an expert in public and private security and in various criminological areas, that knowledge of these infractions was sufficient to reasonably indicate the need for further inquiry. In addition, however, Harrison presented evidence, without objection, that Turner was a heavy intravenous cocaine user during his entire full-time employment with Tallahassee Furniture and was a heavy intravenous heroin user during the last few months before his attack on Harrison; that his drug and alcohol use on the job was commonplace; and that he had indulged in the use of drugs on the premises at work with another employee, which was known to management of Tallahassee Furniture. Also without objection, evidence was presented that one of the principals of Tallahassee Furniture was aware of a prior psychiatric hospitalization. This evidence of Turner's unfitness was corroborated to a large extent by evidence of the track marks on both arms at the time of his arrest, by the finding of drug paraphernalia in his home (syringes and empty capsules), and by his incompetency from drug use and psychiatric problems continuing for several months after his arrest. The clear import of this evidence was that Tallahassee Furniture failed in its duty to exercise a reasonable degree of supervision and control over its service employees, a conclusion supported somewhat by evidence that appellant's dispatcher, who was Turner's supervisor and in charge of the daily assignment of deliveries to the homes of

customers, was not aware that Turner had been given the personal use of a Tallahassee Furniture truck to drive home and for use during his off hours, on weekends, and on holidays. Significantly, no coemployee of Turner at Tallahassee Furniture serving in the capacity as a driver or deliveryman with Turner was called to testify as to Turner's activities on the job. Considering the evidence in its entirety, we are not of the view that it was error to submit the issue of negligent retention for resolution by the jury.

In appellant's argument on the negligent retention issue and in other parts of its brief, appellant contends that the evidence pertaining to Turner's drug use (other than the track marks on his arms) was inadmissible hearsay, in that it was based upon the testimony of Harrison's expert witness, Professor James White, who related statements made to him by Turner during a prison interview and who also relied upon an affidavit from Turner's wife regarding Turner's drug use. Appellant relies upon the rule that an expert witness cannot serve merely as a conduit for the presentation of inadmissible evidence, citing *3-M Corp. v. Brown*, 475 So.2d 994, 998 (Fla. 1st DCA 1985), and *Department of Corrections v. Williams*, 549 So.2d 1071 (Fla. 5th DCA 1989).

[10][11] We find this reliance misplaced. As appellee points out, hearsay evidence not objected to becomes part of the evidence in the case and is usable as proof just as any other evidence, limited only by its rational, persuasive power. *Tri-State Systems, Inc. v. Department of Transportation*, 500 So.2d 212, 215 (Fla. 1st DCA 1986), rev. denied, 506 So.2d 1041 (Fla.1987). Further, an appellate court may consider only the objections to admissibility of evidence on the grounds specifically stated at trial, and will not consider those objections to admissibility urged for the first time on appeal. *Tabasky v. Dreyfuss*, 350 So.2d 520, 521 (Fla. 3d DCA 1977).

We have reviewed the record and find no objection on any grounds to the testimony of Professor White regarding his interview with

Turner, nor as to his reliance on Turner's wife's affidavit. Furthermore, Turner's drug use and abuse was also established by the testimony of police officers *755 and the two examining psychologists, all of which was admitted without objection. [FN2]

FN2. Turner had been transported from prison to the scene of the trial in this case and was being held to be available as a witness if called. Neither appellant nor appellee placed Turner on the witness stand.

IV. PROXIMATE CAUSE

Appellant urges that even assuming the existence of a duty on its part, under the circumstances, to investigate Turner's background before placing him in the deliveryman's job, and assuming negligence in hiring and retaining Turner, there can be no liability in this case because of the absence of a causal connection between its negligence and the subsequent injuries. Harrison's injuries, appellant maintains, were not a natural, direct, and continuous result of appellant's conduct. In making this argument, appellant refers to the familiar standard of causation followed in negligence actions by Florida courts, that in order to carry the burden of proof on the issue of causation, the plaintiff must present evidence which "affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the result." Prosser, Law of Torts § 41 (4th ed. 1971), quoted with approval, Gooding v. University Hospital Building, Inc., 445 So.2d 1015, 1018 (Fla.1984); see also Cassel v. Price, 396 So.2d 258, 266 (Fla. 1st DCA), rev. denied, 407 So.2d 1102 (Fla.1981).

Appellant argues that the attack on Harrison resulted not from appellant's negligent hiring or retention, but from Harrison's own "personal contacts" with Turner: Harrison's gift of the television set to Turner at the time of the couch delivery; and Turner's return to her apartment on New Year's Day for a receipt, together with Harrison's assent to Turner's entering her

apartment "on the personal premise of [his] needing to use the bathroom" (quoting from appellant's brief). Appellant urges that these events were not the ordinary sequence of Turner's employment, pointing out that the initial (and only) employment-related contact was without incident, and that the lapse of time between that visit and the New Year's Day attack, approximately three months, so severed the two events that a reasonable person could find no substantial connection between the two. Furthermore, appellant finds the instant case analogous to: F & T Company v. Woods, 92 N.M. 697, 594 P.2d 745 (1979), Strauss v. Hotel Continental Company, Inc., 610 S.W.2d 109 (Miss.App.1980), and Watson v. City of Hialeah, 552 So.2d 1146 (Fla. 3d DCA 1989). We disagree, both as to appellant's application of the law to the facts and its characterization of the pertinent facts of this case.

[12][13] We think that it is clear, from our above discussion on the law of negligent hiring and retention, that the courts have recognized, as a matter of law, that there can be a causal connection between an employment-related contact in the home by an unfit or dangerous employee and an injury inflicted on the occupant during a later, non-employment related entry into the home. See Williams, Abbott, Garcia, and Ponticas, supra. Whether the employment-related contact and the later event in which the injuries occur are so separated by time or other circumstances that the former cannot reasonably be said to be a substantial factor in producing the result complained of depends upon the facts in each case. The issue of proximate cause is generally one for the jury unless reasonable persons cannot differ, in which case it becomes a matter of law for the court. Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983), quoted with approval, Department of Transportation v. Anglin, 502 So.2d 896, 899 (Fla.1987).

[14][15] The evidence in the case before us established without conflict that the sole contact between Harrison and Turner prior to New Year's Day 1986 was on the occasion of the furniture delivery some time in October

1985. [FN3] The gift of the television *756 set was the kind of incidental event reasonably expected to occur when a person is moving in or out of an apartment, when unneeded items are routinely disposed of. The evidence does not support appellant's contention that the gift of the television was a "personal contact" in logical or natural sequence leading to Turner's New Year's Day visit to Harrison's apartment. Instead, the evidence is virtually conclusive that Turner used the supposed need for a receipt as a pretext to present himself at the door of her apartment, knock on the door, and further identify himself to Harrison. Harrison testified that she recognized Turner from his uniform and his face as one of the persons who had delivered her couch. [FN4] When Turner requested a receipt, telling Harrison that he needed one so that "they" would not think he had stolen the television, she assumed "they" was Tallahassee Furniture. Having thus gained Harrison's recognition as someone who had previously been permitted to enter her home, the next step, getting her consent to enter the apartment by requesting to use the bathroom, does not appear to us to be such an unusual, extraordinary, or unexpected event as to be totally removed or separated from Turner's prior employer-authorized entry into Harrison's apartment. We do not believe that either the gift of the television set or the consent to enter the apartment to use the bathroom can reasonably be considered as intervening events requiring that appellant be relieved of liability as a matter of law. In order for an intervening cause to relieve the negligent party from liability, such intervening cause must be truly independent of and not set in motion by the original negligence. Anglin, supra, 502 So.2d at 898. Here, the initial entry into Harrison's apartment allowed Turner the opportunity to learn Harrison's age, sex, the physical features of her apartment, its location and proximity to other residences, and the fact that Harrison was single, lived alone, and was therefore unprotected. The evidence is susceptible to no other conclusion but that Turner had no means of access to Harrison's residence other than through the indicia of authority conferred upon him as a Tallahassee

Furniture employee and that the visit on New Year's Day had no legitimate purpose, personal or otherwise, but at the same time was not a chance encounter. Turner had gone to great lengths the night before to obtain the use of an unmarked Tallahassee Furniture truck in place of the large, marked van he customarily drove, presumably to avoid identification by neighbors or passersby. [FN5]

FN3. It was also established, significantly, that Turner was in the vicinity of Harrison's apartment on another occasion when he made a furniture delivery to the same apartment complex during the week preceding the New Year's Day attack.

FN4. Turner was wearing his brown uniform pants when arrested shortly after the attack. A bloody shirt found in his home contained fibers matching those from Harrison's clothing. The blood pattern on the shirt was consistent with being worn under another garment, open in front. Turner's brown uniform jacket, which was customarily worn on cool days, was never found by the police, nor was the knife used in the attack.

FN5. Turner went to the home of a coemployee on the night before and falsely told the employee's wife that Turner's van needed repairs and that he needed the unmarked truck to drive to a neighboring town to check on his ailing mother. Harrison did not see the truck Turner drove to the apartment at the time of the attack. After the attack, Turner arrived back at the scene driving the marked van. Police investigators were unable to find blood stains in the unmarked truck, but other evidence indicated it was the vehicle used for travel to and from the crime scene.

Given the facts particular to this case, we believe the cases cited by appellant are distinguishable. In Woods, supra, the employee entered the plaintiff's home with permission to deliver a television set, and three days later broke into the home at night and raped the plaintiff. The court found that, as a matter of law, the act of the employee could not have been foreseen by the employer either at the time of hiring or during the employment, nor could the act be considered the natural or probable result of the retention of the employee. The court pointed out,

however, that it did not intend to foreclose all causes of action for negligent hiring or retention; and that whether the hiring or retention constitutes negligence depends upon the facts and circumstances of each case.

*757 We conclude that the facts and circumstances of Woods differ from the case before us in that here, the entry at the time of the attack was gained by consent, based upon Harrison's previous employment-related contact with Turner, opposed to the unlawful break-in which occurred in Woods. Further, on facts similar to those in Woods, the Florida court in Williams found that a jury issue was presented, and on even less compelling facts, the court in Abbott found a cause of action was stated. In addition, as pointed out by appellee, the New Mexico court's application of the law on causation and foreseeability in Woods may be somewhat out of harmony with Florida law. This is indicated, appellee argues, by the Woods' court's reference to case law of that state which precludes a finding of proximate cause for injuries resulting from an owner's leaving the keys in an unlocked motor vehicle, whereas the law of Florida rejects this view, and holds that a jury issue is presented in such a case. See *Vining v. Avis Rent-A-Car, Systems, Inc.*, 354 So.2d 54 (Fla.1977) (if an intervening criminal act is foreseeable, the chain of causation is not broken, and this rule is directly applicable to key-in-the-ignition cases; and statutory law requiring removal of key from unattended vehicle provides additional support for this position).

The facts in *Strauss*, supra, are far removed from those in the present case. In *Strauss*, the plaintiff appealed an unfavorable jury verdict. The plaintiff, a guest of the hotel, was assaulted by a student employed by a club as a locker room attendant on club premises located in the hotel building. As a hotel guest, the plaintiff was entitled to use the club facilities. The assault took place late in the evening, after the club was closed, when the plaintiff returned to the club premises pursuant to a social invitation by the attendant, following which the attendant attacked the plaintiff. The appellate court

found that the plaintiff's evidence failed to establish either a negligent hiring or any proximate causation, and affirmed the jury verdict for all defendants.

In *Watson*, supra, where police officers staged a drug "rip-off" and murder outside the city and hence outside the officers' jurisdiction, the court found no causal connection between the officers' employment and continued retention by the city, and the murder. The court pointed out, among other things, that the police equipment--police badges, "rights cards," radios, and portable blue bubble light--used to gain entry by the officers, who were not in uniform, is readily available in the county and can be easily reproduced and forged. Further, the court found that none of the instances of the officers' employment misconduct was sufficiently egregious to charge the city with knowledge that the officers would commit murder and that their actions were so bizarre as to be beyond the scope of any fair assessment of the danger created by the city's negligence.

[16] Appellant also maintains that the element of foreseeability is not present in this case and that, at most, Tallahassee Furniture's employment of Turner merely provided the occasion for Harrison to give Turner the television set and for Turner to use the television as a pretext to contact Harrison. Again, we disagree. As stated by this court in *Paterson v. Deeb*, 472 So.2d 1210, 1218 (Fla. 1st DCA 1985), rev. denied, 484 So.2d 8 (Fla.1986):

In determining foreseeability, it is not necessary to "be able to foresee the exact nature and extent of the injuries or the precise manner in which the injuries occur"; it is only necessary that "the tortfeasor be able to foresee that some injury will likely result in some manner as a consequence of his negligent acts." *Crislip v. Holland*, 401 So.2d 1115, 1117 (Fla. 4th DCA 1981). (emphasis in original).

It would seem almost unnecessary in these times to require proof of the correlation between a person's history of unlawful and violent behavior, drug abuse, and mental illness, and that person's propensity for future

dangerousness. Nevertheless, appellee established such a correlation through extensive testimony of police officers, psychologists, and an expert in criminology, Professor White. While it is true, as explained by Professor White, that the *758 science of future behavior has not developed to the point of permitting one to predict the time or exact nature of future acts, the best indicator of potentially-dangerous future conduct is the history of a person's past conduct. The jury could have found, and no doubt did find, that had appellant made reasonable inquiry, it could have learned that Turner had been convicted of a violent battery on his former wife with a knife, had numerous other criminal charges involving violence, and had undergone periods of hospitalization for drug abuse and serious mental illness. As noted, Turner had been convicted for cutting his former wife in the face with a knife. Harrison's testimony at the trial revealed, in what may or may not be regarded as a bizarre coincidence, that the first wound she received from Turner was when he stabbed the knife through her cheek and into her mouth. We think the evidence met the test of causation and foreseeability, sufficient to require resolution by the jury. [FN6]

FN6. As a practical matter, argument on the foreseeability issue would appear to be foreclosed to some extent by the testimony of appellant's own witnesses to the effect that if they had known the aspects of Turner's background and character described in this opinion, they would not have hired him as a deliveryman.

V. ACTUAL OR APPARENT AGENCY

[17] In addition to the issues of negligent hiring or retention, the court submitted the case to the jury for consideration of liability grounded upon actual or apparent agency. To recover under a theory of vicarious liability such as actual or apparent agency, it must be shown that the agent or apparent agent's conduct was motivated, at least in part, by the purpose of serving the employer.

It is entirely clear that responsibility for the intentional wrongful acts of a servant-employee may be visited upon his master-

employer under the doctrine of respondeat superior only when that conduct in some way furthers the interests of the master or is at least motivated by a purpose to serve those interests, rather than the employee's own.

Perez v. Zazo, 498 So.2d 463, 465 (Fla. 3d DCA 1986) (footnote omitted), citing, among others, Stinson v. Prevatt, 84 Fla. 416, 94 So. 656 (1922); see also, Schwartz v. Zippy Mart, Inc., 470 So.2d 720 (Fla. 1st DCA 1985), overruled on other grounds, Byrd v. Richardson-Greenshields Securities, 552 So.2d 1099 (Fla.1989); Nazareth v. Herndon Ambulance Service, Inc., 467 So.2d 1076 (Fla. 5th DCA), rev. denied, 478 So.2d 53 (Fla.1985); Kirschenbaum v. Rehfield, 539 So.2d 12 (Fla. 3d DCA 1989); Morrison Motor Co. v. Manheim Services Corp., 346 So.2d 102 (Fla. 3d DCA 1977), cert. denied, 354 So.2d 983 (Fla.1978); and Gibbs v. Air Canada, 810 F.2d 1529 (11th Cir.1987).

Restatement (Second) of Agency § 235 (1958) provides that "[an] act of a servant is not within the scope of employment if it is done with no intention to perform it as a part of or incident to a service on account of which he is employed." Further, it was observed in Annot., 34 A.L.R.2d 372, 379 (1954), that "there is general agreement that where an assault is purely personal to the servant, having no real connection with the master's business, the doctrine of respondeat superior is inapplicable to fasten liability upon the master."

[18] There is no evidence that Turner intended to serve Tallahassee Furniture or further any of its interests in any way in his New Year's Day attack upon Harrison. We agree with appellee that the evidence establishes without equivocation that Turner met Harrison through his job-related contact, and but for this initial contact, Turner would not have known anything concerning her residence or that she was single and lived alone, and would have had no means of gaining her confidence so as to obtain access into her apartment. It is clear, however, that Turner had not been instructed by his employer to obtain a receipt for the television

set; instead, the request for the receipt was merely a ruse or pretext used by Turner for the purpose of gaining consent to enter Harrison's apartment. Furthermore, Turner's assault on Harrison was so outrageous and so far removed from the nature of his job as a *759 furniture deliveryman that we can conceive of no theory under which his actions can be said to be within the scope of his employment.

We do not hold that an employer can never be held liable for an assault committed by an employee. Rather, we hold only that under the facts of this case, the doctrine of respondeat superior is inapplicable. The cases cited by appellee in support of her theory of liability under this principle are distinguishable by the fact that, in those cases, there was evidence from which it could be concluded that the acts of the agent were in furtherance of his employment in some manner, whereas no such evidence is present in this case.

In *M.V. v. Gulf Ridge Council Boy Scouts of America, Inc.*, 529 So.2d 1248, 1249 (Fla. 2d DCA 1988), the court held a jury issue was presented on the question of liability under the doctrine of respondeat superior in an action for emotional distress suffered by a boy scout subjected to intentional homosexual acts following medically-permitted touching. This created a jury question "of whether the employee's intentional tort was within the scope of his employment with appellee." *Id.*

The court similarly held in *Parsons v. Weinstein Enterprises, Inc.*, 387 So.2d 1044 (Fla. 3d DCA 1980), that a jury issue was presented where a bar patron was beaten by servants of the bar after the patron broke a light. The court found that a jury could have reasonably concluded from the evidence that at least some of the attackers were employees acting to avenge the damage with the tacit approval of the bar's owner. Also, in *Rivas v. Nationwide Personal Security Corp.*, 559 So.2d 668 (Fla. 3d DCA 1990), the court found that it was error to direct a verdict in favor of a security company whose employee struck a supermarket cashier at the supermarket

where the guard was assigned, since the jury could have found that the assault and battery arose out of and was in the course and scope of employment.

Thus, although we agree with appellant that submission of the case to the jury on the theory of actual or apparent agency was error, this error does not require reversal since, as stated in our discussion of the general verdict rendered by the jury, the evidence was sufficient to support the verdict of liability against appellant based upon the theories of negligent hiring or retention.

VI. ADMISSION OF PSYCHIATRIC, CRIMINAL, AND JUVENILE RECORDS

The complaint filed by Harrison alleged that appellant either knew or should have known that on the date of hiring Turner, and during the course of his employment, Turner was incompetent and unfit to work as a deliveryman. This allegation was grounded upon specific allegations pertaining to Turner's record of assault, theft, and probation violation; his attack upon his former wife; his hospital admissions for acute depression, hallucinations, and suicidal thoughts; his history of substance abuse, including alcohol, cocaine, and heroin; and Turner's vicious and violent nature. The allegations were denied by appellant.

[19] Notwithstanding these allegations of the complaint, denied by appellant, appellant argues that the records of Turner's arrests, convictions, and his hospitalization for drug abuse and mental illness were inadmissible. Appellant cites no decision from this or any other jurisdiction denying the admissibility of such records in cases of this kind, in the absence of specific statutory authority precluding their use as evidence. Appellee, on the other hand, points to an abundance of authority holding that such records are admissible to prove the employee's unfitness for employment or retention, and to establish what information the employer would likely have obtained had it made reasonable inquiry. See *Williams*, 386 So.2d at 1241.

This court in *Petrik v. New Hampshire Insurance Company*, 379 So.2d 1287, 1289 (Fla. 1st DCA 1979), cert. denied, 400 So.2d 8 (Fla.1981), recognized the rule as explained in *Clooney v. Geeting*, 352 So.2d 1216 (Fla. 2d DCA 1977), that an employee's past driving record would be admissible to show negligent hiring or employment *760 of a driver. The decision in *Williams*, 386 So.2d at 1239, 1240, while not specifically addressing the admissibility of records as proof, leaves no doubt as to the relevancy of information concerning an applicant's criminal or psychiatric treatment, history, and character. Further, the Florida evidence code, Section 90.405(2), Florida Statutes, provides that when character or a particular trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his conduct.

Appellee cites a number of negligent hiring or retention cases from other jurisdictions in which the issue of records admissibility has been addressed. In *Estate of Arrington v. Fields*, 578 S.W.2d 173 (Tex.Civ.App.1979), [FN7] the court stated that a servant's character is an issue and may be proven by evidence of reputation "or of specific conduct" for the purpose of showing that the master knew or by exercising ordinary care should have known of the servant's incompetence. *Id.* at 179. The employer in *Fields* objected to the introduction of the employee's prior criminal conviction on several grounds: remoteness (the latest conviction was 13 years prior to trial); unavailability of the records to the employer; admission into evidence would serve no purpose except to prejudice and inflame the jury; and that the prior convictions did not exhibit a propensity to commit acts of violence. The *Fields* court rejected these arguments, pointing out, among other things, that the evidence in the case, as in the case before us, reflected that the employee's criminal record could have been obtained from at least two sources and that whether the employer should have pursued the inquiries more diligently is a question for the jury, "and does not control its admittance into evidence." 578 S.W.2d at 178.

FN7. Cited in *Williams*, 386 So.2d at 1240.

In *Easley v. Apollo Detective Agency, Inc.*, 69 Ill.App.3d 920, 26 Ill.Dec. 313, 387 N.E.2d 1241 (1979), the court held that there was no error in admitting evidence that an employee had been arrested twice before his employment as a security guard. There, while conceding that unfitness may be shown by specific prior acts of misconduct, the employer, nevertheless, urged that the mere fact of arrest has very little, if any, probative value in showing that the employee has engaged in any misconduct. To this argument the *Easley* court responded:

Whatever the applicability of that statement in another context, we cannot hold that a person's prior arrests invariably have no relevance to whether he should be hired as a security guard; indeed, the fact that both Apollo representatives testified that they would not have hired Brown had they known of his prior arrests belies such a position. *Id.* 26 Ill.Dec. at 323, 387 N.E.2d at 1251. Significantly, the court further pointed out that both the nature and disposition of the arrest charges would have an important bearing on the question of unfitness and on the extent of the employer's misconduct. The court further addressed, and rejected, a contention as to the unavailability of the arrest records to the employer. No issue of unavailability is present in the case before us, with the exception of the juvenile records, because the evidence here established both the availability and insignificant expense involved in obtaining the employee's adult arrest and conviction records from the police, sheriffs' offices, or the Florida Department of Law Enforcement. [FN8]

FN8. Of further significance is the fact that the *Easley* court, in rejecting the contention made in oral argument that it is an unfair labor practice under Illinois law to include a question on an application form as to prior arrests, observed that no case law cited by the employer provides that arrests discovered by other means cannot be considered. 26 Ill.Dec. at 323, 387 N.E.2d at 1251.

[20] We have not overlooked the holding in

Florida decisions that there is no requirement, as a matter of law, that the employer check with law enforcement agencies concerning a prospective employee's criminal record. Williams, 386 So.2d at 1240; Garcia v. Duffy, 492 So.2d at 441. As we view it, the rule is not one of admissibility of evidence but, rather, is a rule *761 that specific conduct on the part of the employer, namely, the failure to check with law enforcement agencies concerning criminal records cannot be considered in and of itself, as establishing negligence as a matter of law. The rule does not mean, as apparently argued by appellant, that the duty of reasonable inquiry under no circumstances can be said to encompass an investigation of the criminal record of an employee. Furthermore, the rule itself is not absolute but is conditional or qualified by the following language: "If the employer makes adequate inquiry or otherwise has a sufficient basis to rely on the employee, there is no need to inquire about a possible criminal record." Evans v. Morsell, 284 Md. 160, 395 A.2d 480, 484 (Md.1978); see also Williams, 386 So.2d at 1240; Garcia, 492 So.2d at 441. The correct application of the rule is seen in Williams, in which, despite the holding that the employer had no duty as a matter of law to check with law enforcement authorities, the fact that the employee had a criminal record, and the employer made no investigation, either by requesting submission of an application form containing questions as to criminal conduct or by interview, required reversal of a summary judgment in favor of the employer and submission of the case to a jury for resolution. A further application of the rule is found in Ponticas, supra. In that case, the court also adopted the Evans v. Morsell rule, stating it as follows: "[i]f the employer has made adequate inquiry or otherwise has a reasonably sufficient basis to conclude the employee is reliable and fit for the job, no affirmative duty rests on him to investigate the possibility that the applicant has a criminal record." 331 N.W.2d at 913. Further, the court explained, "[l]iability of an employer is not to be predicated solely on failure to investigate criminal history of an applicant, but rather, in the totality of the circumstances surrounding the hiring,

whether the employer exercised reasonable care. This is generally a jury question." Id. Thus, the court concluded, "the jury could have found that appellants made slight effort to determine whether it was safe to hire [the employee] and give him access to the living quarters of the tenants of the apartments." Id.

We find that the trial court did not err in admitting the evidence of Turner's adult arrest and conviction records. Furthermore, we find that the trial court fully and correctly instructed the jury on the employer's duty with respect to investigation of an employee's criminal records. [FN9]

FN9. The court instructed the jury, in part: However, there is no requirement in every case that the employer make an inquiry with law enforcement agencies about an employee's possible criminal record. Even where the employee is to regularly deal with the public [sic]. If the employer makes adequate inquiry or otherwise has sufficient basis to rely on the employee there is no need to inquire about the possible criminal record. Even actual knowledge of an employee's criminal record does not establish in every case the employer's negligence in hiring him. The law does not require that an employer can never hire a person with a criminal record at the risk of being held liable for the employee's torturous act, however each case must be determined on its own circumstances. Rehabilitation of those who have gone astray can be a goal of society.

[21] We further find appellant's contention that the hospital records pertaining to Turner's psychiatric illness were inadmissible is without merit. Appellant bases its argument upon Section 394.459, Florida Statutes (1985), to the effect that psychiatric and psychological records are confidential and may not be disclosed without a waiver from the patient. Appellant filed a motion in limine seeking a ruling from the trial court excluding these psychiatric records. The trial court granted the motion in limine based upon the records' confidentiality under the statute, subject to a showing that the records were properly obtained. At the trial, it was disclosed that Turner had signed a release with respect to these records, and they were

obtained by Dr. Stimel, a psychologist who examined Turner shortly after his arrest for the attack on Harrison. We find no error in the trial court's admission of these records.

[22] Appellant makes much the same argument as was made in the Easley case *762 above, to the effect that the records were not available to the employer. As demonstrated by Dr. Stimel, they were available by the simple means of obtaining a release from Turner. As previously noted, appellant's standard application form had questions relating to nervous conditions or mental disorders. Appellant failed to require an application form to be filled out and conducted no interview with Turner concerning his past medical history. Since the records were obtainable with Turner's consent, they were not necessarily unavailable to the employer.

[23] We do not agree with appellant's contention that in order for the records to be admissible, it must first be shown that Turner would have signed a written release. [FN10] In a similar vein, the Williams court noted that some courts hold the employer chargeable with knowledge it could have obtained upon reasonable investigation, while others seem to hold that an employer is only responsible for his actual prior knowledge. We agree, as stated by the Williams court, that the latter view "appears to put a premium upon failing to make any inquiry whatsoever." 386 So.2d at 1240. To adopt the argument made by appellant would serve to insulate the employer from liability so long as he made no inquiry and had no actual knowledge concerning an employee's mental instability. We decline to adopt such a rule. As stated in Ponticas, 331 N.W.2d at 912-913 although an employer will not be liable for failure to discover information that could have been discovered by reasonable investigation, the issue is whether the employer did make a reasonable investigation.

FN10. The most obvious response to a refusal to sign a release, as explained by Professor White, would be for the employer to refuse to hire the employee in a position in which the employee's

mental condition could present a threat to customers.

Turning to the matter of Turner's juvenile records, a different question is presented. Juvenile offense files are protected from disclosure and use as evidence by statute. Section 39.12(5) and (7), F.S. Record of Turner's two 1976 juvenile offenses for burglary and strong-arm robbery were noted in a "rap" sheet of the Florida Department of Law Enforcement which was attached to a 1979 court file in an adjoining county pertaining to criminal charges brought against Turner for an attack on his former wife. As noted by appellant, the records of Turner's juvenile arrests were sealed by court order; the only way they could have become a part of the court file in the adult case was by mistake. The trial court ruled, nevertheless, that in view of the fact that the rap sheet appeared as a part of the public records, open to inspection by any person, it became a matter of public information and could be introduced into evidence.

[24][25] We agree that an employer should not be held responsible for information contained in records of juvenile arrests or dispositions which are confidential and under court seal. However, even if it be assumed that the trial court abused its discretion in allowing the jury to have access to the rap sheet disclosing Turner's juvenile records, we are of the opinion that the error was harmless. While the arrests for armed robbery and burglary indicate a propensity for unlawful conduct, Turner had other arrests as an adult and a conviction of a serious charge involving violence to the person of another, namely, the knife attack on his former wife. In view of the extent of the other evidence disclosing Turner's unfitness for employment or retention, we are of the view that the disclosure of his juvenile arrests was cumulative and could not have had any bearing on the outcome of this case. We therefore conclude that any error in the admission of the juvenile records was harmless.

[26] Turning to another alleged trial error,

appellant argues that the testimony given by appellee's expert, Professor White, concerning Turner's potential for danger given his history prior to the attack on Harrison was improper and inadmissible. Appellant maintains that the subject matter of Professor White's testimony was not beyond the understanding of the average layman and thus cannot be the subject of expert testimony, citing *Sea Fresh Frozen *763 Products, Inc. v. Abdin*, 411 So.2d 218, 219 (Fla. 5th DCA), rev. denied, 419 So.2d 1195 (Fla.1982); *Florida Power Corp. v. Barron*, 481 So.2d 1309, 1310 (Fla. 2d DCA), rev. denied, 488 So.2d 829 (Fla.1986). Additionally, appellant maintains that Professor White possessed no level of experience or learning that qualified him to render such an opinion.

These contentions are without merit. Trial courts are vested with "broad discretion" in deciding the matters which may be the subject of expert opinion evidence, and absent a clear showing of error, a ruling on such a matter will not be overturned on appeal. *Johnson v. State*, 393 So.2d 1069, 1072 (Fla.1981), cert. denied, 454 U.S. 882, 102 S.Ct. 364, 70 L.Ed.2d 191, reh. denied, 454 U.S. 1093, 102 S.Ct. 660, 70 L.Ed.2d 632 (1981). We find ample basis in the record for the trial court's ruling that Professor White was qualified as an expert in the fields of public and private security, and in the fields of criminal law about which he testified. Moreover, Professor White's qualifications as an expert in the fields of public and private security, and criminology were never objected to or questioned by appellant. The court sustained appellant's objection, based upon White's lack of qualifications as an expert in the prediction of future violent behavior, to the question of whether Turner, in view of his past history, "was a danger to people." However, on further questioning, Professor White was permitted to explain the factors involved and the criteria used in determining the risk or potential for future dangerous behavior. We find that the evidence fully supports Professor White's expertise and qualifications in the matters about which he testified. [FN11]

FN11. Professor White is an associate Professor of

Criminology at Florida State University. He has a B.S. degree in criminology. His experience includes work both as a city policeman and sheriff's department detective sergeant; he received a law degree and worked as a prosecuting attorney, handling felony career and Baker act commitment proceedings for the mentally ill; served as special prosecutor, Governor's Council for Prosecution of Organized Crime; assistant general counsel for Law Enforcement Affairs, Office of the Governor; member of the White House Conference on Legal Rights and Justice Task Force; he has published a book dealing with the insanity defense, and training papers and materials for police training academies and junior colleges and universities in the field of high hazard police operations—the use of deadly force; he was currently teaching in the area of public and private security, and in police operations, and had acted as consultant and conducted background investigations for employers in both the public and private sector.

[27] Appellant objected to Professor White's testimony concerning the "iceberg effect." In answer to a specific question on direct examination, Professor White explained that the so-called "iceberg effect" referred to statistics compiled by the United States Department of Justice indicating that reported criminal incidents probably reflect only about one-third of the total crimes actually committed. Upon objection for irrelevancy, the court ruled the answer admissible "as long as it does not relate to Mr. Turner." Continuing with his explanation, Professor White explained that a number of crimes go unreported either because victims do not wish to become involved, are frightened, or simply cannot identify their assailant, etc. We agree that, standing alone, the testimony concerning the "iceberg effect" seems to have little bearing upon the issues in the case, since under the court's ruling, it clearly could not be applied to Turner. However, we cannot view this testimony in isolation but must consider it in connection with all the other testimony given by Professor White. In so doing, we think this testimony was related, however ephemerally, to other testimony given by Professor White, without objection, concerning the significance of arrest and conviction information on reasonable employment and

hiring practices for jobs in which the risk of harm to customers or the public is a consideration. Furthermore, we find that this testimony encompassed less than one page of some 150 pages of testimony by Professor White, the majority of which was cross-examination.

VII. PUNITIVE DAMAGES

[28] Without further recitation of the egregious facts of this case, we are of the *764 view that the trial court did not err in allowing the jury to consider punitive damages. Based upon the information appellant knew or reasonably should have discovered about Turner, the jury could reasonably have determined that appellant's conduct in hiring or retaining Turner was so gross and flagrant as to show a reckless disregard of human life or of the safety of persons exposed to the effect of its conduct; or that its conduct so entirely lacked any care that the appellant must have been consciously indifferent to the consequences; or that appellant's conduct shows wantonness or recklessness, or a grossly-careless disregard of the safety and welfare of the public; or such conduct showed a reckless indifference to the rights of others which is equivalent to an intentional violation of those rights. See *American Cyanamid Co. v. Roy*, 498 So.2d 859 (Fla.1986); *Como Oil Company, Inc. v. O'Loughlin*, 466 So.2d 1061 (Fla.1985); *White Construction Co. v. Dupont*, 455 So.2d 1026, 1029 (Fla.1984); *Johns-Manville Sales Corp. v. Janssens*, 463 So.2d 242 (Fla. 1st DCA 1984), rev. denied, 467 So.2d 999 (Fla.1985).

[29] Since Turner's attack on Harrison occurred outside the scope of his employment, appellant could not be held vicariously liable for Turner's acts. *Mercury Motors Express, Inc. v. Smith*, 393 So.2d 545 (Fla.1981). However, as appellant's argument tacitly concedes, appellant may be held liable for its own acts which rise to a level of extreme misconduct within the standard adopted by the court in *White Construction v. Dupont*, supra. We have examined appellant's argument addressing its liability under this standard and find that it is based entirely

upon appellant's version of the facts, which differs substantially from the facts the jury could reasonably have found from all the evidence.

CONCLUSION

[30] Appellant urges, referring to the voluminous evidence of Turner's unfitnes gathered by police, prosecutors, medical personnel, and plaintiff's attorneys, that "twenty/twenty hindsight" so refocused the trial on Turner's bad character that it became impossible for the jury to have made a rational judgment about Tallahassee Furniture's legal obligations in 1985. We disagree. After careful review of the record, we find nothing to indicate that at the conclusion of this six-day trial the jury was not thoroughly conversant with the issues, the evidence, and the law they had to apply in order to reach a decision. We find that the areas of actual evidentiary conflict on the controlling facts were remarkably limited for a trial of this duration, and that these areas of dispute, as well as the issues of law involved, were fully and fairly discussed by counsel in their closing arguments to the jury. That reasonable persons might disagree with the jury's verdict does not authorize this court to set it aside. [FN12]

FN12. We have not specifically addressed matters cursorily raised in appellant's brief, such as the complaint that the court erroneously instructed the jury, and that the damages were excessive. The brief does not point out the instructions that are deemed improper nor the specific errors therein. The claim as to excessiveness of damages is without merit. These and other matters have not been briefed and argued so as to merit further discussion.

The judgment appealed is **AFFIRMED**.

ALLEN, J., concurs.

NIMMONS, J., concurs and dissents in part with written opinion.

NIMMONS, Judge, concurring in part and dissenting in part.

With the following exceptions, I concur in Judge Smith's opinion.

I am of the view that Professor White's testimony concerning the "iceberg effect" (with respect to criminal history records) was inadmissible. However, I do not believe the error in admitting this testimony rose to the level of being reversible. Rather, I would deem it harmless when viewed in the context of all of the evidence presented.

With respect to the punitive damages issue, I do not believe that the appellant's conduct in its hiring and retaining of Turner *765 met the standard of extreme misconduct contemplated by White Construction Co. v. Dupont, 455 So.2d 1026, 1029 (Fla.1984).

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43363 - KNOREK, JOHN

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M. Dyer & Sons, Inc.

MOVING STORAGE

98-054 kuleana road pearl city, hawaii 96782

January 8, 1996

Commissioners
Hawaii Civil Right Commission

Our employees are grouped in crews of two to three, one of which is the designated driver the other one or two as packer and packer helper.

We go into a customers home and are responsible for the packing, handling and movement of his most personal possessions, from one residence to the new residence which maybe across town or several thousand miles away.

Each move is different, but each one requires 100 percent honesty on behalf of our employees. With often only a housewife present there is only limited supervision over the crew as it performs the job.

Further, these employees must not have any history of assault, or sexual offenses due to their close contact with the customer and his family which often includes dependent children of all ages.

The job we do presents a terrific temptation on each employee. In my 40 years I have experienced the whole spectrum of claims against my company for theft, and loss, as well as verbal abuse, improper language, and disrespect to our customers.

The moving industry must have the ability to reject for employment personnel with histories of theft, robbery, assault, and sexual offenses.

Lacking this protection jeopardizes the company and all of its other employees. Seventy percent of our work is performed for US Government/Military personnel. They have the authority and often do terminate a movers contract for exactly the infractions described.

I strongly support the proposed rules of the Chamber of Commerce of Hawaii which will allow Hawaii Employers to use certain criminal conviction information for employment purposes.

Respectfully submitted,



Medford G. Dyer
President

MGD:ss

vLT
-J1
file

Post-It Fax Note	7671	Date	1/8/96	# of pages	2
To	LINDA C. TSEU, Esq.	From	MARY ANANIAN		
Co./Dept.	HAWAII CIVIL RIGHTS COMM.	Co.	FAIRWAY VILLA COND.		
Phone #	586-8636	Phone #	923-1225		
Fax #	586-8655	Fax #	923-5500		

Mary Ananian, President - Bd. of Dir.
Fairway Villa - Assoc. of Apt. Owners
2345 Ala Wai Boulevard - 2301
Honolulu, Hawaii 96815

JANUARY 8, 1996

HAWAII CIVIL RIGHTS COMMISSION
888 MILILANI STREET
HONOLULU, HAWAII, 96813

LADIES AND GENTLEMEN:

RE: REQUEST FOR PUBLIC INPUT ON WHAT SHOULD BE CONTAINED IN RULES ON ARREST AND COURT RECORD DISCRIMINATION

MY NAME IS MARY ANANIAN AND I THANK YOU FOR SENDING ME YOUR NOVEMBER 29, 1995 NOTICE OF THIS MEETING IN WHICH YOU ARE SEEKING PUBLIC INPUT ON WHAT SHOULD BE CONTAINED IN YOUR ADMINISTRATIVE RULES GOVERNING ARREST AND COURT RECORD DISCRIMINATION.

I APPRECIATE THE OPPORTUNITY TO TESTIFY ON THIS SUBJECT.

I AM HERE TO SPEAK ON BEHALF OF THE THOUSANDS OF VOLUNTEER DIRECTORS THAT HAVE BEEN ELECTED BY THE HOMEOWNERS OF THE HUNDREDS OF CONDOMINIUM AND COMMUNITY ASSOCIATIONS IN HAWAII TO MANAGE AND OVERSEE THE OVERALL AFFAIRS OF THEIR RESPECTIVE ASSOCIATIONS INCLUDING THE HIRING OF OUR EMPLOYEES.

DURING THE 1988 LEGISLATIVE SESSION IN HAWAII OUR LEGISLATURES ENACTED A LAW TO OUR CHAPTER 514A HAWAII REVISED STATUTES THAT GOVERNS CONDOMINIUM PROPERTY IDENTIFIED AS 514A-82.1 EMPLOYEES OF CONDOMINIUMS; BACKGROUND CHECK. (COPY ATTACHED)

WE ASK THAT YOU INSERT THIS INTO YOUR ADMINISTRATIVE RULES ON ARREST AND COURT RECORD DISCRIMINATION.

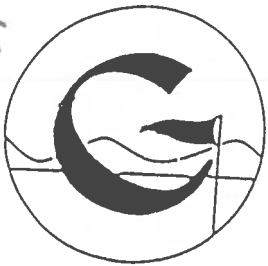
THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS MATTER.

Mary Ananian
Mary Ananian

Enc. 1

PROPERTY

[§514A-82.1] Employees of condominiums; background check. The board of directors of an association of apartment owners or the manager of a condominium project, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the units in the condominium project or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a condominium employee with access to association funds or the keys of or entry into the units in the condominium project, and the judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. Failure of an association of apartment owners or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association or manager for acts and omissions of the employee hired. [L. 1988, c. 293, §1]



THE GREENWOOD

1128 ALA NAPUNANI STREET, HONOLULU, HAWAII 96818

January 6, 1996

'96 JAN -8 P1:14

Hawaii Civil Rights Commission
888 Mililani Street
Honolulu, Hawaii 96813

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Subject: Employment Application in Condominium Association Properties
Background Checks

Gentlemen:

Employees of a Condominium Association have access to Association common property, apartments and funds..

Due to the sensitive nature of accessibility to the aforementioned property and funds, it is sensitive that employees of a condominium association be dependable, honest and free of prior record of such anti-social activity.

There will be Liability Exposure to the Association of Owners of Apartment of the condominium project if due diligence were not followed prior to hiring staff members of the project. While many condominium associations delegate the hiring of employees to the managing agent, it is ultimately the responsibility of the condominium association to provide safety to all residents of the project.

Therefore, it is very important that Condominium Associations and their designated representatives involved in the hiring of employees have the right to access the applicant's arrest and conviction record in order to evaluate appropriately, the suitability of such person applying for a job at the project.

Not to allow this authority to Condominium Associations will create another problem of liability suits against the association by residents who have suffered loss, damages or injury caused by employees with prior arrest and convictions but were not checked on in pre-employment processing.

Thank you for the opportunity to express this concern by a condominium board member, owner and resident.

Sincerely,

President, The Greenwood Condominium AOA



Hawaii Council of Associations of Apartment Owners

A non-profit organization

677 Ala Moana, Suite 701

Honolulu, Hawaii 96813

Telephone (808) 533-2528

FAX (808) 531-2716

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

'96 JAN -5 AM 11:11

January 5, 1996

Hawaii Civil Rights Commission
888 Mililani Street
Honolulu, Hawaii 96813

RE: TESTIMONY BEFORE CIVIL RIGHTS COMMISSION

We appreciate very much the opportunity to address this Bill. The Hawaii Council of Associations of Apartment Owners (HCAAO) represents 105 apartment associations with 19,318 individual apartment owners and 34 associate members. Our objective is to provide an effective operation of the projects according to the wishes of the apartment owners.

We support and join in the position taken by John Knorek of the Employer's Consortium on Arrest and Court Record Rules.

The Hawaii Council and its members would be very concerned if the Commission were to adopt rules that would require Associations to hire people with criminal convictions.

HRS 514A 82 currently allows Associations to do background checks on employee applicants, including having access to the State of Hawaii criminal justice records. A copy of the statute is attached to this testimony. Since association employees have access to condominium units in the ordinary course of their employment and in the case of a resident manager (who is usually on site on a 24 hour basis and is constantly dealing with the residents in the project), the Association would not want to hire people with theft, embezzlement, assault, rape or sexual misconduct convictions since this would jeopardize the safety and security of the people (adults and children) living in the project and their property.

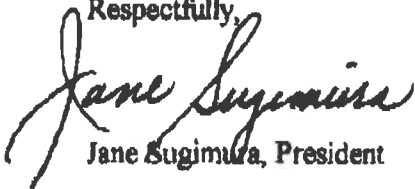
Further, the statute implies that the Association has a duty to do background checks on prospective employees to ensure that they do not have criminal convictions that would make them unfit to carry out their employment duties at the project. This means that an Association may be exposed to legal claims and lawsuits if they failed to do a background check and an employee with a prior criminal conviction engaged in similar conduct against residents of the project or their property.

Any rule changes that would result in the nullification of this statute would result in serious harm to condominium associations.

For all of these reasons, we urge that HCRC adopt rules and regulations that would specify and/or identify criminal convictions that should be used to deny certain employment

Thank you for the opportunity to testify on this important matter.

Respectfully,



Jane Sugimura, President



HAWAII EMPLOYERS COUNCIL

2682 Waiwai Loop Honolulu, HI 96819

Telephone No. (808) 836-1511 FAX Phone No. (808) 833-6731

Company HCRC

Date 1/2/96

Attention Pinkie Tseng

No. of pages sent 6
(Include this form)

From Comme Hester

FAX No. 586-8655

SUBJECT Committee reports from 1973 bill
(Act 54) on asset & asset records - FY1

STAND. COM. REP. NO. 376

Honolulu, Hawaii

March 22, 1973

RE: H. B. NO. 656

H. D. 1

The Honorable Tadao Beppu
Speaker, House of Representatives
Seventh Legislature
Regular Session, 1973
State of Hawaii

Sir:

Your Committee on Labor and Employment to which was referred H. B. No. 656 entitled: "A BILL FOR AN ACT RELATING TO ARREST AND COURT RECORDS.", begs leave to report as follows:

The purpose of this bill is to amend Chapter 378, Hawaii Revised Statutes, to prohibit discriminatory employment practices based upon a person's arrest or court records.

Chapter 378 presently prohibits a number of employment practices on the part of employers, labor unions, employment agencies, and others if the practices discriminate against a person because of his race, sex, age, religion, color, or ancestry.

This bill proposes to amend said chapter to also prohibit discriminatory employment practices based upon a person's arrest or court record. In a case where the arrest or court records bear a substantial relationship to the functions and responsibilities of the employment, however, a refusal of employment or discharge would not be prohibited by the bill.

Your Committee agrees that discrimination in employment because a person has been arrested or involved in court proceedings should not be permitted, unless the arrest or court proceeding bears a relationship to the continued or future performance of the job involved. The director of labor and industrial relations in his testimony supporting the bill suggested that it be clarified in several respects. He suggested a clarification of the definition of the term "arrest or court records" and an amendment of Section 378-2(1)


STAND. COM. REP. NO. 376

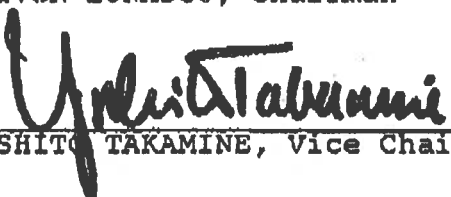
Page 2

to protect those already employed, as well as prospective employees. Your Committee has therefore amended H. B. No. 656 by defining "arrest and court records" to include records of "trials and convictions". It has also amended Section 378-2(1) to extend the intended protection of this bill to those already employed, as well as prospective employees.

Your Committee on Labor and Employment is in accord with the intent and purpose of H. B. No. 656, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 656, H. D. 1, and be referred to the Committee on Judiciary.

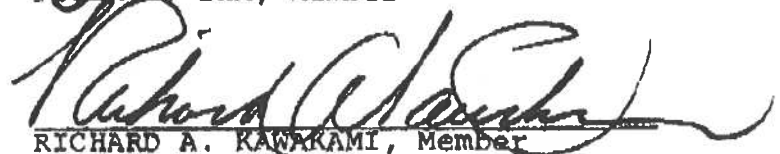
Respectfully submitted,


OLIVER LUNASCO, Chairman


YOSHITO TAKAMINE, Vice Chairman


ANSON CHONG, Member


PETER S. IHA, Member


RICHARD A. KAWAKAMI, Member


RONALD Y. KONDO, Member

STAND. COM. REP. NO. 376

Page 3

Herman Wedemeyer
HERMAN WEDEMEYER, Member

Richard S. H. Wong
RICHARD S. H. WONG, Member

Ralph K. Ajifu (I do not concur)
RALPH K. AJIFU, Member

John Leopold
JOHN LEOPOLD, Member

Patricia Saiki
PATRICIA SAIKI, Member

W-534

STANDING COMMITTEE REPORT NO. 851

Honolulu, Hawaii
April 11, 1973

The Honorable David C. McClung
President of the Senate
Seventh Legislature
Regular Session, 1973
State of Hawaii

Sir:

RE: H.B. No. 656, H.D. 2

Your Committee on Judiciary to which was referred H.B. No. 656, H.D. 2 entitled:

"A BILL FOR AN ACT RELATING TO ARREST AND COURT RECORDS.",
begs leave to report as follows:

The purpose of this bill is to amend Chapter 378, Hawaii Revised Statutes, by adding that employment discrimination based upon an individual's arrest and court records is prohibited.


The amendment is an addition to Chapter 378 which presently prohibits discriminatory employment practices based upon race, sex, age, religion, color, or ancestry. It does not include convictions in the definition of "arrest and court record."

The amendment's prohibition of discriminatory employment practices does not preclude any employer from refusing employment or discharge if the arrest or court records has a substantial relationship to the functions and responsibilities of the employment.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 656, H.D. 2 and recommends its passage on third reading.

Respectfully submitted,


JOHN T. USHIJIMA, Chairman


DUKE T. KAWASAKI, Vice-Chairman

STANDING COMMITTEE REPORT NO. 851
Page 2

Joseph T. Kuroda
JOSEPH T. KURODA, Member

Sakae Takahashi
SAKAE TAKAHASHI, Member

Eureka B. Forbes
EUREKA B. FORBES, Member

Henry Takitani
HENRY TAKITANI, Member

Tennyson Lum
TENNYSON LUM, Member

Francis A. Wong
FRANCIS A. WONG, Member

George H. Mills
GEORGE H. MILLS, Member

Mamoru Yamasaki
MAMORU YAMASAKI, Member



HAWAII HOTEL ASSOCIATION
SUITE 1103
2270 KALAKAUA AVENUE
HONOLULU, HAWAII 96815-2564
TELEPHONE: (808) 923-0407
FAX: (808) 924-3843

STATEMENT OF THE HAWAII HOTEL ASSOCIATION
TO THE CIVIL RIGHTS COMMISSION

My name is Murray Towill, President of the Hawaii Hotel Association.

The Hawaii Hotel Association is requesting your support in restoring some common sense to how prior criminal convictions can be used in employment decisions. Our association represents over 150 hotels statewide which collectively have over 30,000 employees. Presently, prior criminal convictions cannot be considered as a factor in employment decisions. We do not believe this is logical especially when the conviction is relevant to the employment being sought.

The very nature of the hotel business is such that significant liability is placed on hotels for the safety of their guests. Guest service and security is obviously critical to the quality of the guest experience. Hotels are treated as homes away from home, and guests have the right to expect privacy and security. The 24 hour a day operations of a hotel also require that employees be on property at all hours and many have access to guests and guest rooms.

Common law has long established the responsibilities and standard of duty of a hotel or innkeeper to its guests. When these responsibilities have not been met, substantial judgements have been made against the hotel. In many respects, hotels are made defenseless when they cannot even inquire about any relevant convictions by a prospective employee. If a guest or fellow employee is assaulted or injured by an employee, the hotel's liability is not reduced because they could not inquire about prior convictions.

To be qualified to obtain any position that involves unsupervised guest contact or access to guest rooms should require the absence of a felony conviction for homicide, assault, kidnapping, sexual offenses, child abuse, extortions, or prostitution.



American Hotel &
Motel Association

To be qualified to obtain any position that involves access to guestrooms or the property of guests should require the absence of felony convictions for theft, embezzlement, robbery, forgery, and other related offenses.

We strongly believe that employers should have the right to obtain and consider conviction records when the crime has a substantial relationship to the functions and responsibilities of the employment sought. We must be able to ensure that guests and employees are provided with a safe and secure environment.

Thank you for the opportunity to provide this input.

(1/8/96-MET/sh)

**HAWAIIAN TUG AND BARGE, CORPORATION
YOUNG BROTHERS, LTD.**

Testimony on Arrest and Court Record
Hawaii Civil Rights Commission
January 8, 1996

Hawaiian Tug & Barge, Corporation ("HTB") and Young Brothers, Ltd. ("YB"), respectfully submits testimony regarding an employer's right to inquire about an applicant's or employee's conviction record.

HTB/YB is a publicly regulated common carrier and the primary carrier for interisland cargo and transportation of goods, materials, and commercial or personal property. We have a cargo and transportation fleet of over 24 large boats, tugs and over 250 vehicles. Our companies are entrusted with and handle millions of dollars worth of commercial goods and personal property on an annual basis. In order to effect our business, our 300+ employees are required to operate heavy equipment, boats, and vehicles, both individually and as teams. The jobs and positions of our employees are demanding and usually stressful, and certain positions are under closed quarters while on the seas. Our employees are entitled to rely upon and trust one another to get the job done. We are particularly aware of the increased incidents of violence in the workplace, which becomes a greater reality for businesses, such as ours, undergoing change, downsizing and realignment. With higher levels of stress within the workplace, each individual must demonstrate or be equipped with coping skills and the ability to seek and benefit from counseling. In addition, all of our employees are currently covered under a crime or fidelity bond which typically requires that employees with criminal records be insured under specially obtained federal bonds. In order to acquire and maintain proper insurance coverage for such employees, the employer must know of the employee's criminal history.

We must select our employees with care because our employees are collectively responsible for millions of dollars worth of property and goods owned by over 2000 major customers, as well as property owned by thousands of individual customers. If we lose the public's or our customers' trust in our companies, we will ultimately lose their business and jeopardize our company's and all employees' futures.

There is great temptation and numerous opportunities for loss and theft in the cargo and property transportation business. As a result, we are obligated to maintain a workforce that meets an appropriate standard of morals and ethics in order to properly provide the services rendered. It would be foolish for us and harmful to the public and our customers to relax that standard.

We acknowledge the importance of equal opportunity for all individuals. We stress, however, that this right must be balanced against the potential harm to society, employers, employees, and customers. There are numerous cases in which employers have paid dearly for hiring persons with criminal records.

Employers must maintain their right to make a reasonable inquiry about crimes committed by potential employees related to the job being sought. Without this right, employees are unable to protect themselves and their employees or customers from potentially harmful applicants.

We propose that, at the very least, the Commission recognize and appropriately balance the interests of the protected individual against the overwhelming interests of employers, employees and the public. In doing so, HTB and YB requests that the Commission address and provide for the following bona fide concerns of our companies:

1. Violent Crimes. Criminal history of violent crimes exposes the work place, all employees and the public to a risk of harm. We believe that all employers have the right and need to know whether an applicant has been convicted of a violent crime, including but not limited to murder, homicide, assault (with or without a deadly weapon), rape or sexual assault.
2. Substantially Related Crimes. Employers have the right and need to know if an applicant has been convicted of a crime substantially related to the position in question. Employers could identify in advance, the types of crimes related to each particular position, to which an applicant can be asked to reply.

Attached for your information is a sample listing of the types of positions at our companies which merit an inquiry into past criminal history. The list is not exhaustive.

3. Repeat Offenders. Employers also have the right and need to know if an applicant is a repeat offender. Unless employers are protected from claims of negligent hiring/retention, hiring a repeat offender is an open invitation to plaintiffs' attorneys to collect punitive damages for intentional or reckless behavior by the employer.

We ask that the employers' right to inquire about all of the above be preserved in any regulations or policies adopted by the Commission. Anything less creates greater harm than good and will adversely affect the public, society and businesses collectively.

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

ACCOUNTING/FINANCE RELATED

POSITIONS

Account Representative
Accountant
Accounting Manager
Accounting Supervisor
Accounts Receivable Coordinator
Accounts Receivable Supervisor
Finance Administrator
Junior Accountant
Output Clerk
Secretary
Senior Accounting Clerk
Senior Payroll Clerk

These positions are responsible, in different aspects, for maintaining respective financial information and records for the Company. In light of the nature of the transactions, the extensive resources entrusted to these positions, and records that each department is responsible for, it is critical to have employees who demonstrate, meet and maintain the highest moral and ethical standards

HRS 708-830, Theft and Related Offenses
HRS 708-840, Robbery
HRS 708-850, Forgery and Related Offenses
HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime
HRS 708-8100, Credit Card Offenses
HRS 708-810, Burglary/Other Offenses of Intrusion
HRS 708-760, Extortion
HRS, Chapter 712, Public Health and Morals

POSITIONS HANDLING CASH

TRANSACTIONS

Accounts Representative
Claims Administrator
Claims Agent
Claims Clerk
Claims Coordinator
Commissary Clerk
Commissary Coordinator
Commissary Expeditor
Credit Coordinator
Customer Clerk
Customer Service Representative
Customer Service Supervisor
Director, Sales/Customer Service
Documentation Clerk
Manager, Customer Service
Payroll Coordinator

These positions require daily handling of cash and reporting of related transactions. Related records, invoices and files are a requisite part of the job. In addition, frequent contact with the public and customers is required.

HRS 708-830, Theft and Related Offenses
HRS 708-840, Robbery
HRS 708-850, Forgery and Related Offenses
HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime
HRS 708-8100, Credit Card Offenses
HRS 708-810, Burglary/Other Offenses of Intrusion
HRS 708-760, Extortion

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS HANDLING CASH

TRANSACTIONS (cont.)

Payroll Specialist
Sales & Service Agent
Sales Representative

(See job responsibilities discussed on previous page.)

(See crimes discussed on previous page.)

**POSITIONS REQUIRED TO
HANDLE/SECURE CARGO & INTERACT
REGULARLY WITH PUBLIC**

Ablebodied Seaman/Oiler
Assistant Reefer Superintendent
Barge Terminal Superintendent
Barge/Shoreside Mnt Supt.
Cargo Claims Supervisor
Cargo Traffic Coordinator
Cook
Cook/AB/Oiler
Cook/OSM/iper
Deckhand
Deckhand/Cook
Dispatcher
Equipment Inventory Supt.
Equipment Tracking/Term Superintendent
First Mate
Fleet Equipment Manager
Fleet Operations Supervisor
Freight Clerk
Har Boat Opers Supv/Tug I
Head Dispatcher
Hilo Barge/Terminal Superintendent
Hilo Operations Superintendent
Kahului Operations Superintendent

Our cargo and barge positions require our personnel to handle, secure and transport all of our customers' property from the docks and on the ocean.

Operation and use of company vehicles, trucks, light or heavy equipment also makes traffic violations critical areas of inquiry for employment. Substance abuse jeopardizes the welfare of employees and the public and we strive to insure that our employees work under the safest condition possible and do not pose any risk of harm to the public.

HRS §707-700 Criminal Homicide
HRS §707-710 Criminal Assaults
HRS §707-720, Kidnapping/Criminal Coercion
HRS §707-730, Sexual Offenses
HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-820, Criminal Damage to Property
HRS §708-830, Theft and Related Offenses
HRS §708-840, Robbery
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 7 11, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS REQUIRED TO HANDLE/SECURE CARGO & INTERACT REGULARLY WITH PUBLIC (cont.)

Kaunakakai Operation Superintendent
Kawaihae Operations Superintendent
Lanai Port Superintendent
Leaderman
Machine Operator
Marine Equipment Supervisor
Materials Supervisor
Naviliwili Operation Superintendent
Offshore AB/Oiler
Offshore Chief Engineer
Offshore Cook/AB/Oiler
Offshore Cook/OS/Wiper
Offshore Engineer
Offshore First Mate
Offshore Second Mate
Oiler
Operations Coordinator
Operations Manager
Operator
Operator/Engineer
Ordinary Seaman Red Circle
Ordinary Seaman/Wiper
Port Captain
Port Engineer
Reefer/Cargo Cont. Supervisor
Second Mate
Senior AB/Oiler
Servicer/Repairer
Special Boat Operator
Sr. Tug Master/Harbor Op Sup

Our cargo and barge positions require our personnel to handle, secure and transport all of our customers' property from the docks and on the ocean.

Operation and use of company vehicles, trucks, light or heavy equipment also makes traffic violations critical areas of inquiry for employment. Substance abuse jeopardizes the welfare of employees and the public and we strive to insure that our employees work under the safest condition possible and do not pose any risk of harm to the public.

HRS §707-700 Criminal Homicide
HRS §707-710 Criminal Assaults
HRS §707-720, Kidnapping/Criminal Coercion
HRS §707-730, Sexual Offenses
HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-820, Criminal Damage to Property
HRS §708-830, Theft and Related Offenses
HRS §708-840, Robbery
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 7 11, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS REQUIRED TO HANDLE/SECURE CARGO & INTERACT REGULARLY WITH PUBLIC (cont.)

Stock Clerk
Storeroom/Toolroom Attendant
Superintendent, Freight Clerks
Superintendent, Pier 39/40 Planning
Superintendent, Port Ops-Lanai
Superintendent, Shoreside/Mobile Eq
Supt. Port Operations - Lanai
Supt. Shoreside Equip.
Tug I/Har Boat Oper's Supv
Tugboat Master
Tugboat Master I / Port Captain
Utility Stevedore

(See job responsibilities discussed on previous page.)

(See crimes discussed on previous page.)

CRAFT WORKER AND LABORER POSITIONS

Automotive Mechanic
Carpenter
Diesel Mechanic
Electrician
Entry Level 1st Six Month
Entry Level 2nd Six Month
Helper
Lead Person
Machinist
Maintenance Administrator
Maintenance Helper
Maintenance Person
Maintenance Shop Supervisor
Maintenance Superintendent

Our craft and laborer positions insure that our operations are smooth and efficient. These jobs require skill, concentration and involves heavy or dangerous positions.

Operation and use of company vehicles, trucks, light or heavy equipment also makes traffic violations critical areas of inquiry for employment. Substance abuse jeopardizes the welfare of employees and the public and we strive to insure that our employees work under the safest conditions possible and do not pose any risk of harm to the public.

HRS \$707-700 Criminal Homicide
HRS \$707-710 Criminal Assaults
HRS \$707-720, Kidnapping/Criminal Coercion
HRS \$707-730, Sexual Offenses
HRS \$707-760, Extortion
HRS \$708-810, Burglary/Other Offenses of Intrusion
HRS \$708-820, Criminal Damage to Property
HRS \$708-830, Theft and Related Offenses
HRS \$708-840, Robbery
HRS Chapter 712, Public Health and Morals
HRS Chapter 7 11, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

CRAFT WORKER AND LABORER

POSITIONS (cont.)

Maintenanceman
Mechanic
Mechanic Helper
Reefer Repairer
Superintendent, Booking & Logistic
Tankerman
Tool Room Mechanic
Welder
Working Foreman

(See job responsibilities discussed on previous page.)

(See crimes discussed on previous page.)

ADMINISTRATIVE SUPPORT POSITIONS

Administrative Assistant
Administrative Manager
Administrative Secretary
Analyst Trainee
Applications Analyst
Benefits & Admin Assistant
Chief Engineer
Computer Operator
Documentation Supervisor
Engineer
Engineer/Deckhand
Executive Secretary
Maintenance Coordinator

Our administrative support departments service both internal customers (all employees) well as external customers (applicants, the public, etc.). Functions of these departments include our personnel department administrative positions.

All of these departments are responsible for or privy to confidential records or information related to our employees or our customers.

HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-830, Theft and Related Offenses
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 711, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

ADMINISTRATIVE SUPPORT POSITIONS

(cont.)

Personnel & Industrial Relations Assistant
Personnel & Industrial Relations Clerk
Personnel & Industrial Relations Specialist
Personnel & Labor Relations Specialist
Postal Clerk/Messenger
Programmer Analyst
Quality Control Coord.
Quality Control Supervisor
Reservation Clerk
Secretary to the President
Senior Programmer Analyst
Switchboard Operator
Tech Support Engineer
Technical Assistant
Term/ice House Yard Supervisor
Terminal Yard Supervisor
Training & Development Admin
Vehicle/Terminal Superintendent
Vessel Cost Administrator

Our administrative support departments service both internal customers (all employees) well as external customers (applicants, the public, etc.). Functions of these departments include our personnel department administrative positions, commissary positions.

All of these departments are responsible for or privy to confidential records or information related to our employees or our customers.

HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-830, Theft and Related Offenses
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 711, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

MANAGEMENT POSITIONS

Asst. Manager, Honolulu Port Operations
Asst. Manager, YB Operations
East Hawaii Manager
Honolulu Assistant Manager
Honolulu Manager
Kauai Manager
Lanai Manager
Maintenance Manager
Management Trainee
Manager of Information Systems
Manager, Charter & Oil Operations
Manager, Contracts & Admin
Manager, Doc. & Systems
Manager, Engineering & Maintenance
Manager, Facilities/Planning
Manager, Harbor Operations
Manager, Hawaii County
Manager, Maui County
Manager, Maui County
Manager, Oil & Charter Barge Operation
Manager, Oil Operations
Manager, Special Projects
Manager, Special Projects
Manager, Vessel Cost & Admin
Manager, YB Operations
Maui Manager
Molokai Manager
Personnel Manager
Risk Manager
West Hawaii Manager

Our management positions are responsible for overall operations and supervision of our employees. The welfare of our employees and our business rests in these individuals hands. They are privy to confidential records and financial information and have access to all levels of company records.

These persons must be held to the highest degree of moral and ethical standards.

HRS §707-700 Criminal Homicide
HRS §707-710 Criminal Assaults
HRS §707-720, Kidnapping/Criminal Coercion
HRS §707-730, Sexual Offenses
HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-820, Criminal Damage to Property
HRS §708-830, Theft and Related Offenses
HRS §708-840, Robbery
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 7 11, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

HTB / YB Positions

Job Responsibilities

Substantially Related Crimes

SAFETY POSITIONS

Environmental & Safety Admin.

Security Officer

Security Supervisor

These positions are responsible for the security of company property and all employees.

- HRS §707-700 Criminal Homicide
- HRS §707-710 Criminal Assaults
- HRS §707-720, Kidnapping/Criminal Coercion
- HRS §707-730, Sexual Offenses
- HRS §707-760, Extortion
- HRS §708-810, Burglary/Other Offenses of Intrusion
- HRS §708-820, Criminal Damage to Property
- HRS §708-830, Theft and Related Offenses
- HRS §708-840, Robbery
- HRS §708-850, Forgery and Related Offenses
- HRS §708-870, Business and Commercial Frauds
- HRS §708-8100, Credit Card Offenses
- HRS Chapter 712, Public Health and Morals
- HRS Chapter 7 11, Offenses Against Public Order
- HRS Chapter 710, Offenses Against Public Admin.
- HRS Chapter 291, Traffic Violations/DUI



PETER H. SCHALL
Area General Manager

STATEMENT FOR THE HAWAII CIVIL RIGHTS COMMISSION

The Hilton Resorts in Hawaii, which includes the Hilton Hawaiian Village, Turtle Bay Hilton Golf and Tennis Resort, and the Hilton Waikoloa Village, is and always has been a responsible community leader and employer through its high standards of integrity in its business operations and also through its dedicated commitment to Hawaii's community. We have earned our reputation through maintaining extremely high standards in the quality of the products and service that we offer to our visitors and local guests.

Hilton Resorts in Hawaii employs 3,600+ employees who are carefully selected in accordance with our high standards of service. Guest confidence and security are crucial to a quality visitor experience at our hotels. More importantly, Hilton Resorts in Hawaii, as innkeepers, have a higher standard of duty to provide our guests and employees with a safe and secure environment. Increased liability for negligent hiring and retention as well as sexual harassment requires a thorough review of an applicant's past history.

Convictions for certain offenses are substantially related to the ability of applicants to perform certain job-related duties. Clearly, a conviction for embezzlement should disqualify an applicant for employment as a cashier. Larceny or burglary convictions should likewise disqualify an applicant for the positions of bellhelp or housekeeper with unsupervised access to guestrooms. The critical areas of concern to the hospitality industry involve guest contact and guestroom access.

A criminal record of assault and battery, sexual assault or rape should disqualify any applicant for positions that expose our guests, employees, or other members of the public to the potential of such crimes to be repeated against them. To reduce the risk of needless litigation and the cost to the system to enforce employment rights, we support proposals for state rules that identify job duties with the types of criminal offenses that would disqualify an applicant for employment.

Specifically, to be qualified to perform any positions that involve unsupervised guest or co-employee contact or access to guestrooms would require the absence of a felony conviction in the past seven (7) years (excluding periods of incarceration) for any of the following categories of

state offenses against the person:

Criminal Homicide
Criminal Assaults and Related Offenses
Kidnapping and Related Offenses
Sexual Offenses
Child Abuse or Extortion, Hawaii Revised Statutes Chapter 707
Prostitution or Promoting Prostitution, Hawaii Revised Statutes
Chapter 712, Part I.

To be qualified to perform any position involving access to guestrooms or the property of guests or the employer, an applicant or employee should not have a felony conviction in the past seven (7) years (excluding periods of incarceration) for:

Intrusion
Theft/Embezzlement
Robbery
Forgery
Computer Crime
Credit Card Offenses or Money Laundering, Hawaii Revised Statutes
Chapter 708
Offenses Related to Drugs and Intoxicating Compounds, Hawaii
Revised Statutes Chapter 712, Part IV

Of course, any employee or applicant would have the right to challenge the employer's rejection if the position sought did not include the duties and responsibilities identified as related to the offenses.

The Hawaii Legislature has already recognized legitimate non-discriminatory reasons to rely on conviction information to disqualify applicants for positions of employment with condominium and cooperative associations. Commission rules should be patterned after these recognized exceptions to permit inquiry into conviction data for persons with access to guestrooms, the funds of the hotel or its guests, or with jobs requiring unsupervised contact with a co-employee of the opposite gender.

We must be allowed to have the ability to ensure that our guests and employees are provided with a safe and secure environment. That is our duty and responsibility and we urge the Commission to consider rules which parallel the authority of the State of Hawaii to consider an applicant's past criminal conviction record and base employment considerations and decisions on such history.

**HAWAIIAN ELECTRIC COMPANY, INC.
MAUI ELECTRIC COMPANY, LTD. and
HAWAII ELECTRIC LIGHT COMPANY, INC.'s**
Testimony Re: Policies on Arrest and Court Record
Hawaii Civil Rights Commission
January 8, 1996

Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Ltd. ("MECO"), and Hawaii Electric Light Company, Inc. ("HELCO"), respectfully submit the following testimony regarding an employer's right to inquire or use conviction information for employment purposes. HECO, MECO and HELCO are responsible for generating, transmitting, distributing and providing reliable electric power to Oahu, Maui, Molokai, Lanai and the Big Island, respectively. HECO has over 1500 employees, MECO has over 300 employees and HELCO has over 350 employees. Our companies operate in similar manners and our jobs are similar, with HECO having the greatest number and variety of job positions.

Many of the jobs at our companies involve dangerous work, access to or handling of confidential information or client records, and more importantly, regular access to the homes and property of all of our customers. In addition, in order for us to provide reliable and effective service, it is essential that our companies develop and maintain a safe and harmonious workplace based upon mutual trust, respect and teamwork.

There is a distinct and bona fide difference between this class of individuals (criminal records) and the other classes protected under equal employment opportunity laws. By and large, equal opportunity is based upon the premise that an individual's job performance or abilities should not be judged solely or primarily upon an individual's race, national origin, color, religion, gender, age or disability. The underlying rationale is clear -- an individual does not have control over his or her age, gender, or race, and should not be penalized for this. This rationale does not apply in the case of a convicted individual. Indeed, society has determined that the convicted individual has, beyond a reasonable doubt, intentionally engaged in criminal activity. More importantly, courts and juries have since penalized employers who hire individuals with criminal records, place them in a position of trust amongst employees, customers and the public, and then commit an act of harm thereafter related to the past crime.

Our companies and employees have earned positions of trust in the community, particularly since so many of our employees must interact with the public and our customers on a daily basis, year-round, both day and night. During storms, bad weather, or natural disasters, our crews are out repairing lines and equipment 24 hours a day, if needed. Collectively, hundreds of our employees have regular contact with or access to customers and the public. Hundreds of our employees, statewide, visit your homes and property on a regular basis. Hundreds of our employees are entrusted with vehicles, heavy equipment, tools and materials which, if used improperly, may pose a risk of harm to the public, our customers or to fellow employees. Internally, many of our employees must work together in confined areas, under high stress or work round the clock in emergency situations. In order to deliver reliable service, our employees rely upon and trust one another to get the job done. In addition, all of our employees are currently covered under a crime or fidelity bond which typically requires that employees with criminal records be insured under specially obtained federal bonds. In order to acquire and maintain proper insurance coverage for such employees, the employer must know of the employee's criminal history.

The only reason why we are able to entrust our employees with such duties and responsibilities is because we impose high standards in selecting our employees. Our employees are our key to maintaining the public's trust. We cannot maintain this public trust unless we maintain our right to make informed decisions about applicants and employees and are able to maintain the standards of hiring that presently exist.

We recognize and respect the importance of the laws prohibiting discrimination with respect to arrest and court records, and recognize that a convicted individual has paid his/her debt to society and should not be further penalized.

We also repeat and emphasize that employers have been held accountable for negligent hiring or retention of employees based upon past criminal activity. Numerous courts and juries have punished employers who failed to inquire or have hired individuals who committed crimes that were substantially related to the position filled.

It would be grossly unfair to employers and would expose employees, customers and the public to an unreasonable risk of harm if employers could not make a reasonable inquiry about crimes committed by an applicant related to the job sought. Caselaw clearly establishes that employers owe a duty of care to its employees, its customers and the public in hiring employees. If an employer cannot fulfill its duties, it will be unfairly exposed to claims, lawsuits or damages stemming from negligent hiring or retention claims, nor any assurance to employees, customers or the public that their health, safety and well being is a priority.

We propose that, at the very least, the Commission recognize and appropriately balance the interests of the protected individual against the overwhelming interests of employers, employees and the public. In doing so, HECO, MECO and HELCO requests that the Commission's proposed policies and regulations address and provide for the following bona fide concerns of our companies:

1. Violent Crimes. Criminal history of violent crimes exposes the work place, all employees and the public to a risk of harm. We believe that all employers have the right and need to know whether an applicant has been convicted of a violent crime, including but not limited to murder, homicide, assault (with or without a deadly weapon), rape or sexual assault. Employers then bear the burden of justifying employment decisions made as a result of such disclosure or knowledge. Our employees are entitled to a safe workplace free from violence. We also owe a duty of care to our customers and the public which clearly outweighs any duty owed to a potential individual or applicant.
2. Substantially Related Crimes. Employers have the right and need to know if an applicant has been convicted of a crime substantially related to the position in question. Employers could identify in advance, the types of crimes related to each particular position, to which an applicant can be asked to reply.

Attached for your information is a sample listing of the types of positions at our companies which merit an inquiry into past criminal history. The list is not exhaustive. Many of the positions at HELCO and MECO, exist in greater numbers at HECO.

3. Repeat Offenders. Employers also have the right and need to know if an applicant is a repeat offender. Unless employers are protected from claims of negligent hiring/retention, hiring a repeat offender is an open invitation to plaintiffs' attorneys to collect punitive damages for intentional or reckless disregard.

We ask that the Commission exercise its authority with discretion and take into consideration the health, safety and welfare of the community and public as a whole in promulgating its regulations. Failure to do so places an unfair and unreasonable burden upon employers and will expose our employees, customers and the public to unjustified risk and potential harm.

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

ACCOUNTING/FINANCE RELATED POSITIONS

The Departments listed below are responsible, in different aspects, for maintaining respective financial information and records for the Company. In light of the nature of the transactions, the extensive resources entrusted to these positions, and records that each department is responsible for, it is critical to have employees who demonstrate, meet and maintain the highest moral and ethical standards

HRS 708-830, Theft and Related Offenses
HRS 708-840, Robbery
HRS 708-850, Forgery and Related Offenses
HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime
HRS 708-8100, Credit Card Offenses
HRS 708-810, Burglary/Other Offenses of Intrusion
HRS 708-760, Extortion
HRS, Chapter 712, Public Health and Morals

Financial Services
Securities Specialist
Clerk Stenographer
Treasury Specialist
Insurance Coordinator
Financial Analyst
Capital Budgets Sys. Analyst
Claims Representative
Claims Adjuster
Scheduler Technician
Capital Budgets Info. Analyst
Insurance Administrator
Claims Administrator
Senior Treasury Specialist
Securities Administrator
Senior Financial Analyst
Treasury Administrator
Financial Services Consultant
Director, Risk Management
Assistant Treasurer & Manager

Financial VP & Controllers Office
Executive Secretary
Financial Vice President & Treasurer

HECO/HELCOM/MECO Positions

Job Responsibilities

Substantially Related Crimes

ACCOUNTING/FINANCE RELATED POSITIONS

(cont.)

General Accounting		
Accounting Clerk	<p>The Departments listed below are responsible, in different aspects, for maintaining respective financial information and records for the Company. In light of the nature of the transactions, the extensive resources entrusted to these positions, and records that each department is responsible for, it is critical to have employees who demonstrate, meet and maintain the highest moral and ethical standards</p>	HRS 708-830, Theft and Related Offenses
Job Records Clerk		HRS 708-840, Robbery
Invoice Processing Clerk		HRS 708-850, Forgery and Related Offenses
Accounts Receivable Clerk		HRS 708-870, Business and Commercial Frauds
Deduction & Allowance Clerk		HRS 708-890, Computer Crime
Stenographer Clerk		HRS 708-8100, Credit Card Offenses
Accounts Payable & Disbursement Clerk		HRS 708-810, Burglary/Other Offenses of Intrusion
Plant Accounting Clerk		HRS 708-760, Extortion
Associate Plant Accountant		HRS, Chapter 712, Public Health and Morals
Labor Hour Clerk		
Staff Accounting Analyst		
Corporate Accountant		
Executive Secretary		
Job Accounting Clerk		
Accounting & Statistical Aide		
Tax Accountant		
Job Accountant		
Disbursement Accountant		
Depreciation Accountant		
Payroll Accountant		
Director, Corporate Accounting		
Director, Cost Accounting		
Director, Taxes & Depreciation		
Controller		

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

ACCOUNTING/FINANCE RELATED POSITIONS

(cont.)

Management Accounting

Clerk Typist

Accounting Systems Analyst

Management Accounting Analyst

Management Accounting Tech. Coordinator

Director, Management Accounting

Internal Audit

Auditor

Director, Internal Audit

Customer Service Department

Customer Billing Representatives

Secretary

Commercial Credit Analyst

Operations Analyst

Purchasing & Materials Management

Purchasing Clerk

Stock Control Clerk

Warehouse Attendant Driver

Senior Warehouse Attendant

Material Coordinator

Buyer

Materials System Administrator

Receiving Coordinator

The Departments listed below are responsible, in different aspects, for maintaining respective financial information and records for the Company. In light of the nature of the transactions, the extensive resources entrusted to these positions, and records that each department is responsible for, it is critical to have employees who demonstrate, meet and maintain the highest moral and ethical standards

HRS 708-830, Theft and Related Offenses
HRS 708-840, Robbery
HRS 708-850, Forgery and Related Offenses
HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime
HRS 708-8100, Credit Card Offenses
HRS 708-810, Burglary/Other Offenses of Intrusion
HRS 708-760, Extortion
HRS, Chapter 712, Public Health and Morals

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

COMPUTER AND INFORMATION SYSTEMS

POSITIONS (cont.)

Information Services (cont.)

Data Administrator

Group Supv. Development

Work Management System Administrator

Info. Svcs. Consultant

Prin. Info Svcs. Infrastr & P.

Prin. Corp. Telecom & Doc. Mgm

Director, Systems & Svc. Dev.

Prin. Info. Svcs. Consultant

Director, Computer & Office Services

Manager, Information Services

The Information Services Department develops, maintains and services all internal hardware, software and information systems for the companies. The department employees handle all aspects of company information and have potential access to all business records within the company, related to internal or external customers.

HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime

POSITIONS HANDLING CASH TRANSACTIONS

Customer Service

Account Services Clerking

Cashier

Payment Processing Clerk

Customer Account Services Clerk

Lead Payment Processing and Suppt Ct

Supervisor, Payment Processing & Supp.

Director, Customer Account Service

Credit Manager

Secretary

These positions require daily handling of cash and reporting of related transactions. Related records, invoices and files are a requisite part of the job. In addition, frequent contact with the public and customers is required.

HRS 708-830, Theft and Related Offenses
HRS 708-840, Robbery
HRS 708-850, Forgery and Related Offenses
HRS 708-870, Business and Commercial Frauds
HRS 708-890, Computer Crime
HRS 708-8100, Credit Card Offenses
HRS 708-810, Burglary/Other Offenses of Intrusion
HRS 708-760, Extortion

HECO/HEL/COM/ECO Positions

Job Responsibilities

Substantially Related Crimes

COMPUTER AND INFORMATION SYSTEMS

POSITIONS

Information Services
Project Aide
Night Mail Driver
Mail Clerk
Clerk Typist
Printer
Microfilm Equipment Operator
Computer Oper. Librarian
Tape Librarian
Publishing Svc. Coordinator
Materials & Stationary Aide
Senior Word Processing Operator
Secretary
Records Management Coordinator
Desktop Coordinator
Data Controller
Production Controller
Senior Press Operator
Senior Compt. Systems Operator
Supervisor, Mailing & Stationery
Developer/Alyst
Network Specialist
Desktop Specialist
Desktop Analyst
Systems Analyst, Dev. Supp
Systems Analyst
Network Analyst
Database Administrator
Data Security Administrator
Supervisor, Computer Oper. & Prod.
Supervisor, Publishing & Rec. Svc.
Technical Analyst

The Information Services Department develops, maintains and services all internal hardware, software and information systems for the companies. The department employees handle all aspects of company information and have potential access to all business records within the company, related to internal or external customers. HRS 708-870, Business and Commercial Frauds HRS 708-890, Computer Crime

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS REQUIRED TO ENTER CUSTOMER OR PUBLIC PROPERTY/ HAVE ACCESS TO THE PUBLIC REGULARLY

Customer Service
Meter Reading Clerk
Field Service Clerk
Meter Reader
Customer Field Representative
Senior Customer Field Investigator
Supervisor, Meter Reading

Customer Installations
Planner Aid
Joint Pole Aide
Project Clerk
Senior Mapper
Jr. Customer Planner
Customer Planner
Chief Mapper
Design Planner
Design Draft Technician
Customer Oper. Coordinator
Engineer II
Designer III
Supervisor, Customer Engineering
Lead Engineer
Lead Engineer, Design
Director, Customer Planning

The Customer Service Department, the Customer Installations, System Operations, Transmission and Distributions Energy Services, Facilities and Project Management, all require or include regular or continual access to customer or public property, on a 24-hour basis, if necessary. Our personnel handles all aspects of insuring delivery of service to our customers. We meet with customers and go to their homes. Our crews install, maintain or repair our overhead and underground lines, equipment and property, and frequently enter customer property at night to respond to emergencies. Our Customer Service Department handles sensitive customer information regarding billings and financial information. Our Energy Services Division services large commercial clients and developers and is often at customer sites. Our Customer Installations division handles all levels of residential, commercial and industrial clients, with frequent client contact and visits to customer property.

HRS §707-700 Criminal Homicide
HRS §707-710 Criminal Assaults
HRS §707-720, Kidnapping/Criminal Coercion
HRS §707-730, Sexual Offenses
HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-820, Criminal Damage to Property
HRS §708-830, Theft and Related Offenses
HRS §708-840, Robbery
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 711, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

Indeed, the companies' franchise and tariffs require that customers allow us or others provide us with access to lines or equipment located on customer property. Given our right to enter customer property and homes, we are responsible for insuring that only the most trustworthy individuals will fill these types of positions. Anything less may jeopardize the safety or welfare of our customers or the public.

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS REQUIRED TO ENTER

CUSTOMER OR PUBLIC PROPERTY/ HAVE

ACCESS TO THE PUBLIC REGULARLY (cont.)

Energy Services

Education & Consumer Affairs
Education & Consumer Services Coordinator
Market Service Representative
Education & Consumer Affairs Administrator
Director, Marketing Services
Director, Research & Evaluation
Director, Education & Consumer Affairs
Director, Technical Services
Director, Demand Side Management
Manager, Energy Services

Engineering

Land Surveyor
Senior Land Surveyor
Project Manager
Lead Engineer
Principal Engineer
Manager, Engineering

Facilities & Project Management

Inspector
Senior Inspector
Lead Senior Inspector
Working Foreman
Project Manager
Facilities Project Manager
Land Agent
Foreman
Contract Administrator

(Cont. from previous page)

Operation and use of company vehicles, trucks, light or heavy equipment also makes traffic violations critical areas of inquiry for employment. Substance abuse jeopardizes the welfare of employees and the public and we strive to insure that our employees work under the safest conditions possible and do not pose any risk of harm to the public.

HRS §707-700 Criminal Homicide
HRS §707-710 Criminal Assaults
HRS §707-720, Kidnapping/Criminal Coercion
HRS §707-730, Sexual Offenses
HRS §707-760, Extortion
HRS §708-810, Burglary/Other Offenses of Intrusion
HRS §708-820, Criminal Damage to Property
HRS §708-830, Theft and Related Offenses
HRS §708-840, Robbery
HRS §708-850, Forgery and Related Offenses
HRS §708-870, Business and Commercial Frauds
HRS §708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 711, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.
HRS Chapter 291, Traffic Violations/DUI

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

POSITIONS REQUIRED TO ENTER

CUSTOMER OR PUBLIC PROPERTY/ HAVE

ACCESS TO THE PUBLIC REGULARLY (cont.)

Facilities & Project Management (cont.)

(See job responsibilities discussed on Pages 6 and 7.)

T&D Construction Manager

Supervisor Construction & Inspection

Lead Contract Administrator

Lead Project Manager

Lead T&D Construction Manager

Director, Facilities Planning

Director, Land & Rights of Way

Director, Contracting & Construction Management

Manager, Facilities & Project Management

Transmission & Distribution

Apprentice Lineman

Equipment Operator

Truck Driver

Right-of-Way Forester

Lineman 1st Year

Live Line Truck Operator

T&D: Line Inspector

Crew Dispatcher Thft

Lineman Thft

Lineman (LLM)

Senior Cable Splicer

Aerial Lineman

Distrib. Line Inspector

Lead Cable Splicer

Working Foreman

Working Foreman (LLM)

Work Coordinator

Foreman

HRS §707-700 Criminal Homicide

HRS §707-710 Criminal Assaults

HRS §707-720, Kidnapping/Criminal Coercion

HRS §707-730, Sexual Offenses

HRS §707-760, Extortion

HRS §708-810, Burglary/Other Offenses of Intrusion

HRS §708-820, Criminal Damage to Property

HRS §708-830, Theft and Related Offenses

HRS §708-840, Robbery

HRS §708-850, Forgery and Related Offenses

HRS §708-870, Business and Commercial Frauds

HRS §708-8100, Credit Card Offenses

HRS Chapter 712, Public Health and Morals

HRS Chapter 711, Offenses Against Public Order

HRS Chapter 710, Offenses Against Public Admin.

HRS Chapter 291, Traffic Violations/DUI

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

**POSITIONS REQUIRED TO ENTER
CUSTOMER OR PUBLIC PROPERTY/ HAVE
ACCESS TO THE PUBLIC REGULARLY (cont.)**

(See job responsibilities discussed on Pages 6 and 7.)

System Operations Mapper	HRS §707-700 Criminal Homicide
Senior Mapper	HRS §707-710 Criminal Assaults
Meter Clerk	HRS §707-720, Kidnapping/Criminal Coercion
Apprentice Substation Electrician	HRS §707-730, Sexual Offenses
Apprentice Meter Electrician	HRS §707-760, Extortion
Senior Mapper	HRS §708-810, Burglary/Other Offenses of Intrusion
Apprentice Troublemaker	HRS §708-820, Criminal Damage to Property
Chief Mapper	HRS §708-830, Theft and Related Offenses
Substation Electrician 1st Year	HRS §708-840, Robbery
Meter Electrician	HRS §708-850, Forgery and Related Offenses
Meter Engineer	HRS §708-870, Business and Commercial Frauds
Electrician (I&C) Thft	HRS §708-8100, Credit Card Offenses
Electrician (Relay) Thft	HRS Chapter 712, Public Health and Morals
Senior Electrician (Relay)	HRS Chapter 711, Offenses Against Public Order
Senior Electrician (I&C)	HRS Chapter 710, Offenses Against Public Admin.
Senior Electrician	HRS Chapter 291, Traffic Violations/DUI
Trouble Dispatcher	
Primary Troublemaker Thft	
Senior Primary Troublemaker	
Substation Technician	
Substation Planner Scheduler	
Load Dispatcher	
Working Foreman	
Field Investigation Coordinator	

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

ADMINISTRATIVE SUPPORT POSITIONS

Legal

General Counsel, VP

Legal Secretary

Legal Assistant

Associate General Counsel

Manager, Legal

Human Resources

Fire Inspector & Repr

Safety Aide

Senior Fire Equipment Ins. & Repair

OCC Health & Safety Specialist

Public Safety Specialist

Corporate Health Administrator

Lead OCC Health & Safety Sp.

Director, Safety

Industrial Relations

Personnel Assistant

Wage Admin. & Workers' Compensation

Labor Relations Administrator

Director, Workers Compensation & Pers.

Director, Labor Relations & Wage Ad.

Our administrative support departments service both internal customers (all employees) well as external customers (applicants, the public, etc.). Functions of these department include our legal department, human resources, industrial relations, corporate communications, safety, workers' compensations and other internal resources. All of these departments are responsible for or privy to confidential records or information related to our employees or our customers.

HRS \$707-760, Extortion
HRS \$708-810, Burglary/Other Offenses of Intrusion
HRS \$708-830, Theft and Related Offenses
HRS \$708-850, Forgery and Related Offenses
HRS \$708-870, Business and Commercial Frauds
HRS \$708-8100, Credit Card Offenses
HRS Chapter 712, Public Health and Morals
HRS Chapter 711, Offenses Against Public Order
HRS Chapter 710, Offenses Against Public Admin.

HECO/HELCO/MECO Positions

Job Responsibilities

Substantially Related Crimes

ADMINISTRATIVE SUPPORT POSITIONS

(cont.)

Transportation & Facilities Maintenance

- Custodian II
- Tire Repairer
- Mechanic Helper
- Custodian
- Groundskeeper
- Security Officer
- Atmrv Pool Attendant
- Custd-Groundskeeper
- Utility Bldg Custd
- Supervisor, Buildings/Grounds

Our administrative support departments service both internal customers (all employees) well as external customers (applicants, the public, etc.). Functions of these department include our legal department, human resources, industrial relations, corporate communications, safety, workers' compensations and other internal resources. All of these departments are responsible for or privy to confidential records or information related to our employees or our customers.

- HRS §707-760, Extortion
- HRS §708-810, Burglary/Other Offenses of Intrusion
- HRS §708-830, Theft and Related Offenses
- HRS §708-850, Forgery and Related Offenses
- HRS §708-870, Business and Commercial Frauds
- HRS §708-8100, Credit Card Offenses
- HRS Chapter 712, Public Health and Morals
- HRS Chapter 711, Offenses Against Public Order
- HRS Chapter 710, Offenses Against Public Admin.

Corporate Communications

- Education & Consumer Affairs
- Education & Consumer Services Coordinator
- Market Service Representative
- Education & Consumer Affairs Administrator

*Beyond the call*Charles W. Kerle
Director-Human Resources Services

*96 JAN 16 P12:21

January 12, 1996

CIVIL RIGHTS COMMISSION
HONOLULU, HI**Ms. Linda C. Tseu, Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813**

Dear Ms. Tseu:

RE: Rules on Arrest and Court Record Discrimination

GTE Hawaiian Tel offers the following comments in response to your memo dated November 29, 1995, soliciting input into the proposed rules on arrest and court record.

GTE Hawaiian Tel is committed to the policy of providing Equal Employment Opportunity (EEO) in all of its operations and in all areas of employment practices. This policy covers all employees and applicants for employment and ensures there shall be no discrimination against the individuals on the basis of their race, ancestral origin, color, religion, sex, national origin, age, marital status, arrest and court record, sexual orientation or disability.

The company does not condone discrimination on the basis of arrest and court records. However, it does believe that as permitted by HRS 378-3, any rules promulgated by the Commission should recognize the right of an employer to inquiry into and utilize information based on court records where it might relate to the job. Companies may be found liable (e.g. on the basis of negligent hiring) for failure to act on information (which it knew or "should have known") to protect others from its employee's unfitness. Employers should have the ability to protect itself as well as third parties where a conviction, for example would relate to the employment involved. (For example, recent convictions for violent crimes for a prospective security guard position.)

GTE Hawaiian Tel's business operations include positions where our employees interface with customers and have access into their homes and businesses. As such, GTE Hawaiian Tel, as well as other employers, need to have the ability to do appropriate pre-employment screening and be able to take appropriate job related action where warranted.

Thank you for this opportunity to provide our comments. We look forward to reviewing the proposed rules to be developed by the Commission.

Sincerely,



Beyond the call

Charles W. Kerie
Director-Human Resources Services

January 12, 1996

Ms. Linda C. Tseu, Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

Dear Ms. Tseu:

RE: Rules on Arrest and Court Record Discrimination

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Thank you for this opportunity to provide our comments. We look forward to reviewing the proposed rules to be developed by the Commission.

Sincerely,



0723-20/4880

GTE Hawaiian Tel

P.O. Box 2200
Honolulu, Hawaii 96841

** HONOLULU P&D CTR, HI ** 01 1296 100 **

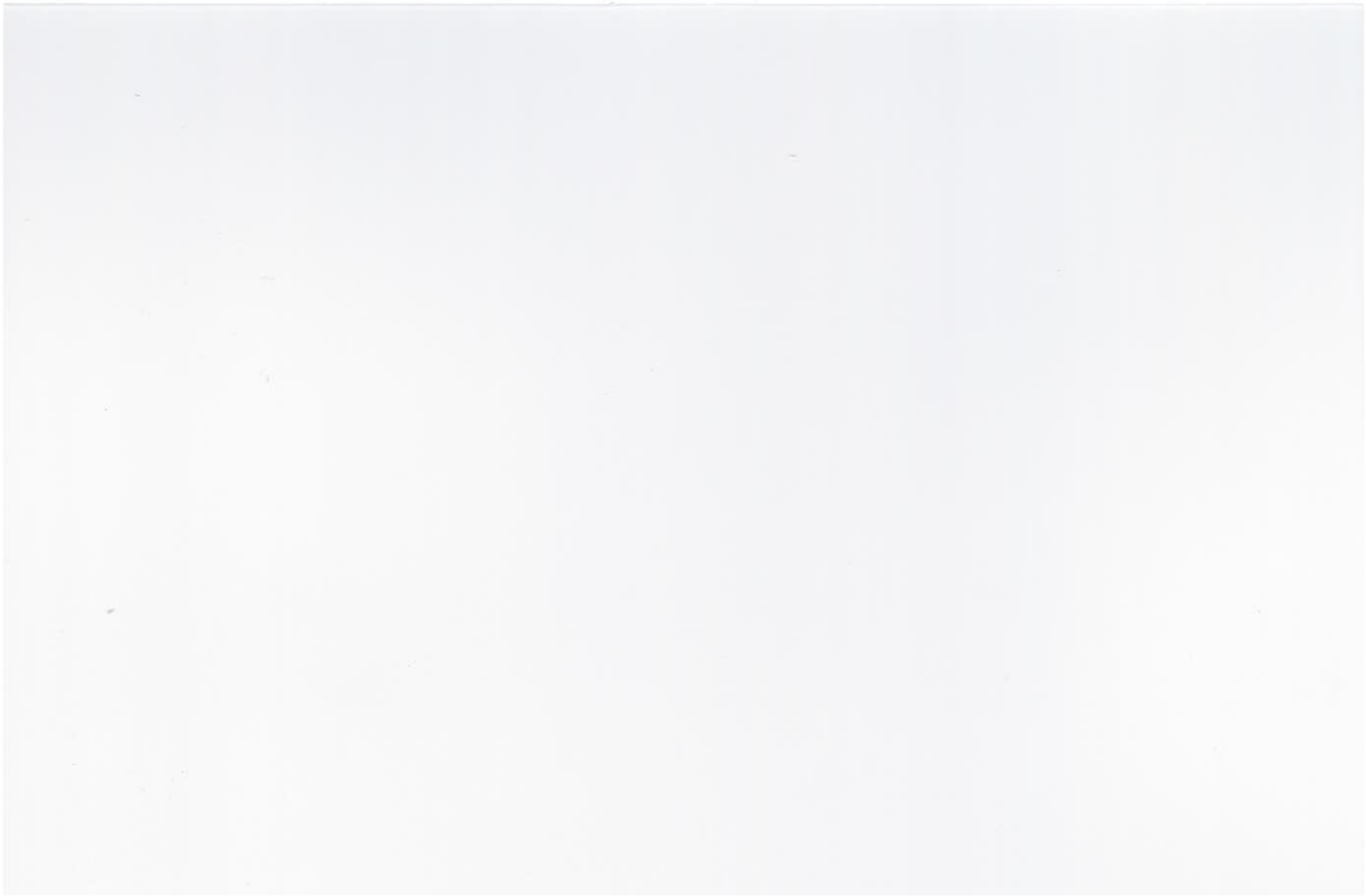


'96 JAN 16 11:11

COMMUNICATIONS
DIVISION
HONOLULU, HI

Ms. Linda Tseu, Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, HI 96813

96813-2918 29



**STATE DEPARTMENT OF HEALTH
KAUAI DISTRICT HEALTH OFFICE
3040 UMI STREET
LIHUE, KAUAI, HAWAII 96766**

PHONE: (808) 241-3495

FAX: (808) 241-3480

DATE: 011296 **# OF PAGES (INCLUDING COVER):** 4

TO: Linda Tsen, HI CRC

FROM: Stan Yates

NOTES:

faxing 3 copies of
1 page.



12 January 1996

To: Hawaii Civil Rights Commission
Re: What Should Be Contained in Rules on Arrest and Court Record
Discrimination

I respectfully offer the following testimony as a private citizen. My thoughts reflect experience in my job with State government advocating for persons who have a disability, and also my own life-long experience as a person with a mobility impairment.

To me the basic issue is one of balancing the rights on both sides. On one side, the person who theoretically paid his/her debt to society should not have to continue paying for their crime the rest of their life. On the other side, the public should be protected from persons who are likely to commit their crime again.

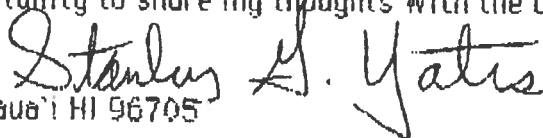
In most cases, it would be difficult to argue convincingly that a criminal (for example, a burglar who may have stolen to feed his/her family) would likely commit that crime again. However, three significant exceptions come to mind. (1) sexual offenders, particularly child molesters; (2) persons who have a record of committing violent crimes against persons with certain disabilities, who are less able to protect themselves against attack, or who cannot comprehend dangerous situations and do not know how to protect themselves; (3) police with a history of brutality, racism and/or bigotry.

I urge the Commission not to lump all crimes together in their discussions. Rather, I feel that it would be useful to consider the above three types of situations/offenders separately.

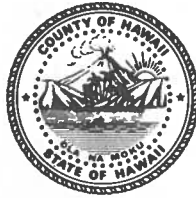
- (1) Child molesters need to be kept away from children, and children and their parents should have access to the criminal history of such offenders.
- (2) Persons who victimize persons with disabilities should not have the opportunity to repeat those offenses.
- (3) Police, given their position of public trust, and the multiple weapons at their disposal, should be carefully screened and monitored in their work, and should not be permitted access to the public if they demonstrate tendencies toward anti-social behaviors.

Thank you for the opportunity to share my thoughts with the Commission.

Stanley G. Yates
P.O. Box 417, Ele'ele, Kaua'i HI 96705



Stephen K. Yamashiro
Mayor



County of Hawaii
OFFICE OF HOUSING AND
COMMUNITY DEVELOPMENT
50 Wailuku Drive • Hilo, Hawaii 96720-2484
V/TT (808) 935-8581 • Fax (808) 935-4725

'95 DEC 19 10:53

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

December 18, 1995

Hawai'i Civil Rights Commission
888 Mililani Street 2nd Floor
Honolulu, Hawaii 96813

Subject: Input for Rules on Arrest and Court Record
Discrimination Meeting on Monday, January 8, 1996

I will be unable to attend the referenced meeting but would like our input to be considered in your rule making deliberations.

The Office of Housing and Community Development (OHCD) of Hawaii County needs access to arrest and conviction records of participants on the Section 8 Rental Assistance Program. The information is used to determine initial and continuing eligibility of potential and active participants. Neither the arrest and conviction records nor any other privileged participant information is divulged except on a "need-to-know" basis to qualified parties because Section 8 participants are covered by the Privacy Act.

We have recently used the information received from the AG's office to show that a tenant was arrested for the same kind of drug charge twice instead of the once which he contended. We sometimes use the reports to confirm information received in phone calls to the office. At other times, we check on convictions reported by the families to assure that enough time has passed since the conviction to allow continued assistance.

We would oppose any rules that would restrict the access we presently have through the Attorney General's office.

Please call me at 935-8581 if you have any questions.



Edwin S. Taira
Assistant Housing Administrator

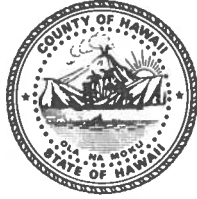
EST:pge



EQUAL HOUSING OPPORTUNITY
"AN EQUAL OPPORTUNITY EMPLOYER"

JAY T. KIMURA
PROSECUTING ATTORNEY

CHARLENE Y. IBOSHI
FIRST DEPUTY
PROSECUTING ATTORNEY



34 RAINBOW DRIVE
HILO, HAWAII 96720

PH: 961-0466
FAX: 961-2703
969-1159
961-2580

WEST HAWAII UNIT
P.O. BOX 748
KEALAKEKUA, HAWAII 96750

PH: 322-2552
FAX: 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

'96 JAN 17 A11:38

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

January 15, 1996

Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

RE: Arrest and Court Record

Dear Sirs:

Information received from the commission states that a county agency may ask "Have you ever been arrested or convicted?" or ask to check into a person's arrest or conviction record. My question is what can we do with this information?

Can our office deny employment to an individual who has been convicted of a crime and/or has a long criminal arrest record?

Please do not hesitate to contact us if you are not able to respond to this inquiry.

Sincerely yours,

Dwayne T. Mukai, Business Manager

COUNTY OF HAWAII
OFFICE OF THE PROSECUTING ATTORNEY
34 Rainbow Drive
Hilo, Hawaii 96720

** HONOLULU P&D CTR. HI * 011796 PM **



*96 JUN 17 AM 1:38

HAWAII CIVIL RIGHTS
HONOLULU

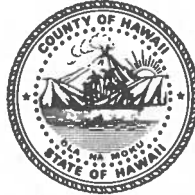
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

96813-2912 29



JAY T. KIMURA
PROSECUTING ATTORNEY

CHARLENE Y. IBOSHI
FIRST DEPUTY
PROSECUTING ATTORNEY



34 RAINBOW DRIVE
HILO, HAWAII 96720

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WEST HAWAII UNIT
P.O. BOX 748
KEALAKEKUA, HAWAII 96750

PH. 322-2552
FAX: 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

February 5, 1996

'96 FEB -7 P12 :04

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, HI 96813

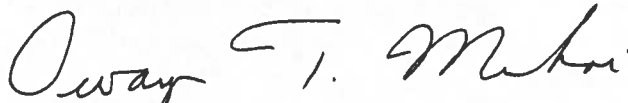
RE: Arrest and Court Record

Dear Sirs:

Enclosed is a copy a letter sent to your office on January 15, 1996. We would appreciate your opinion concerning our earlier correspondence.

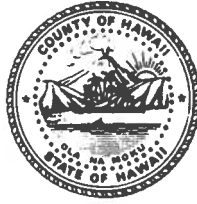
Please do not hesitate to contact us if you should have any questions.

Sincerely,


Dwayne T. Mukai

JAY T. KIMURA
PROSECUTING ATTORNEY

CHARLENE Y. IBOSHI
FIRST DEPUTY
PROSECUTING ATTORNEY



34 RAINBOW DRIVE
HILO, HAWAII 96720

PH. 961-0466
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WEST HAWAII UNIT
P. O. BOX 748
KEALAKEKUA, HAWAII 96750

PH. 322-2552
FAX: 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

January 15, 1996

Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

RE: Arrest and Court Record

Dear Sirs:

Information received from the commission states that a county agency may ask "Have you ever been arrested or convicted?" or ask to check into a person's arrest or conviction record. My question is what can we do with this information?

Can our office deny employment to an individual who has been convicted of a crime and/or has a long criminal arrest record?

Please do not hesitate to contact us if you are not able to respond to this inquiry.

Sincerely yours,

Dwayne T. Mukai, Business Manager

COUNTY OF HAWAII
OFFICE OF THE PROSECUTING ATTORNEY
34 Rainbow Drive
Hilo, Hawaii 96720



'96 FEB -7 P12:04

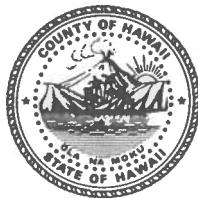
CIVIL RIGHTS COM.
HONOLULU, HAWAII

Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, HI 96813

96813-2412 24



Stephen K. Yamashiro
Mayor



Wayne G. Carvalho
Police Chief

James S. Correa
Deputy Police Chief

96 JAN -5 P1:14

County of Hawaii
POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawaii 96720-3998
(808) 935-3311 • Fax (808) 961-2702

January 2, 1996

Linda C. Tseu
Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

Dear Ms. Tseu:

We have received a copy of your memorandum 95-73 requesting input on proposed administrative rules governing arrest and court record discrimination.

Although HRS Section 92F-11 gives an agency authority to establish rules to protect its records, Section 92F-26 restricts rulemaking to the State Office of Information Practices (OIP). As provided by the statutes, our Department defers to the opinions of the OIP regarding disclosure of any police record.

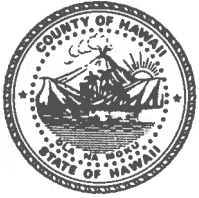
Should you have any questions, please call Lieutenant James Day of our Records Section at 961-2232.

Sincerely,

Wayne G. Carvalho
WAYNE G. CARVALHO
POLICE CHIEF

smt

cc: Michael R. Ben, Director of Personnel
Department of Civil Service



County of Hawaii

**POLICE
DEPARTMENT**
349 Kapiolani Street
Hilo, Hawaii 96720-3998



'96 JAN -5 1 14

HAWAII CIVIL RIGHTS COMMISSION
HONOLULU

Ms. Linda C. Tseu
Executive Director
Hawaii Civil Rights Commission
888 Mililani St., 2nd Floor
Honolulu HI 96813

96813-2912 29





Hawaii Island Chamber of Commerce

Established in 1897 • 202 Kamehameha Ave. • Hilo, Hawaii 96720 • Phone (808) 935-7178

95 FEB 28 AM 10:08
CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

December 26, 1995

Linda C. Tseu
Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

RE: Arrest and Court Record

Dear Linda,

As the Chairman of the Retail Committee we are against any softening of the rule that currently allows employers to make a decision about employability based upon a crime having a substantial relationship to the essential functions and responsibilities of the job.

Hiring or employing people who have committed crime expose businesses to internal theft, liability and loss in sales (due to lowering of public image). Businesses cannot afford to constantly watch over their employees, not mentioning that this "Police State", would create a morale problem. Trust is a required attribute in their performance.

We firmly believe that prevention of crime must start with strong consequences, of which the persons employability should be one.

Page 2
Arrest and Court Record
December 26, 1995

Sincerely,

A handwritten signature in cursive script, appearing to read "Stafford Oyama". The signature is written in dark ink and is positioned above the typed name.

Stafford Oyama
Chairman--Retail Committee



LEGISLATIVE INFORMATION SERVICES OF HAWAII, INC.

677 Ala Moana Blvd. Ste. 815
Honolulu, Hawaii 96813-5416

Phone (808)533-6750
Fax (808)599-2608

A Multi-Organization Management Firm representing over two-thousand five hundred businesses establishments directly or through business and trade organizations in Hawaii.

Professional Registered Lobbyists at the State of Hawaii and Honolulu levels of government.

Publisher of "The LISH Report"
Publisher of "Defensive Management"

Plan Administrator for Medical Trusts as a Multi-Employer Alliance

National Safety Council Private Training Agency for PTD (Professional Truck Driver) Driver Improvement Classes

Professional Meeting & Convention Planners

Administrators of
ABPA

Automotive Body & Painting Assoc. of HI.
HARGD

HI. Automotive & Retail Gasoline Dirs. Assn.
HBL

Hawaii Business League
HICA

Hawaii Independent Contractors Alliance
HFIA

Hawaii Fashion Industry Association
HFBA

Hawaii Food & Beverage Association
HFIA

Hawaii Food Industry Association
HPA

Hawaii Publishers Association
LDH

Liquor Dispensers of Hawaii
RLD

Retail Liquor Dealers Association

January 2, 1996

Linda C. Tseu, Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

'96 JAN -3 P12:05

Re: Proposed Rules on Arrest and Court Record Discrimination

It is the view of LISH and organizations represented by LISH, that the employer has both the moral and legal responsibility to provide a safe working environment for both employees and customers. Management of a firm has a moral and contractual responsibility to protect the financial integrity of the establishment for the well being of both the employer and employee's financial security.

To pass laws making certain actions against others a crime, then prohibiting private employers from proper screening based on discriminatory actions against any individual because of past convictions is simply providing the opportunity for more crime.

There are three psychological elements that encourage theft. They are opportunity, need, and justification. The employer realistically can only control the opportunity. The employer can somewhat control the justification, if the individual is an employee that fits in the 80% bracket of what we consider the basically honest person. To prohibit an employer from checking criminal history is prohibiting an employer from removing the opportunity. This is unacceptable for government, and must also be unacceptable for the private sector.

We do not support discrimination, and do encourage employers to employ persons with a record of conviction, where and when appropriate. We do not feel it appropriate to place an employer in a situation where he/she may unknowingly hire a convicted theft to control the cash register, loading dock, or the company books. We do not feel it appropriate to hire a person convicted of violence to work in an office of female employees with no security personnel present, or to handle a sales route where the individual deals with customers one-on-one. For these reasons, we oppose any proposal that would prohibit an employee from refusing to hire any person with a criminal history for any position deemed non-appropriate by the employer.

Respectfully submitted,
Richard Botti
Richard C. Botti, CAE

LISH

LEGISLATIVE INFORMATION SERVICES OF HAWAII

677 Ala Moana Blvd. Suite 815
Honolulu, Hawaii 96813-5416

** SEASON'S GREETINGS * HONOLULU P&D CTR HI * 010296 PM **



Hawaii Civil Rights Commission
Linda C. Tseu, Executive Director
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813

'96 JAN -3 P12:05

CIVIL RIGHTS COMMISSION
HONOLULU, HI

96813-2918 29



ITT SHERATON HOTELS IN WAIKIKI
Testimony in Opposition to
Proposed Hawaii Civil Rights Commission Regulations on Arrest and Court Record
January 8, 1996

My name is Wayne Ogino. I am employed by the Sheraton Waikiki Hotel as Director of Human Resources. I am testifying on behalf of the Sheraton Hotels in Waikiki which include the Sheraton Waikiki, Princess Kaiulani, Moana Surfrider and the Royal Hawaiian Hotels, to express our business need to use conviction information for employment purposes. We employ approximately 4,000 employees.

The hotel industry is unique in that our employees deal with the public 75 - 100% of their shifts. They have access to guest rooms, to the safety deposit boxes in which the guests are encouraged to put their expensive jewelry and cash, and in many instances, deal with them on a one-on-one basis, just to name a few examples. In the case of our Security Officers, they are responsible for the safety and well being of the guests as well as the employees.

The State of Hawaii is spending "millions of dollars" for a "State of the Art" Convention Center. However, if we cannot assure the tourists that they will be safe in our hotel environment, they will not come to Hawaii and will spend their dollars elsewhere.

There are many types of convictions that should rule out applicants for certain positions. For example, convictions for violent crimes or property crimes should rule out positions that involve unsupervised public contact (such as a housekeeper, bellhelp, security officer, just to name a few). Convictions for crimes involving dishonesty or a breach of trust should eliminate those applicants from cashier or other cash handling positions.

Sheraton Hotels is also concerned that we may be liable for increased claims of negligent hiring and retention. This requires a thorough review of a person's criminal record for those offenses that are job related. A conviction record of assault and battery, sexual assault or rape should disqualify any applicant for positions with the public which may give the offender a chance to repeat the crime against our guest or employee.

Until recently, the Hawaii Civil Rights Commission and its predecessor, the Department of Labor and Industrial Relations administered and enforced HRS Chapter 378 under a policy that it was lawful for an employer to take into account convictions which have reasonable and substantial relationship to the employment in question. However, now, the Commission appears to have adopted a new and substantially different enforcement policy in which private employers cannot consider job related convictions.

We request that the Hawaii Civil Rights Commission re-evaluate its interpretation of this law and allow Hawaii employers like Sheraton to use conviction information to the same extent as that of the State of Hawaii and its agencies. If we can show that certain offenses are substantially job related, consideration of such conviction information must be allowed. While we are aware of the

Commission's desire to protect the right of rehabilitated persons with an arrest or court record to obtain employment, a blanket prohibition on an employer's use of all conviction information will not enable us to assure our guests and employees a safe environment.

On behalf of ITT Sheraton Hotels in Waikiki, we thank the Commission for this opportunity to share our views. Thank you.



January 10, 1996

'96 JAN 12 P1:40

Hawaii Civil Rights Commission
888 Millilani Street, Second Floor
Honolulu, Hawaii 96813

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Re: Rules on Arrest and Court Record Discrimination

Dear Sirs,

We understand you are seeking input on what should be contained in the above referenced rules.

As an employer in the State of Hawaii, we do not support nor encourage discrimination. We are, however, concerned that employers should have the right to deny employment if the arrest or court records reveal actions that have a substantial relationship to the functions and responsibilities of the job. In our business, we have a moral and legal responsibility to provide a safe environment for both our employees and customers. As management, we have a moral and contractual responsibility to protect the financial assets and integrity of the company.

We do not feel it is appropriate to place employers in a situation where a person convicted of certain crimes could unknowingly be hired. For example, we should not be unknowingly placed in a situation where someone convicted of violence is hired to work with other employees or customers where no security personnel are present. It is also inappropriate to hire someone convicted of theft to perform work involving the handling of cash and the cash register, the controlling of the loading dock area, or the maintaining of the financial records of the company.

We understand that certain convictions are used by the State of Hawaii, as an employer, in screening applicants while private employers generally are denied this right. Is this disparity a denial of equal protection and a violation of the "taking without just compensation" provision of the State Constitution?

We recommend that the Commission adopt rules and regulations which define a Bona Fide Occupational Qualification in such a way as to assure private employers equal rights. Certain convictions could be defined by the Commission as legitimate reasons for denying certain employment, or convictions could be deleted from the definition of "arrest and court records".

It appears that Hawaii's private sector employers are being required to bear more and more of society's social costs by the encouragement of convicted persons being hired. While this goal is admirable, there should be safeguards for Hawaii's employers so that such hires will be for positions where and when appropriate.

Thank you for this opportunity to present input on this matter. If there are any questions regarding the above, please do not hesitate to contact me.

Sincerely,

Barry K. Taniguchi
President



KTA SUPER STORES

January 10, 1996

Hawaii Civil Rights Commission
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Honolulu, Hawaii 96813

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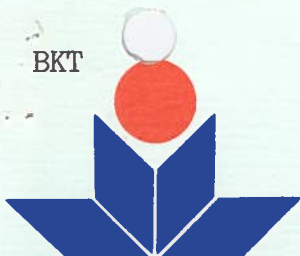
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Barry K. Taniguchi
President

BKT



KTA

SUPER STORES

KTA CENTER

50 E. PUAINAKO ST.
HILO, HAWAII 96720

*96 JAN 12 P1 40

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII



Hawaii Civil Rights Commission
888 Mililani Street, Second Floor
Honolulu, HI 96813



TESTIMONY ON ARREST AND COURT RECORD ISSUES

Before the
Hawaii Civil Rights Commission
Monday, January 8, 1996, 12:00 noon

My name is Joyce Hedani and I am the Employee Relations Director for Liberty House. I am testifying on behalf of my employer to express our concern that the Commission recognize and respect the legitimate, non-discriminatory business needs for companies in Hawaii to use conviction information for employment purposes.

Legislative history is clear that when the Legislature added "arrest and court records" to HRS Chapter 378 in 1973 it did not intend this amendment to stop an employer from refusing employment or discharge if the arrest or court record had a substantial relationship to the functions and responsibilities of the position. (Senate Journal 1973, page 967) Even when the convictions were added to the definition in 1974, the understanding was that employers could still consider "job-related" convictions in applying the statute. This was evidenced when the Department of Labor and Industrial Relations continued to publish guidelines for employers listing lawful and unlawful preemployment inquiries. It was lawful to ask whether the applicant had been convicted of a felony which had a "substantial relationship" to the employment in question.

HRS Chapter 378 - 3 (3) allows Hawaii employers to deny employment to persons "for reasons relating to the ability of the individual to perform the work in question." This standard implies that an employer may deny employment to persons if it serves, in a significant way, the legitimate business needs of that employer. Likewise, convictions for certain offenses can be shown to necessitate the denial of employment for legitimate business reasons when the nature of the conviction is sufficiently job-related.

Legitimate Non-Discriminatory Business Reasons

There are numerous types of convictions that should rule out persons for certain positions. For example, convictions for crimes involving dishonesty or a breach of trust should disqualify persons for cashier or any other cash-handling positions. At Liberty House as well as in the retail industry as a whole, we believe an applicant or employee who has been convicted of theft or embezzlement or credit card offenses or similar types of criminal offenses should be denied employment for positions that require access to cash, finances or property of the employer or the employer's customers or clients. In one situation at Liberty House, an applicant was hired for a sales position. In this sales position, he had ready access to merchandise, cash and customer property such as credit cards. We soon discovered that he had taken a customer's credit card and used it fraudulently charging in excess of \$5000 on it. In looking further into the employee's

background, we found that he had had numerous convictions for contempt of court, theft and traffic crimes. Had we known about the conviction for theft, we may have been able to have prevented a crime against an innocent customer.

Negligent Hiring and Retention

Another concern is that if employers are prevented from inquiring about an individual's conviction record, employers would still be liable for increased claims of negligent hiring and retention. Legally, an employer may be liable to a third party for negligence in hiring or retaining an employee who is incompetent or unfit, who the employer knew or reasonably should have known was a potential risk to others. Another position at Liberty House and probably at all retailers that we believe would require criminal background clearance would be that of our Store Detectives. If an applicant had been convicted of a violent crime such as assault and battery and/or theft, forgery, or similar crimes, he/she should be denied employment. The Store Detective's responsibility is to deter and stop crime within the store, either from internal or external sources. In performing the job, the Detective has ready access to cash registers and back stock areas where there may or may not be supervision. In addition, the position requires that the Detective deal with other employees or customers in often-times uncooperative conditions. The exposure here deals with the potential for such violent crimes to be repeated against the public or co-workers.

Proposed Rules on Arrest and Court Record

Any administrative rules on arrest and court record promulgated by the Commission must, at the very least, allow employers to deny the hiring or retention of persons who have a record of certain job-related convictions. Liberty House believes that for an individual to be qualified for any position involving unsupervised access to the property of the customers or the Company, including cash, that person should not have had any record of any felony convictions for minimum of seven (7) years (excluding periods of incarceration) for any of the following categories: burglary and other offenses of intrusion, theft, robbery, forgery, computer crime, credit card offenses, money laundering or offenses related to drugs and intoxicating compounds. Similarly, for an individual to be qualified for any position involving unsupervised public contact or working conditions, that person should not have had any record of any felony convictions for a minimum of seven (7) years (excluding periods of incarceration) for any of the following categories of offenses against the person: criminal homicide, criminal assaults and related offenses, kidnapping and related offenses, sexual offenses, child abuse, extortion or prostitution and promoting prostitution.

Other employers may believe that other offenses for different jobs should also be included. However, Liberty House believes that these enforcement exclusions to the arrest and court record law must be adopted and written into the administrative rules to ensure that the legitimate non-discriminatory business concerns of Hawaii employers are addressed. We are keenly aware that having these rules, however, does not stop any

applicant or employee from challenging an employer's action if the duties and responsibilities of the position cannot be shown to be substantially related to the offenses.

Summary

In summary, Liberty House asks that the Commission allow private employers to use of conviction information to the same extent that the State of Hawaii and its agencies can use that information. If a private employer like Liberty House can show that certain offenses are substantially job-related, consideration of such conviction information must be allowed. While we are aware of the desire to protect the rights of rehabilitated persons with an arrest or court record to obtain employment, a blanket prohibition on an employer's use of all conviction information does not address the need for Hawaii companies to use that information for legitimate, non-discriminatory employment purposes.

Thank you for the opportunity to share our views.

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
CORRECTION LAW
CHAPTER 43 OF THE CONSOLIDATED LAWS
ARTICLE 23-A--LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF
ONE OR MORE CRIMINAL OFFENSES

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Current through L. 1994, Ch. 738, apv. 8/16/94

§ 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

CREDIT(S)

1987 Main Volume

(Added L. 1976, c. 931, § 5.)

< < CORRECTION LAW > >

< Laws 1929, Chapter 243, amending Laws 1909, Chapter 47 >
< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

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1987 Main Volume

Effective Date. Section effective Jan. 1, 1977 pursuant to L. 1976, c. 931, § 7.

CROSS REFERENCES

1987 Main Volume

Certificate of good conduct, see Correction Law § 703-a.

Certificate of relief from disabilities, see Correction Law § 701 et seq.

RULES OF THE CITY OF NEW YORK

1995 Interim Update

Good conduct certification, see 38 RCNY Chapter 9.

LIBRARY REFERENCES

1987 Main Volume

Civil Rights ⇔ 9.10. Licenses ⇔ 20. C.J.S. Civil Rights § 59 et seq. C.J.S. Licenses §§ 32, 33.

NOTES OF DECISIONS

Certificate of

Certificate of - Good conduct 3 Certificate of - Relief from disabilities 2 Hearing, necessity of 4
Rehabilitation, evidence of 1

1. Rehabilitation, evidence of

Presumption of rehabilitation created by certificate of good conduct applies, even when applicant's prior conviction directly related to license or employment sought; because presumption applies, agency or employer must consider statutory factors to determine whether direct relationship is sufficiently attenuated to warrant issuance of license or employment. *Bonacorsa v. Van Lindt*, 1988, 71 N.Y.2d 605, 528 N.Y.S.2d 519, 523 N.E.2d 806.

Dentist's repeated history over three-year period of use and improper prescription of controlled substances justified denial of application for license to practice dentistry due to failure to meet good moral character requirement, even though dentist provided evidence of rehabilitation. *Markman v. New York State Dept. of Educ.*, 1987, 131 A.D.2d 908, 516 N.Y.S.2d 359.

City's commissioner of building department based denial of ex-offender's application for rooming house license on inadequate consideration of statutory factors under which licensing body determines whether there exists "direct relationship" between one or more of applicant's previous criminal offense and specific license sought, where applicant presented certificate of good conduct and commissioner presented no evidence to rebut presumption of rehabilitation, and annual issuance of taxi license to applicant corroborated applicant's claim of rehabilitation and supported finding that any bearing which his burglary convictions would have on his ability to perform his duty to safeguard persons and property had been attenuated. *Marra v. City of White Plains*, 1983, 96 A.D.2d 17, 467 N.Y.S.2d 865.

City civil service commission's determination that provisional city employee was suitable for employment

despite previous criminal convictions was supported by substantial evidence showing that employee was a model parolee and did not pose any threat to the community, that she was a skilled worker whose work was outstanding, and that she had recently received an award certificate from the mayor for excellent work performance. *City of New York v. City Civil Service Com'n*, 1988, 141 Misc.2d 276, 532 N.Y.S.2d 626.

2. Certificate of relief from disabilities

Rebuttable presumption raised by certificate of relief from disabilities was only one of several factors to be considered by administrative law judge denying applications to renew license as private investigator and commission as notary public. *Hughes v. Shaffer*, 1989, 154 A.D.2d 467, 546 N.Y.S.2d 25.

A certificate of relief from disability does not authorize a job applicant with a criminal record to deny on an employment application that he has ever been convicted of a crime, but the employer must consider the certificate, which establishes a presumption of rehabilitation as to the criminal offenses specified in the certificate. 1981 Op.Atty.Gen. (Inf.) 281.

The Police Department of the village of Malone may request the transfer of a CETA employee who is assigned to work as a dispatcher in the police department upon discovering that he has been convicted of a felony even though the employee had obtained a certificate of relief from disabilities. 1981, Op.Atty.Gen. (Inf.) 96.

3. Certificate of good conduct

Consideration of license applicant's prior convictions is subject to statutory presumption of rehabilitation arising from applicant's presentation of certificate of good conduct, which imposes burden on licensing body to come forward with evidence to rebut certificate. *Marra v. City of White Plains*, 1983, 96 A.D.2d 17, 467 N.Y.S.2d 865.

4. Hearing, necessity of

Evidence raised fact issue as to whether termination of caseworker for city department of social services based on his alleged failure to disclose two prior misdemeanor convictions was arbitrary and capricious, requiring evidentiary hearing in action challenging discharge; evidence indicated that caseworker had obtained certificates of relief from civil disabilities and had notified department of his involvement with criminal justice system at time he was hired. *Rodgers v. New York City Human Resources Admin., Dept. of Social Services*, 1989, 154 A.D.2d 233, 546 N.Y.S.2d 581.

Former felon with certificate of relief from disability was entitled to evidentiary hearing before New York City Department of Buildings on his application for site safety manager license to determine whether direct relationship between his bribery conviction and license was sufficiently attenuated to warrant issuance of the license. *Peluso v. Smith*, 1989, 142 Misc.2d 642, 540 N.Y.S.2d 631.

In considering the fitness of an applicant, licensing officials are not required to conduct a public hearing, but may, in considering the effect of a prior conviction, deny a license only after making the determinations required by the Legislature. Op.Atty.Gen. (Inf.) 84-37.

McKinney's Correction Law § 753

NY CORRECT § 753

END OF DOCUMENT

H A W A I I



'96 JAN -8 A9:14

OFFICE OF THE ATTORNEY GENERAL
HONOLULU, HAWAII

January 6, 1996

TO: Hawaii Civil Rights Commission
FROM: Bette Tatum, NFIB State Director
RE: Public Input Re Employment Discrimination

Aloha! Mahalo for allowing me to submit written comments concerning employment discrimination. My name is Bette Tatum and I am state director of the National Federation of Independent Business, representing over 5,000 small and independent business owners throughout the state.

NFIB policy is determined by a vote of the membership. Our 1996 State Ballot results reveal 82.9 percent of our members support civil immunity for employers who disclose employment information on former employees to potential employers.

Currently it is virtually impossible for employers to provide information on former employees without fear of being exposed to a lawsuit. The only information that an employer can safely communicate about a former employee is to confirm the fact that the person worked in the business from one date to another and the wage level.

NFIB members believe there should be liability protection when the only information given on a former employee is provided in good faith and is not deliberately false or misleading or malicious. Protection from frivolous lawsuits is necessary to facilitate the free exchange of vital employment information.

Hiring an employee without actually knowing anything more than how long the person worked at a previous job or at what wage level makes the small business owner the kind of "risk taker" the owner never envisioned when opening a business.

Denying an employer the ability to inquire about a job applicant's convictions relating to honesty even if the applicant is applying for a cash-handling position or being able to learn of past violent behavior smacks of discrimination against the employer. Hawaii employers have a hard enough time making ends meet without being unable to make good faith evaluations of an employee's job-related behavior.

Mahalo--and here's to a more productive 1996!

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1588 Piikea
Honolulu, HI 96818

JAN -8 A9:14

HONOLULU HI

For Jan 8 Hearing
Hand Delivered

H A W A I I

Hawaii Civil Rights Commission
888 Mililani Street
Honolulu, Hawaii
96813

**TESTIMONY OF THE
RETAIL MERCHANTS OF HAWAII
RELATING TO ARREST AND COURT RECORDS**

**HAWAII CIVIL RIGHTS COMMISSION
January 8, 1996**

My name is Jan Berman. I am President of the Retail Merchants of Hawaii, an organization representing approximately 100 large and small retailers in Hawaii, and am submitting this testimony to express our concerns in your consideration of rules relating to discrimination in arrest and court records.

We request that the commission not establish any general prohibition of the use of arrest and conviction information in pre-employment decision-making by employers. Hawaii employers should have the ability to consider criminal conviction information where that information relates to the job that will be performed. An employer, for example, should be allowed to consider the prior arrest and conviction for embezzlement of an applicant for an accounting or bookkeeping job, or a prior conviction for theft of an applicant as a store employee. In addition, employers should know and be allowed consideration of an applicants' arrest and conviction record for crimes such as assault, drug-use, credit offenses, and others, which may relate to the job to be performed. You must allow employers, in evaluating employment applicants, to deny employment of persons with arrest and conviction records that relate to the job being considered.

We also want to add our support to the testimony given today by the Chamber of Commerce of Hawaii regarding these same issues.

Thank you for this opportunity to present the concerns of Hawaii's retail merchants. We look forward to working with you in this endeavor.



Good Morning Ladies and Gentlemen of the Civil Rights Commission:

My name is Signe Godfrey and I am the Owner/Manager of a temporary help service called Olsten Staffing Services. Our company employs over 3,000 people a year and interview approximately 6,000 to 7,000 people a year. We interview nearly twice the amount in order to fill all the jobs that we receive from our clients.

The process to fill these jobs are to prescreen, interview, test and reference check each person. We have standards and requirements that must be met before we can place anyone on a job since each person is a representation of our company and its services.

Part of this process is asking questions that would give us a true picture of the person. This then allows us to place people on jobs with confidence. Our clients trust that we have checked each person to the best of our ability.

I would like to cite a case which I recently encountered. I received a phone call from the Sheriff's office asking for a certain female. I checked our records and found she had indeed worked for us. The sheriff was asking for any recent information of her whereabouts such as address changes or anything that would help him locate her. Evidently this person had signed up with 4 or 5 different temporary services and when she was placed on jobs through each service she was able to acquire information about the client companies such as how they process checks and she would access their checking account and was able to embezzle over \$250,000.

She was convicted and deported to the Phillipines and was able to return to the USA by falsifying her identification documents. On paper she looked

great, graduated from UCLA as an accountant, had great references (these references were totally false, she had a phone installed in her home with a number that her sister answered who pretended to be the company she had notated as a former employer) and she was very articulate.

Fortunately, for our company we placed her on jobs where she did not have access to any sensitive information although she did make attempts to enter into their computer system looking for information.

Another case I had in 1995, where we hired a male to perform unskilled labor. He immediately began to enter the Ladies Restrooms pretending to have entered in error or saying he had to use the restroom quickly and did not think anyone would mind. The next day after he had scouted the facility, he followed a female into the Ladies shower room pretending to be a janitor. He waited just long enough for the female to remove her clothes and then entered knowing she was there alone. Our client was so angry for sending this person that they threatened to close our account and never do business with us again. After this person was removed from the premises, his probation officer called us looking for him and we found out he had just recently been paroled having been convicted of sexual assaults. He did have a gap in his work history and his reason for the gap was he worked for jobs that paid cash and the people had gone out of business so employment verification was not possible however, he did have one good reference. Is this negligent hiring?

If we had been able to ask the question of everyone "Have you ever been convicted of a crime?" and some lied and some did not, at least we, as a company did our very best to get to know the person we are interviewing. I believe that I have been fortunate up to this day and it would be only a



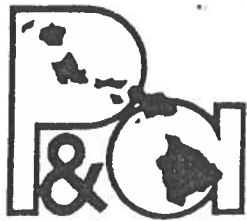
matter of time before we place someone who will do considerable damage to a client simply because we were not able to ask questions that would provide us a better picture of the person we are interviewing.

Let us pretend now that we are able to ask the question and the answer is yes. And we place this applicant on a job that they can perform, we would place them somewhere where they can be supervised 100% of the time or in a situation where opportunity and temptation would not present itself. And this person does a good job and begins to build trust and credibility, at least they were given a chance to prove themselves honestly.

Would you trust a rapist to babysit your children or a convicted felon to do your accounting knowing that they have embezzled prior to working for you?

I believe that when people break the law there are consequences and as in any relationship they have to build their credibility and trust again with employers. The first step is to **BE HONEST** so everyone can work together, so we know what we are working with, so we know what would be best, so that no one will be hurt, so that we can all work together peacefully.

I hope you will heed these cases bearing in mind that someone could be hurt financially or physically.



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January 5, 1996

'96 JAN -8 P1:24

Linda C. Tseu
Executive Director
Hawaii Civil Rights Commission
888 Mililani Street, 2nd Floor
Honolulu, HI 96813

Re: Rules on Arrest and Court Record Discrimination
Pursuant to HRS § 378 et seq.

Dear Ms. Tseu:

Thank you for the opportunity to contribute to your Commission's formulation of administrative rules regarding discrimination on the basis of one's arrest or court record. Similar to your agency, the Protection and Advocacy Agency of Hawaii, is committed to eliminating discrimination against people with disabilities in Hawaii. We are a private, non-profit agency which receives federal funding to protect the civil rights of persons with disabilities.

Our interest in this law stems from our experience that persons suffering from certain disabilities, e.g., mental illness, are arrested and/or convicted of various and sundry offenses (such as disorderly conduct or trespass) at a disproportionately greater rate than persons without disabilities. Once any potential employer obtains information about any record of such arrests and/or convictions, it is likely to be viewed negatively because of the general public's unfavorable disposition towards people who have been arrested and/or convicted of penal offenses. This would subject such persons to discrimination, preventing these individuals from obtaining or maintaining gainful employment.

In this spirit, I would like to share with you some of our thoughts on your task. I will do this by first providing you with our perspective of the general policy of the law which should be implemented by the adoption of administrative rules, and secondly, by providing you with a few examples of rules which we would find acceptable.

General Policy

Our agency supports the promulgation of administrative rules which truly protect individuals as intended by the law. The law itself, is very straightforward. It prohibits any inquiry into arrest and/or court

records subject to specific exceptions listed in § 378-3. The reasons behind the law are quite obvious. The only purpose of inquiring into whether an individual has an arrest and/or court record is to use the information in the process of evaluating whether or not to hire or maintain such individual for employment. Given that society, generally, is ill disposed towards people who have been arrested and/or convicted of penal offenses, any inquiry into the prohibited area of whether an individual has an arrest and/or court record would likely subject such persons to discrimination, preventing these individuals from obtaining or maintaining gainful employment and thereby, prevent such individuals from earning income to obtain food and shelter, let alone, the other necessities or pleasures of every day life.

The Hawaii legislature has deemed it appropriate to pass HRS §378 et seq. in order to afford such persons certain protections. This obviously serves the laudable purpose of reintegrating such persons into society as employed, productive, and contributing members.

In addition to the statute under consideration, the legislature had previously made its will known by passage in 1969 of a law which specifically prescribes the rights lost and retained by persons convicted of criminal offenses. Chapter 831, "Uniform Act on Status of Convicted Persons" provides, in pertinent part, that "a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law" HRS § 831-3. Thus the consistent intent of the state legislature has been to allow for the fullest reintegration into society of those persons convicted of a crime. The rules to be promulgated by the HCRC should reflect and further this objective by stringently limiting any and all inquiries into arrest and/or court records except as permitted by the law. Stringent limitation on such inquiries will hopefully result in employment for individuals based upon their actual qualifications for employment, without consideration or influence of the existence of arrest and/or court record.

As a matter of policy, the promulgated rules should prohibit any inquiries into arrest and/or court record except as permitted by the statute. Then and only then, may an employer pose narrow and specific questions which are limited to elicit information which fit the exceptions of § 378-3.

Thus, for example, each employer who seeks to make any limited inquiry into arrest/and or court record will have to identify bona fide occupational qualifications which it can demonstrate is reasonably necessary to its normal operations, and which have a substantial relationship to the functions and responsibilities of that particular job description or position.

Recommendations

We believe that it may be most effective for the HCRC to develop a short list of specific questions which may be asked by specific employers for specifically identified positions. Our concern is that if the HCRC is overly broad in designing such a list, employers will be misled into believing the exception has swallowed the rule, which prohibits inquiries into arrest/court records. The following are examples of permissible inquiries which we would not oppose.

1. In the case of employment relating to the direct service of children, e.g., child care, education, and other child-related services which require working in close proximity to children, inquiries into an individual's prior conviction record only with respect to charges of child molestation, abuse or neglect may be allowable.

2. In the case of employment positions in which direct care or services are provided to persons in their own residences, inquiries into an individual's prior conviction record relating only to charges of sexual or physical assault and battery, violence, neglect, or involving dishonesty or theft may be allowable.

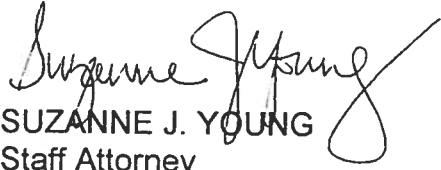
3. In the case of employment which places employees in intimate and direct contact with the areas and property of clients or guests of the employer (e.g., hotel maids or those with key access to hotel rooms), limited inquiries into an individual's prior conviction record relating only to charges of sexual or physical assault and battery, violence, neglect, or involving dishonesty or theft may be allowable.

We proffer the forgoing examples, not in the attempt to be all inclusive of the areas in which limited inquiry is permitted by the statute but merely in the hope that our suggestions are illustrative of the narrow areas into which inquiry is permissible.

Linda C. Tseu
January 5, 1996
Page 4

I would like to thank you again for the opportunity to provide these comments. If you have any questions, please feel free to contact me. Our agency would appreciate the opportunity to offer commentary on the draft regulations, and to have further input into your considerations.

Very truly yours,


SUZANNE J. YOUNG
Staff Attorney

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Honolulu, HI 96803

Date: April 11, 1996

TO: Linda Tseu, Executive Director
Hawaii Civil Rights Commission

Fax #: 586-8655

FROM: Robert Boettcher, Firm Administrator

Page 1 of 2

At February's hearing before the House Committee on Labor and Public Employment on H.B. No. 3008 regarding the use of arrest and court record information by Hawaii employers, you presented testimony on behalf of the Hawaii Civil Rights Commission in opposition to this legislation. We are writing to share our comments about the Commission's testimony and our concern for the forthcoming proposed regulations.

In today's changing workplace, businesses need to take pro-active steps to ensure a safe and secure environment. One effective tool is to use felony conviction information that is substantially related to the job responsibilities of the position sought or at issue. H.B. No. 3008 would have enabled Hawaii employers like us to obtain such conviction information and to use that information to protect our legitimate financial interest and the physical safety of our customers, the public and our employees. Although H.B. No. 3008 is no longer being considered by the 1996 Hawaii Legislature, we are hopeful that the Commission will address the concerns of Hawaii's business community which led to the proposition of this legislation.

We oppose any attempt by the Commission to limit the ability of Hawaii employers to use felony conviction information that is substantially related to the job responsibilities of the position sought or at issue. We do not use arrest and court record information to "screen out" applicants and have always considered such information only for the limited purposes permitted by HRS Chapter 378. Your proposal to permit employers to inquire about felony conviction information only from the applicant to whom a job offer has been made will unnecessarily complicate our hiring process. Moreover, it will frustrate and anger applicants who make it through the final cut only to find themselves without the job because of their felony conviction record. Simply stated, the arrest and court record provision of HRS Chapter 378 worked fine under the aegis of the Hawaii Department of Labor and Industrial Relations, and there is no valid reason for the Commission to tamper with it now.

Please know that we, like the Commission, seek to protect the right of rehabilitated persons with felony convictions to obtain employment. However, if we can show that the conviction record of an individual is substantially job-related, we must be able to use such information for the legitimate employment purpose to maintain a safe and secure workplace. We seek to avoid situations that may give rise to a negligent hiring or retention claim.

Your suggestion that Hawaii employers may be required to determine whether an applicant/employee with a felony conviction record has been "rehabilitated" is completely unworkable. We know of no means to determine whether a convicted felon has been successfully "rehabilitated." Will the State of Hawaii indemnify employers for damages to victims when they make a good-faith determination that a convicted felon has been "rehabilitated" but a violent act occurs? If not, the Commission cannot burden Hawaii employers with this unrealistic requirement.

Thank you for taking this opportunity to consider our views. If you have any questions, please call me.



January 5, 1996

Association of Apartment Owners

Hawaii Civil Rights Commission
Room 313
830 Punchbowl Street
Honolulu, HI 96813

'96 JAN -9 P2:40

HAWAII CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Attention: Mr. John Ishihara

Dear Mr. Ishihara:

We are writing to ask your support in expressing our concerns regarding possible changes to the Hawaii Civil Right Commission rules pertaining to employer's use of arrest and conviction records to evaluate a potential employee's suitability for a particular position.

In the case of a homeowner's association, the association and board of directors has a fiduciary responsibility as defined by HPR 514A to protect the owner's units and best interest.

Security officers and other like-employees who need access to owner's apartments must be screened for criminal activity.

If passed, a measure of this nature would further destroy the association's ability to protect our owners and guests, which is contrary to our fiduciary responsibilities outlined in HPR 514A.

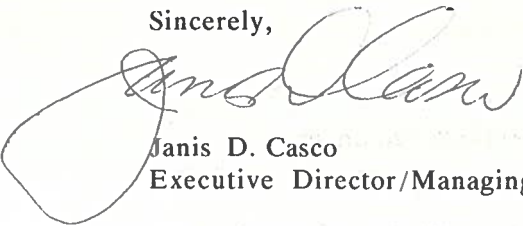
Liability insurance carriers are now pulling away coverage for deliberate acts of theft, violence, and similar employee crimes, and blanket fidelity bonds may not cover the association if we fail in our basic responsibility to properly screen employees who access apartments.

Unfortunately, this looks like a measure which will "protect the guilty and punish the innocent".

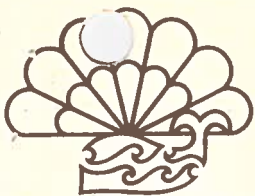
What an upside down society this is when we lose our rights to protect ourselves by access to public information.

Thank you for considering our point of view on this serious issue.

Sincerely,


Janis D. Casco
Executive Director/Managing Agent

cc: Board of Directors



The Whaler

On Kaanapali Beach

2481 Kaanapali Parkway
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Hawaii Civil Rights Commission
Room 313
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Attn: Mr. John Ishihara

'96 JAN -9 22:40
CIVIL RIGHTS
HONOLULU HI



APRIL, MAY, 1994 DISABILITY RULES, HEARING NOTICES, TRANSMITTAL SENT TO:

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add more A+C
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Corporation Council

1 MS. COLE: Oh, of course. We have to be able to
2 handle money.

3 MR. WITHY: Okay. Now, is there any licensing
4 required in California or Hawaii for bartenders?

5 MS. COLE: Not in California, or, when I was
6 bartending there wasn't. Here, you have to have a liquor
7 license, a manager's card.

8 MR. WITHY: Now, when you, when did you come to
9 Hawaii?

10 MS. COLE: 1978.

11 MR. WITHY: Okay. And did you obtain that
12 license?

13 MS. COLE: Yes.

14 MR. WITHY: Okay. Who was that from? Where did
15 you get the license from?

16 MS. COLE: From the Liquor Control here.

17 MR. WITHY: The State of Hawaii Liquor Control?

18 MS. COLE: State of Hawaii.

19 MR. WITHY: State of -- *or Maui* ✓

20 MS. COLE: Maui. I think, I think it's Maui
21 County. I'm not sure.

22 MR. WITHY: This provides a document that, that
23 they actually give to you. Right?

24 MS. COLE: A card.

25 MR. WITHY: Okay. And you have to have that in

From: JOHNI (JOHNI)
To: CATHY
Date: Wednesday, December 10, 1997 9:18 am
Subject: MAILING LIST

NOTE: SOME DIDN'T HAVE ADDRESSES. "*****"

Files: MAIL

1 MS. COLE: 10:00. Ten o'clock

2 MR. WITHY: Okay. So as a bartender working,

3 would the first bartender shift be, start at 10:00?

4 MS. COLE: Well, usually earlier.

5 MR. WITHY: If you --

6 MS. COLE: ~~You~~ *Because we* have to set up.

7 MR. WITHY: Okay. So you would come in before

8 then?

9 MS. COLE: Uh huh. About a half hour before.

10 MR. WITHY: Okay. And when did that first shift

11 end?

12 MS. COLE: 4:00. *Four*

13 MR. WITHY: Okay. And did you leave right at

14 4:00?

15 MS. COLE: No.

16 MR. WITHY: Did you have to do something?

17 MS. COLE: Because you have to do -- count your

18 money, do a drop, do your paper work.

19 MR. WITHY: Okay. Maybe for us, you could explain

20 what "doing a drop" means.

21 MS. COLE: You count your money. You make sure

22 that it's right. You get -- you put it in an envelope and

23 you have to do your, your liquor count, see how many bottles

24 were -- you used that day, discard them. There's two things

25 you have to do before you can leave.

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1 and I chose to have ^{three} three shifts.

2 MR. WITHY: Okay. And then at some point did you

3 stop working for the other restaurant?

4 MS. COLE: Yes. They discontinued doing lunches,

5 so I --

6 MR. WITHY: Okay. So you came back to the

7 Treehouse.

8 MS. COLE: Came back to the Treehouse.

9 MR. WITHY: And while you were working three

10 shifts a week, how many hours would that be?

11 MS. COLE: Seven hours a day, 21 hours.

12 MR. WITHY: Okay. So the shifts -- when, when did

13 this --

14 MS. COLE: Six hour shifts but there's an hour

15 that you have to do paper work.

16 MR. WITHY: Okay. Now, let's limit ourselves to

17 the period (inaudible) after 19, 1990 and thereafter. 1990,

18 1991, 1992. What was, was the shift schedule the same in

19 terms of when you opened and stuff for those three years?

20 MS. COLE: Yes.

21 MR. WITHY: Okay. When was the first shift? When

22 did you open in the morning at Treehouse, Inc.?

23 MS. COLE: It was at -- .

24 MR. WITHY: I'm going to rephrase that. When did

25 Treehouse, Inc. open in the morning?

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Liberty House

1 order to actually be a bartender?
 2 MS. COLE: You can bartend without it but you have
 3 to have a manager on duty. But, yes, that made me a bar
 4 manager.
 5 MR. WITHY: Okay. So if you don't have the
 6 bartender card, then you, you have to have somebody else on
 7 duty that overseeing *her*
 8 MS. COLE: Right. At all times.
 9 MR. WITHY: Okay. So since you've been here in
 10 Hawaii, you've always had that card and have been able to
 11 bartend solo.
 12 MS. COLE: Uh huh. Solo.
 13 MR. WITHY: Now, at some point, did you start
 14 working for a bar in Lahaina?
 15 MS. COLE: Yes.
 16 MR. WITHY: When you first came over?
 17 MS. COLE: My first bartending job was at the
 18 ~~(Inaudible) and grinder.~~ *organ*
 19 MR. WITHY: Okay. And at that time, were there
 20 other women bartenders working in Lahaina?
 21 MS. COLE: No.
 22 MR. WITHY: So, you were the first woman bartender
 23 at that time.
 24 MS. COLE: To my knowledge.
 25 MR. WITHY: Now, did you work at another bar after

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1 MS. COLE: Mary Anne Cole.

2 MR. WITHY: And could you tell us what city you

3 live in.

4 MS. COLE: Lahaina, Maui.

5 MR. WITHY: Okay. What is your age today, as of

6 today?

7 MS. COLE: As of today, 51.

8 MR. WITHY: Okay. Have you ever worked as a

9 bartender?

10 MS. COLE: Yes.

11 MR. WITHY: When did you start working as a

12 bartender?

13 MS. COLE: 1973.

14 MR. WITHY: Okay. Where was that?

15 MS. COLE: Los Angeles International Airport.

16 MR. WITHY: And was there anything significant

17 about your starting work there?

18 MS. COLE: I was the first woman bartender at the

19 airport.

20 MR. WITHY: Okay. And did you subsequently --

21 back up. What does it require to be a bartender?

22 MS. COLE: Well, you have to know how to make

23 drinks. You have to be able to work with people.

24 MR. WITHY: Is there an accounting function that

25 you have to do?

From: LUISA (LUISA)
To: Everyone
Date: Tuesday, December 16, 1997 2:49 pm
Subject: Hawaii Centers for Independent Living

The new address and telephone number for:

Hawaii Centers for Independent Living
414 Kuwili Street #102
Honolulu HI 96817-5050

(808) 522-5400

Mark O'Banake, Director

FOR Cathy
DATE 12-17 TIME 1:45 P.M.

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McDonald's Restaurant of Hawaii
237 Queen Emma Square
Honolulu, Hawaii 96813

Helen Sadorra
Kobayashi Watanabe
Hawaii Building
745 Fort Street, 8th Floor
Honolulu, Hawaii 96813

Naomi Tsujioka
Oliver Lee Lawn
707 Richards Street, Suite 600
Honolulu, Hawaii 96813

Office Of Consumer Protection
DCCA
P.O. Box 3767
Honolulu, Hawaii 96812

Jake Manegdeg
Oahu Filipino Community Council
1270 Queen Emma Street, Suite 606
Honolulu, Hawaii 96813

Honolulu Start Bulletin
Attention: Ben Seto
P.O. Box 3080
Honolulu, Hawaii 96802

Lunsford D. Phillips, Esq.
Pioneers Plaza
900 Fort Street Mall, #1620
Honolulu, Hawaii 96813

~~Derrick Urabe~~
Personnel Manager
Hawaiian Cement
~~220 S. King Street~~
Honolulu, Hawaii 96813

1100 Alakea St. #2300
96813-2833

Glenn Takahashi
Director Of Recruitment/Public Relations
Zippy's
1765 S. King Street
Honolulu, Hawaii 96828

Wesley M. Fujimoto, Esq.
1800 Pioneer Plaza
900 Fort Street Mall
Honolulu, Hawaii 96813

Lowell K.Y. Chun-Hoon, Esq.
Hawaii Times Building-Suite 208
928 Nuuanu Avenue
Honolulu, Hawaii 96817

King Nakamura & Chun-Hoon
220 S. King St. Suite 980
96813

Wilfredo Tunglo, Esq.
Filipino Chamber Of Commerce
2512 Komo Mai Drive
Pearl City, Hawaii 96782

Director, Governor's Committee on Aids
591 Ala Moana Boulevard Room, #118
Honolulu, Hawaii 96813

Carleen Choo
Human Resources Director
Food Pantry, Ltd.
3536 Harding Avenue, Suite 401
Honolulu, Hawaii 96816

Robert Hall
P.O. Box 4124
Honolulu, Hawaii 96812

May Goya
Employee Relations Manager
Zippy's Inc.
1765 S. King Street
Honolulu, Hawaii 96826

Scott I. Batterman, Esq.
Davies Pacific Center
841 Bishop Street, Suite 1500
Honolulu, Hawaii 96813

Michelle Azuma
Personal & Labor Relations
Hawaiian Tug & Barge
P.O. Box 3288
Honolulu, Hawaii 96801

Dennis W.S. Chang, Esq.
735 Bishop Street, Suite 320
Honolulu, Hawaii 96813

Donald Bender
President
Haleakala Dairy
55 South Wakea Avenue
Kahului, Hawaii 96732

Beth Weaver, Librarian
Cades Schutte Fleming & Wright
1000 Bishop Street
Honolulu, Hawaii 96813

Agnes Ringle
Pacific Village
98-314 Ualo Street, #G-1
Aiea, Hawaii 96701


Mark Skirmstad, Librarian
Torkildson & Katz, et al.
700 Bishop Street, 15th Floor
Honolulu, Hawaii 96813

Merrilyn-Ann K. Ing
Director Of Government Affairs
Hawaii Association Of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Aaron M. Chaney
Chaney Brooks & Company
P.O. Box 212
Honolulu, Hawaii 96810

Deborah Pratt
P.O. Box 1449
Kailua-Kona, Hawaii 96748

Boys & Girls Club Of Honolulu
June Raymond, Financial Manager
1704 Waiola Street
Honolulu, Hawaii 96826


Human Resources Department
Bank Of Hawaii
P.O. Box 2900
Honolulu, Hawaii 96846

Judy Gorman
Hawaii Association Of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Kathleen Tavete
Librarian
745 Fort Street Mall, 5th Floor
Honolulu, Hawaii 96813

Committee on Welfare Concerns
c/o 810 North Vineyard Blvd.
Honolulu, Hawaii 96817

Elizabeth Sullivan, Esq.
Alston Hunt Floyd & Ing
1001 Bishop Street, 18th Floor
Pacific Tower
Honolulu, Hawaii 96813

Wendy Vanderburgh
Carlsmith, et al.
1001 Bishop Street, Suite 2200
Honolulu, Hawaii 96813

Diane Tizard
Hawaii Center for Independent Living
677 Ala Moana Blvd., Suite 118
Honolulu, Hawaii 96813

mark opatake see next
414 Kumu St. #102 pg
96817-5050

Hawaii Centers For Independent Living
677 Ala Moana Blvd
Honolulu, Hawaii 96813

Liz Crisp
Ogden Aviation
P.O. Box 29568
Honolulu, Hawaii 96820

replaced by another

Richard S. Ekimoto, Esq.
Penthouse One
707 Richards Street
Honolulu, Hawaii 96813

Na Loio No Na Kanaka
810 North Vineyard Blvd.
Honolulu, Hawaii 96817

William W. Watkins, Esq.
1001 Bishop Street, Suite 2010
Honolulu, Hawaii 96813

Terri Montano
Sultan Company
2255 Kuhio Avenue, Suite 2000
Honolulu, Hawaii 96815

Mark Obatake
Executive Director
Hawaii Center For Independent Living
~~677 Ala Moana Blvd., Suite 118~~
Honolulu, Hawaii ~~96813~~

414 Kuwili St #102
96817-5050

Richard Botti
Legislative Information Services
677 Ala Moana Blvd., Suite 815
Honolulu, Hawaii 96813

John Gasher
Alexander & Baldwin
822 Bishop Street
Honolulu, Hawaii 96813

Gerry Ikuta
Personnel Specialist
Ala Moana Hotel
410 Atkinson Drive
Honolulu, Hawaii 96814

~~Kerri Ellis~~ Dawn Sikorka
Personnel Manager
ADT Automotive — Aloha Auto Auction
~~1600 Kapiolani Blvd., Suite 620~~ PO BOX 17160
Honolulu, Hawaii ~~96814~~ 96817

~~Jody Milliren~~
Operations Manager
Select Temporary Services
~~810 Richards Street, Suite 123~~
Honolulu, Hawaii ~~96813~~

550 Paiea St Suite 222
96819-1837

Allison Price, Director Of Hum. Res.
Tube 29
Straub Clinic & Hospital
888 South King Street
Honolulu, Hawaii 96814

Geoffrey Johnson
Director Of Employment
Hawaiian Electric
P.O. Box 2750
Honolulu, Hawaii 96840

Becky Dixon
East-West Center
1777 East West Road
Honolulu, Hawaii 96848

Diane C. Freekin, Ex VP and Dir
Human Resources Department
Bank of Hawaii
111 S. King Street
Honolulu, Hawaii 96813

~~Holly Bachini~~
233 Keawe Street, #625
Honolulu, Hawaii 96813

Kim Moore
Director Of Human Resources
Honolulu Mortgage
201 Merchant Street, Suite 1700
Honolulu, Hawaii 96813

Richard Hashimoto
Sr VP & Dir Prsnl Indus Relations
ITT Sheraton Corporation
2155 Kalakaua Avenue
Honolulu, Hawaii 96815

Tim Lyons
Executive VP
HI Business League
677 Ala Moana Blvd, #815
Honolulu, Hawaii 96813

Roy King, Jr.
Sr. Vice President
First Hawaiian Bank
P.O. Box 3200
Honolulu, Hawaii 96847

Gene Murata
Human Resources Department
Servco Pacific
89 South King Street, 4th Floor
Honolulu, Hawaii 96813

Marti Wukelic
Human Resources Director
Hotel Hana Maui
P.O. Box 9
Hana, Maui, Hawaii 96713

Elizabeth J. Fujiwara, Esq.
Attorney At Law
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 1655
Honolulu, Hawaii 96813

Ann Isobe, Esq.
Devens Lo Nakano Saito Lee & Wong
220 S. King Street, Suite 1600
Honolulu, Hawaii 96913

John Manion
1580 Makaloa Street, #1060
Honolulu, Hawaii 96814

Stan Yates
P.O. Box 417
Ele'ele, Kauai, Hawaii 96705

Barbara Date, Ph.D
Case Manager
Big Island Aids Project
P.O. Box 11510
Hilo, Hawaii 96720

Myles Iyo
State Of Hawaii
Public Safety Department
RFD-1 Kawiki Road
Hilo, Hawaii 96720-98001

John Howard Association Of Hawaii
200 N. Vineyard Blvd
Suite 300
Honolulu, Hawaii 96817

Denice Vongnechten
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

Allicyn Hikida Tasaka
1334 Kaihee Street, #101
Honolulu, Hawaii 96822

Claudio R. Suyat
45-596 Apuakea Street, #14
Kaneohe, Hawaii 96744

Jack Law
1877 Kalakaua Avenue
Honolulu, Hawaii 96815

Faye Kennedy
3071 Felix Street
Honolulu, Hawaii 96816

Harry Yee, Esq.
Attorney At Law
333 Queen Street, Suite 803
Honolulu, Hawaii 96813

Tom Yamashita
Superintendent Office
Department Of Education
1319 Miller Street, Room 416
Honolulu, Hawaii 96813

Susan H. Kitsu, Affirmative Action Officer
The Judiciary, State of Hawaii
417 South King Street, Room #209
Honolulu, Hawaii 96813-2902

Library
Cades Schutte Fleming & Wright
Attention: Debbie
P.O. Box 939
Honolulu, Hawaii 96808

~~Letani Hoops~~
Kona
PO Box 1179
96745

~~Geordie Suskan
Direct. of Human Resour.
Royal Kona Resort
75-5852 Alii Drive
Kailua Kona-Hi 96700~~

~~735 Bishop S. 220
Chamber of Commerce of Hi
1132 Bishop Suite 200
96813~~

~~Terrence Urabe
Personnel Mgr
Hawni Cement
220 S King St.
Hon. 96813~~

1100 Ala Kea St. # 2300
96813-2833

TRANSMITTAL LTRS.

MODE = MEMORY TRANSMISSION

START=JUL-15 02:06

END=JUL-15 02:17

FILE NO.= 109

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	8	95924708	020/020	00:07' 14"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
 ADJUDICATION SECTION
 830 Punchbowl Street Room 411
 Honolulu, Hawaii 96813
 Phone: 586-8659; Fax: 586-8655

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DATE: July 15, 1998

TO: Dana Matlin

FAX: 592-4708

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

MESSAGE: I am faxing over the requested information.

NO. OF PAGES INCLUDING THIS COVERSHEET: twenty

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8636

TRANSMITTAL MEMO

TO: Dana Matlin Date: July 15, 1998
FROM: Cathy Simmons, Secretary
Adjudication
RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


Enclosed Via Hand Delivery Mail Faxed

TRANSMITTED HEREWITH:

<input type="checkbox"/>	For Your Information	<input type="checkbox"/>	For Recordation
<input type="checkbox"/>	For Signature and Return	<input type="checkbox"/>	For Correction
<input type="checkbox"/>	For Review and Comment	<input type="checkbox"/>	Approved as Noted
<input type="checkbox"/>	Per Your Request	<input type="checkbox"/>	Disapproved
<input type="checkbox"/>	For Necessary Action	<input checked="" type="checkbox"/>	For Your Files
<input type="checkbox"/>	Per Our Conversation	<input type="checkbox"/>	See Remarks

Enclosed: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination; and

A copy of the "Notice of Public Hearing" published
in the Honolulu Advertiser, December 10, 1997.



Cathy Simmons
Secretary to John Ishihara

FAX TRANSMITTAL

To: HAWAII CIVIL RIGHTS COMMISSION

Date: April 9, 1998

Fax #: 586-8655

Pages: 2, including this cover sheet

Re: Copies of proposed Regulations

From the desk of...

Jelly Tanaka

Pacific Transfer & Warehouse, Inc.

664 Kakoi Street

P.O. Box 30329

Honolulu, Hawai'i 96820

(808) 836-3871

Fax: (808) 833-7404



Pacific Transfer

Pacific Transfer and Warehouse, Inc.
664 Kakoi Street
P.O. Box 30329 Honolulu, HI 96820-0329
Telephone (808) 836-3871

Fax (808) 833-7404

April 9, 1998

State of Hawaii
Department of Labor
Hawaii Civil Rights Commission
830 Punchbowl Street
Room 411

To Whom it may Concern:

I am very interested in obtaining copies of your Proposed Regulations for:

Hawaii Administrative Rules
Title 12
Department of Labor & Industrial Relations
Subtitle 7
Boards
Chapter 46
Civil Rights Commission
Subchapter 10
Arrest & Court Record Discrimination

It would be greatly appreciated if someone could send two copies of each to me at:

Pacific Transfer & Warehouse, Inc.
P. O. Box 30329
Honolulu, Hawaii 96820-0329

Attn: Shelley Tanaka

Thank you very much for your time.

Sincerely,

Shelley Tanaka

Shelley Tanaka
Human Resources
Administrative Assistant

mailed 4-15-98
SP



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Valerie Lam, Esq. March 16, 1998
1001 Bishop Street Suite 8081
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

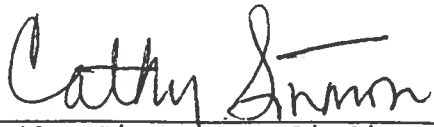
RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via	<input type="checkbox"/>	Hand Delivery	<input checked="" type="checkbox"/>	Mail	<input type="checkbox"/>	FAXED
<input type="checkbox"/>		For Your Information	<input type="checkbox"/>		<input type="checkbox"/>	For Recordation
<input type="checkbox"/>		For Signature and Return	<input type="checkbox"/>		<input type="checkbox"/>	For Correction
<input type="checkbox"/>		For Signature & Forwarding as Noted	<input type="checkbox"/>		<input type="checkbox"/>	For Payment
<input type="checkbox"/>		For Review and Comment	<input type="checkbox"/>		<input type="checkbox"/>	Approved
<input checked="" type="checkbox"/>		Per Your Request	<input type="checkbox"/>		<input type="checkbox"/>	Approved as Noted
<input type="checkbox"/>		For Necessary Action	<input type="checkbox"/>		<input type="checkbox"/>	Disapproved
<input type="checkbox"/>		Per Our Conversation	<input type="checkbox"/>		<input type="checkbox"/>	For Your Files
			<input type="checkbox"/>		<input type="checkbox"/>	See Remarks

Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=FEB-18 13:56

END=FEB-18 14:02

FILE NO. = 024

STN NO.	COM	ABBR NO.	STATION NAME/TEL. NO.	PAGES	DURATION
001	OK	s	92353676	020/020	00:05'45"

***** - ***** - *****

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655**

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DATE: February 18, 1998

TO: Claudia Simpson, Director of Human Resources

FAX: 235-3676

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing and Proposed Change
rules to Arrest and Court Record Discrimination

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Claudia Simpson DATE: February 18, 1998
Director of Human Resources
Aloha Nursing & Rehab Center
45-545 Kam Highway
Kaneohe, HI 96744

FROM: John Ishihara, Chief Counsel


RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via	(x) Faxed	() Mail	() Hand Carry
(XX) For Your Information	() For Recordation		
() For Signature and Return	() For Correction		
() For Signature & Forwarding as Noted	() For Payment		
() For Review and Comment	() Approved		
(XX) Per Your Request	() Approved as Noted		
() For Necessary Action	() Disapproved		
() Per Our Conversation	() For Your Files		
	() See Remarks		

Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: February 18, 1998

TO: Claudia Simpson, Director of Human Resources

FAX: 235-3676

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public Hearing and Proposed Changes
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Linn Koga
Catholic Charities
250 Vineyard Street
Honolulu, HI 96813-2495

DATE: January 27, 1998

FROM: John Ishihara, Chief Counsel

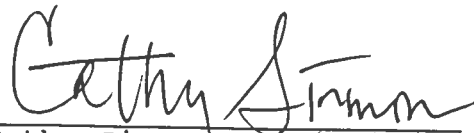
RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via	() Faxed	() Mail	() Hand Carry
(XX) For Your Information	()	() For Recordation	
() For Signature and Return	()	() For Correction	
() For Signature & Forwarding as Noted	()	() For Payment	
() For Review and Comment	()	() Approved	
(XX) Per Your Request	()	() Approved as Noted	
() For Necessary Action	()	() Disapproved	
() Per Our Conversation	()	() For Your Files	
		() See Remarks	

Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Rep. Terrance Tom
Hawaii State Capitol
Room 302
Honolulu, HI 96813

DATE: January 21, 1998

FROM: John Ishihara, Chief Counsel

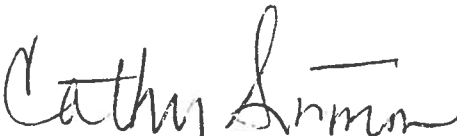
RE: Amendments to Chapter 12-46 Hawaii Administrative Rules
(Chapter 12-46, Hawaii Administrative Rules, is
amended by adding a new Subchapter 10)
Arrest & Court Record

TRANSMITTED HEREWITH:

Enclosed Via () Pick Up () Mail (X) State Messenger

(XX) For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
(XX) Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

Enclosed: One Diskett with the above information.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MELODY - 586-6490

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Wendy Vonderburgh
Marr Jones & Pepper

DATE: January 21, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

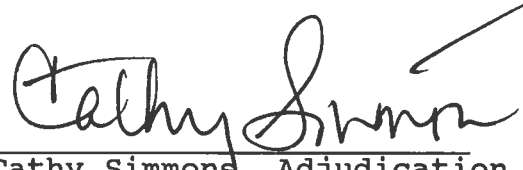
TRANSMITTED HEREWITH:

Enclosed Via Faxed Mail State Messenger

For Your Information For Recordation
 For Signature and Return For Correction
 For Signature & Forwarding For Payment
as Noted Approved
 For Review and Comment Approved as Noted
 Per Your Request Disapproved
 For Necessary Action For Your Files
 Per Our Conversation See Remarks

Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

START=JAN-22 14:34 END=JAN-22 14:46

NO. PAGES DURATION

019/019 00:05'28"

- ***** -

- *****

**RIGHTS COMMISSION
SECTION**

Street Room 411
Hawaii 96813
9; Fax: 586-8655

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FOR Cathy
DATE 1/22 TIME 155 A.M.
P.M.

WHILE YOU WERE OUT

M. Wendy Vonderburgh
OF Marr Jones & Pepper
PH. # 526-4900 FAX # 536-6700

TELEPHONED <u>(omitted)</u>	PLEASE CALL	
CALLED TO SEE YOU	WILL CALL AGAIN	
WANTS TO SEE YOU	RUSH	

RETURNED YOUR CALL

MESSAGE

1001 Bishop St 1550

Pauahi Tower

Could it be faxed today.
copies of all test.

SIGNED [Signature]

DATE: January 22, 1998

TO: Marr Jones & Pepper
Attn: Wendy Vonderburgh

FAX: 536-6700

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=JAN-15 16:07

END=JAN-15 16:21

FILE NO. = 227

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	S	98481987	024/024	00:14'02"

***** -

- ***** -

- *****

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411

Honolulu, Hawaii 96813

Phone: 586-8659; Fax: 586-8655

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DATE: January 15, 1998

TO: Dayton Nakanelua

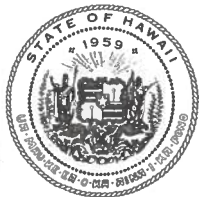
FAX: 848-1987

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 24

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Dayton Nakanelua January 14, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via () Hand Delivery () Mail (x) FAXED

() For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
(xx) Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

Sent: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination";

A copy of the "Notice of Public Hearing" published in The Honolulu Advertiser, December 10, 1997; and

Testimonies of ILWU Local 142 and Daniel R. Foley, Esq.

Cathy Simmons

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: G. Sakakida January 14, 1998
 Hawaii Transportation Association

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing
 rules to Arrest

Enclosed Via () Ha

- () For Your Information
- () For Signature and Initials
- () For Signature & For Initials as Noted
- () For Review and Comments
- (xx) Per Your Request
- () For Necessary Action
- () Per Our Conversation

Enclosed: Copy of one
 Chapter 46 C
 "Arrest and
 A copy of the
 in The Honolulu

(HAWAII TRANSPORTATION)

FOR _____

DATE 1-14 TIME 3:48 A.M. P.M.

WHILE YOU WERE OUT

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OF HAWAII TRAS ASS

PH. # 833-6628 FAX # _____

TELEPHONED	PLEASE CALL
CALLED TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH

RETURNED YOUR CALL

MESSAGE _____

SIGNED _____

COPIED BY JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Eileen Torigoe DATE: January 21, 1998
Michael McGuire, Inc.
700 Richards Street #705
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


TRANSMITTED HERewith:

Enclosed Via Pick Up Mail State Messenger

<input checked="" type="checkbox"/>	For Your Information	<input type="checkbox"/>	For Recordation
<input type="checkbox"/>	For Signature and Return	<input type="checkbox"/>	For Correction
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<input type="checkbox"/>	For Review and Comment	<input type="checkbox"/>	Approved
<input type="checkbox"/>	For Review and Comment	<input type="checkbox"/>	Approved as Noted
<input checked="" type="checkbox"/>	Per Your Request	<input type="checkbox"/>	Disapproved
<input type="checkbox"/>	For Necessary Action	<input type="checkbox"/>	For Your Files
<input type="checkbox"/>	Per Our Conversation	<input type="checkbox"/>	See Remarks

Enclosed: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-15 11:44

END=JAN-15 11:54

FILE NO.= 211

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK		95864990	020/020	00:10'00"

***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
 830 Punchbowl Street Room 411
 Honolulu, Hawaii 96813
 Phone: 586-8659; Fax: 586-8655

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DATE: January 15, 1998

TO: Melanie, DSSH

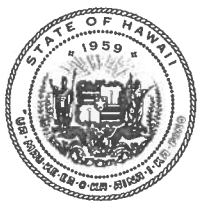
FAX: 586-4990

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: DSSH January 14, 1998
Attn: Melanie

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail FAXED

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Recordation
<input type="checkbox"/> For Signature and Return	<input type="checkbox"/> For Correction
<input type="checkbox"/> For Signature & Forwarding as Noted	<input type="checkbox"/> For Payment
<input type="checkbox"/> For Review and Comment	<input type="checkbox"/> Approved
<input checked="" type="checkbox"/> Per Your Request	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Ron Hajime January 14, 1998
 Adult Probation

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail FAXED

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| <input checked="" type="checkbox"/> Per Your Request | <input type="checkbox"/> Approved as Noted |
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> Disapproved |
| <input type="checkbox"/> Per Our Conversation | <input type="checkbox"/> For Your Files |
| | <input type="checkbox"/> See Remarks |

Enclosed: Copy of set of Hawaii Administrative Rules;
 Chapter 10
 "Arrest and Court Record Discrimination"; and

A copy
 in the

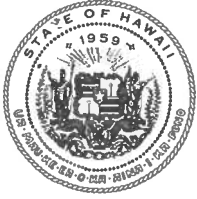
published
 1997.

Ron Hajime
Adult Probation

[Signature]

Enclosed, Adjudication
 to JOHN ISHIHARA

hand delivered



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Erik Abe January 14, 1998
Chamber of Commerce of Hawaii

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail FAXED

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Recordation
<input type="checkbox"/> For Signature and Return	<input type="checkbox"/> For Correction
<input type="checkbox"/> For Signature & Forwarding as Noted	<input type="checkbox"/> For Payment
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	<input type="checkbox"/> See Remarks

SENT: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-14 13:48

END=JAN-14 14:18

FILE NO. = 196

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	S	95454309	020/020	00:13'08"

***** - ***** - *****

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: January 14, 1998

TO: Erik Abe

FAX: 545-4309

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=JAN-13 08:44

END=JAN-13 08:55

FILE NO.= 163

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK		97340391	020/020	00:11'07"

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**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: January 13, 1998

TO: Mary Jossem

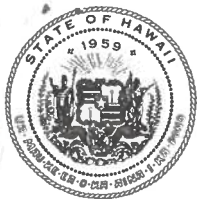
FAX: 734-0391

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Mary Jossem January 13, 1998
Special Education of Hawaii
708 Palekaua Street
Honolulu, HI 96816

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

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Enclosed Via	<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Mail	<input checked="" type="checkbox"/> FAXED
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<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved		
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files		
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Sent: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Sherri Higa
Dept. of Public Safety
Personnel Dept
919 A
Honol

January 12, 1998

FROM: John :

RE: Notice
rules

Sherri Higa
Dept. of Public Safety
Personnel Dept.
919 Ala moana Blvd.
Room 110
HNL 96814
Arrest + crt. record
201-211
539-4900
Helen

Enclosed Via

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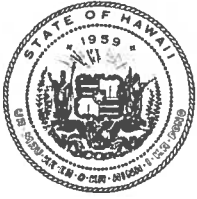
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Cathy Simmons
Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Coralie Matayoshi, Esq.
Hawaii State Bar Assoc.
1136 Union Mall, PH 1
Honolulu, HI 96813

January 12, 1998

FROM: John I

RE: Notice
rules

FOR John Corales
 DATE 1-12 TIME 8:15 A.M. P.M.

WHILE YOU WERE OUT

M ~~CORALES~~ MATAYOSHI
 OF HAW. BAR ASS. / 1136 Union Mall
 PH. # 537-1868 FAX # Punchbowl

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	RUSH	<input type="checkbox"/>

RETURNED YOUR CALL

MESSAGE _____

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Cathy Simmons
Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

From: April Wilson-South (APRIL)
To: Johni
Date: Friday, January 9, 1998 5:33 pm
Subject: Notice and comment A&CR

Meda Chesney-Lind, PhD, is willing to submit written testimony and to be present at the Friday hearing, but she needs to have a copy of the proposed rules and the notice of hearing sent to her. Her fax number is 956-9616. In case you don't know Meda, she is a Professor at UH-Manoa, a nationally recognized criminologist who specializes in issues related to women offenders, and probably the local academic expert regarding Hawaii's female offender population and women's correctional facilities. I'm not sure who is sending out the rules and notice, but if Cathy is, can you have her send Meda a copy on Monday morning? Thanks.

MODE = MEMORY TRANSMISSION

START=JAN-12 10:48

END=JAN-12 10:58

FILE NO. = 140

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	2	99569616	020/020	00:09'04"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
 830 Punchbowl Street Room 411
 Honolulu, Hawaii 96813
 Phone: 586-8659; Fax: 586-8655

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DATE: January 12, 1998

TO: Meda Chesney-Lind, Ph.D.

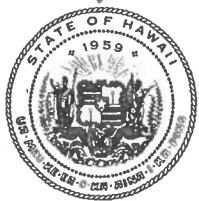
FAX: 956-9616

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Meda Chesney-Lind, PhD. January 12, 1998
U. H. - Manoa

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

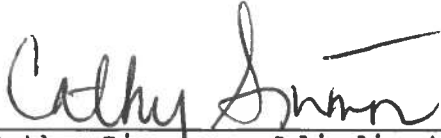
TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail FAXED

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<input checked="" type="checkbox"/> Per Your Request	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

SENT: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-12 10:31

END=JAN-12 10:48

FILE NO. = 139

STN NO. COM ABBR NO. STATION NAME TEL NO. PAGES
001 OK 95866301

***** -

**HAWAII CIVIL R
ADJUDICA**
830 Punchbo
Honolulu
Phone: 586-8

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DATE: January 12, 1998

TO: Jim Funaki

FAX: (6)6301

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

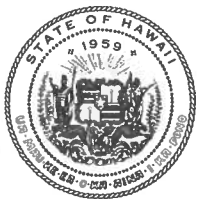
FOR Bill
 DATE 1-12 TIME 8:57 A.M.
P.M.

WHILE YOU WERE OUT

M Jim Funaki / Hse Maj Atty
 OF 66301 per project
 PH. # 66300 FAX # _____

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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Jim Funaki January 12, 1998
House Majority Attorney

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


TRANSMITTED HEREWITH:

Enclosed Via () Hand Delivery () Mail (x) FAXED

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() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
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() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-12 10:15

END=JAN-12 10:26

FILE NO. = 136

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	s	94383950	020/020	00:10

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**HAWAII CIVIL I
ADJUDICA
830 Punchbo
Honolulu
Phone: 586-**

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employee or agent responsible to de
hereby notified that any disseminati
communication is strictly prohibited
in error or are not sure whether it i

by collect telephone, and return the original message to us at the above address
via the United States Postal Service at our expense. Mahalo.

438-3580
438-3850 9470
PAT HAWKINS, ESQ
DEPT OF ARMY
USAR PAC
OFFICE OF THE STAFF
JUDGE ADVOCATE
BLDD T-12010R
438-3940
3950
STOP III
PT SHAFTER, HI
96858-5100

DATE: January 12, 1998

TO: Pat Hawkins, Esq.

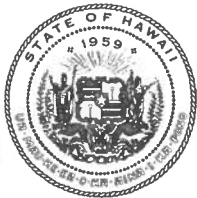
FAX: 438-3950

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAI'I CIVIL RIGHTS COMMISSION

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TRANSMITTAL MEMO

TO: Pat Hawkins, Esq. January 12, 1998
 USARPAC
 Office of the Staff Judge Advocate
 Bldg. T-102 Stop 111
 Ft. Shafter
 Honolulu, HI 96858-5100

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination

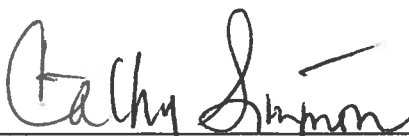
TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail FAXED

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<input type="checkbox"/> For Signature and Return	<input type="checkbox"/> For Correction
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<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

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 Cathy Simmons, Adjudication
 Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-09 17:00

END=JAN-09 17:06

FILE NO.= 115

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK		95866829	020/020	00:05'51"

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**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: January 9, 1998

TO: Senator Randy Iwase

FAX: 586-6829

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed
rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Senator Randy Iwase January 9, 1998
Hawaii State Capitol
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

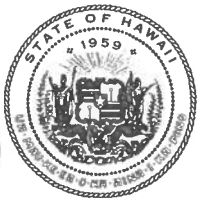
Enclosed Via Hand Delivery Mail FAXED

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Recordation
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<input type="checkbox"/> For Signature & Forwarding as Noted	<input type="checkbox"/> For Payment
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<input checked="" type="checkbox"/> Per Your Request	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

SENT: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: John Howard January 9, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail Faxed

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Recordation
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<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

Sent: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-09 15:55

END=JAN-09 16:05

FILE NO.= 110

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
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HAWAII CIVIL RIGHTS COMMISSION ADJUDICATION SECTION

830 Punchbowl Street Room 411

Honolulu, Hawaii 96813

Phone: 586-8659; Fax: 586-8655

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DATE: January 9, 1998

TO: John Howard

FAX: 524-3450

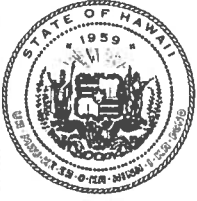
FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

John Howard
FAX 524-3450



HAWAI' CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Carl Varady January 9, 1998
 1164 Bishop Street, Suite 1205
 Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination

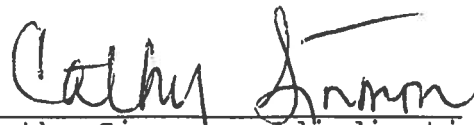
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| () For Necessary Action | () Disapproved |
| () Per Our Conversation | () For Your Files |
| | () See Remarks |

Enclosed: Copy of one set of Hawaii Administrative Rules;
 Chapter 46 Civil Rights Commission; Subchapter 10
 "Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
 in The Honolulu Advertiser, December 10, 1997.


 Cathy Simmons, Adjudication
 Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: P. Dendle January 9, 1998
Kaiser Permanente
1411 Kapiolani Blvd. 17th Floor
Honolulu, HI 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

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- (xx) Per Your Request
- () For Necessary Action
- () Per Our Conversation

*Phyllis Dendle
Kaiser Permanente
1441 Kapiolani 17th Fl
Hon HI 96814*

Enclosed: Copy of one set of
Chapter 46 Civil Rights
"Arrest and Court Record Discrimination"

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-09 15:41

END=JAN-09 15:52

FILE NO. = 108

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK		95225909	020/020	00:09'55"

***** - *****

HAWAII CIVIL RIGHTS COMMISSION ADJUDICATION SECTION

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: January 9, 1998

TO: Vanessa Chong

FAX: 522-5909

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

Vanessa
522-5909



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Vanessa Chong
American Civil Liberties Union
P. O. Box 3410
Honolulu, HI 96801

January 9, 1998

FROM: John Ishihara, Chief Counsel


RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=JAN-09 15:26

END=JAN-09 15:33

FILE NO. = 106

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	8	95381382	020/020	00:07'22"

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**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: January 9, 1998

TO: Elbridge Smith

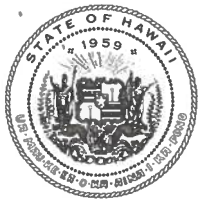
FAX: 538-1382

FROM: John Ishihara, Chief Counsel

SUBJECT: **Notice of Public hearing regarding proposed rules to Arrest and Court Record Discrimination**

NO. OF PAGES INCLUDING THIS COVERSHEET: 20

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Elbridge Smith January 9, 1998
841 Bishop Street
Honolulu, HI 96819

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via Hand Delivery Mail Faxed

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A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Elbridge Smith
FAX 538-1382
Carl Vandy
~~538-1382~~
man

Cathy Simmons
Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Kirk Cashmere
201 Merchant Street
Honolulu, HI 96813

DATE: January 9, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

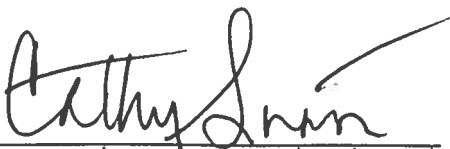
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	() See Remarks

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: SHOPO January 9, 1998
Michael K. Kaneshiro
Chief Counsel
1717 Hoe Street
Honolulu, HI 96819

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Ray Domingo January 9, 1998
P. O. Box 4595
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

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Enclosed: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Carolyn E. Hayashi, Esq. January 9, 1998
Davies Pacific Center
Suite 850
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

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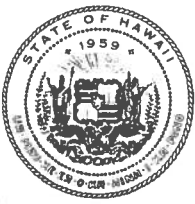
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E.
Carolyn Hayashi, Esq.
Davies Pacific Ctr. Suite 850
HNL 96813

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Chapter 46
"Arrest ar

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in The Hor

Cathy Simmons
Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAI'I CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Albert Dennis, President
Safeguard Services
1000 Bishop Street Suite
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing
rules to Arrest and Court

TRANSMITTAL

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- For Signature & Forwarding as Noted
- For Review and Comment
- Per Your Request
- For Necessary Action
- Per Our Conversation

Enclosed: Copy of one set of Hawaii
Chapter 46 Civil Rights
"Arrest and Court Record"

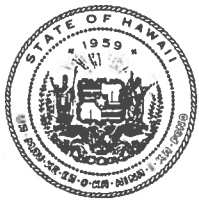
A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

ALBERT Dennis
Pres-SAFEGUARD
SERVICES
Suite 608
1000 Bishop
96813

CI



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Martin & McArthur
1815 Kahai Street
Honolulu, HI 96819
Attn: Maria

FROM: John Ishihara, Chief Co

RE: Notice of Public Hearing
rules to Arrest and Cou

TRANSMITT

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- For Your Information
- For Signature and Return
- For Signature & Forwarding
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- Per Our Conversation

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Chapter 46 Civil Right
"Arrest and Court Reco

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

*Maria
Secretary*

*Martin & McArthur
1815 Kahai St.
HNL 96819*

Arrest & Cr. Record

Cathy Simmons
Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Clinical Laboratories December 6, 1998
of Hawaii
1831 Wilipa Loop
Wailuku, Maui 96793

Attn: Alison Horie

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


TRANSMITTED HEREWITH:

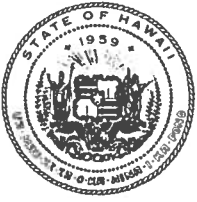
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	<input type="checkbox"/> See Remarks

Enclosed: Copy of one set of Hawaii Administrative Rules;
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMISSION

TO: Madilyn Silverman,
 Program Specialist
 Dept. of Human Resources
 820 Mililani Street
 Honolulu, HI 96813

FROM: John Ishihara,

RE: Notice of Public Hearing regarding proposed
 rules to Amend the Department of Human Resources Record Discrimination

December 6, 1998

*#710 96813 (DHS)
 (Dept. of Human Services)*

ENCLOSURES:

Enclosed Via _____ very _____ (x) Mail _____ () Messenger _____

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<input type="checkbox"/> For Your	<input type="checkbox"/> For Your Files
<input type="checkbox"/> Per	<input type="checkbox"/> See Remarks

*Cathy
 820 Mililani St
 Ph # 586-5890*

*Madilyn Silverman
 Program Specialist*

This information that the following were picked up from
 from the setime during the month of December 1997:

a set of Hawaii Administrative Rules;
 Hawaii Civil Rights Commission; Subchapter 10
 "Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
 in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons
 Cathy Simmons, Adjudication
 Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Jared H. Jossem
Verner Liipfert Bernhard Mcpherson Hand
745 Fort Street, 6th Floor
Honolulu, Hawaii 96813

DATE: January 06 , 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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() Per Our Conversation	() For Your Files
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in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

*Send
copy of rules
H*

DATE: December 20, 1997

TO: Civil Rights Commission

FROM: Amy McAngus
Golden State Foods

PAGES: 1 (including cover page)

RE: PROPOSED LEGISLATION

.....

I would like a copy of the following proposed regulations:

Hawaii Administrative Rules
Title 12
Dept. of Labor & Ind. Relations
Subtitle 7
Boards
Chapter 46
Civil Rights Commission
Subchapter 10
Arrest & Court Record Discrimination

Please send copy to:

Amy McAngus
Golden State Foods
94-554 Ukee Street
Waipahu, HI 96797

Please call me at Ph. 671-4017 if there are any questions. Thank you.



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Amy McAngus
Golden State Foods
94-554 Ukee Street
Waipahu, HI 96797

DATE: January 5, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Brian Kagihara
DOH Certification and
Monitoring Unit
2827 Waimano Home Road
Pearl City, HI 96782

DATE: January 5, 1998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

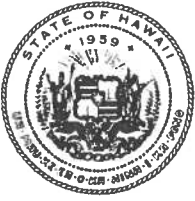
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<input type="checkbox"/> For Signature & Forwarding as Noted	<input type="checkbox"/> For Payment
<input type="checkbox"/> For Review and Comment	<input type="checkbox"/> Approved
<input checked="" type="checkbox"/> Per Your Request	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> For Necessary Action	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> For Your Files
	<input type="checkbox"/> See Remarks

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"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Director of Human Res. DATE: December 19, 1997
Straub Clinic
888 S. King Street
Honolulu, HI 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

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(XX) For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Allison Price, Director Of Hum. Res.
Tube 29
Straub Clinic & Hospital
888 South King Street
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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<input type="checkbox"/> For Review & comment	<input type="checkbox"/> See remarks below
<input type="checkbox"/> For necessary action	<input type="checkbox"/> Please contact this office upon receipt

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Richard S. Ekimoto, Esq. DATE: December 19, 1997
1132 Bishop Street Suite 902
Honolulu, HI 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Richard S. Ekimoto, Esq.
Penthouse One
707 Richards Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 22, 1997

TO: Center Scale Automation Hawaii
2632-A Kilihau Street
Honolulu, Hawaii 96819
Attention: Miyuki

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

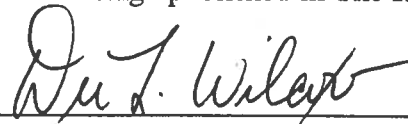
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for 
Cathy Simmons, Adjudication
Secretary to John Ishihara

Castley

Copy of rules

Brian Kagihara

DOH Certification + Monitoring Unit

2827 Waimano Home Road

Penal City, HI 96782

FOR Bill
DATE 12-19 TIME 11:00 A.M.
P.M.

WHILE YOU WERE OUT

M Brian Kagihara
OF Dept. of Health
PH. # 453-6416 FAX # _____

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input checked="" type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input checked="" type="checkbox"/>

RETURNED YOUR CALL

MESSAGE _____

SIGNED Step



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 22, 1997

TO: Lori E. Jio, Personnel & Benefits Manager
VIP Foodservice
P.O. Box 517
Kahului, Hawaii 96733

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

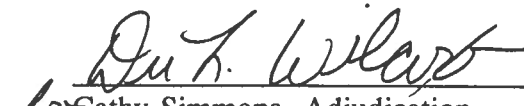
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Cathy Simmons, Adjudication
Secretary to John Ishihara

facsimile
TRANSMITTAL

to: Civil Rights Commission
fax #: 1-808-586-8655
re: Proposed Regulations
date: December 19, 1997
pages: 1, including this cover sheet.

Please send us a copy of the proposed regulations regarding the employment inquiries for individuals with arrest record or convictions records.

Hawaii Administrative Rules
Title 12
Dept. Of Labor & Industrial Relations
Subtitle 7
Boards
Chapter 46
Civil Rights Commission
Subchapter 10
Arrest & Court Record Discrimination

Our mailing address is: P. O. Box 517, Kahului, HI 96733

From the desk of...

Lori E. Jio
Personnel & Benefits Manager
VIP Foodservice
P. O. Box 517
Kahului, HI 96733

808-877-5055, ext. 205
Fax: 808-877-4960



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 22, 1997

TO: DMR
360 B Mokauea Street
Honolulu, Hawaii 96819

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

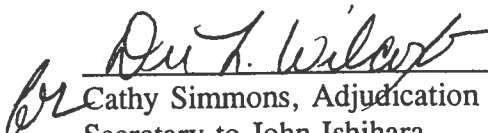
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Cathy Simmons, Adjudication
Secretary to John Ishihara

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

FAX 586-8655

TRANSMITTAL MEMO

TO: Desmond Byrne, Owner
Honolulu Info. Service
PO Box 2390
Honolulu, HI 96804

DATE: December 31, 1997

THANKS

SUGGESTION

ATTACHED

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

JSM
- 12/31

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| | <input type="checkbox"/> See Remarks |

DIFFICULT
TO
READ

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Cathy Simmons

Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Leilani
Magoo's Auto Parts
722 Kanoelehua Avenue
Hilo, Hawaii 96720

DATE: December 22, 1997

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

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(XX) For Your Information	() For Recordation
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Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Pancho Alcon
P.O. Box 586
Kaunakakai, Hawaii 96748

DATE: December 22, 1997

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

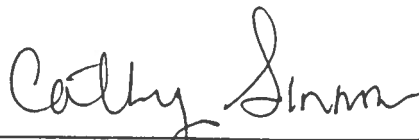
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Secretary to JOHN ISHIHARA

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Paradise Beverages
ATTN: Lyan Bonn Human Resource & Payroll Administrator
94-1450 Moeniani Street
Waipahu, Hawaii 96797

DATE: December 26 , 1997

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

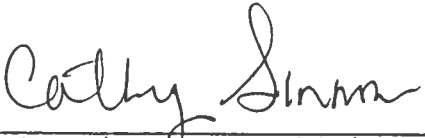
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Robert Hall
P.O. Box 4124
Honolulu, Hawaii 96812

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

No address

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

HEREWITH

- Per your request
- Per our conversation
- For your files
- See remarks below
- Please contact this office upon receipt

Administrative Rules; Chapter 46 Civil Rights
t and Court Record Discrimination"; and

aring" published in The Honolulu Advertiser,

Cathy Simons

Simons, Adjudication
ary to John Ishihara

12/18/97

Cathy -

*Please return envelope so
we can get refund for postage
on front & back side of envelope*

*Thank you
Kanani*

Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu HI 96813

Robert Hall
P.O. Box 4124
Honolulu, Hawaii 96812

HALL124 968124003 IN 02 12/16/97
RETURN TO SENDER

NO FORWARD ORDER ON FILE
UNABLE TO FORWARD
RETURN TO SENDER



97 DEC 18 P1:44

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Senator Sam Slon
Hawaii State Capitol Room 208
Honolulu, HI

DATE: December 19, 1997

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

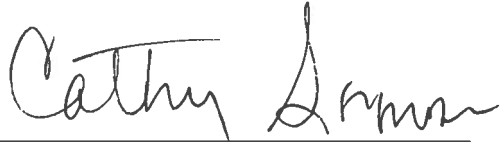
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: County of Kauai DATE: December 17, 1997
Dept. of Personnel
4444 Rice Street, Suite 140
Lihue, Kauai 96766
Attn: Verna, Personnel Mgt. Specialist

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: ILWU
451 Atkinson Drive
Honolulu, Hawaii 96814

DATE: December 17, 1997

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

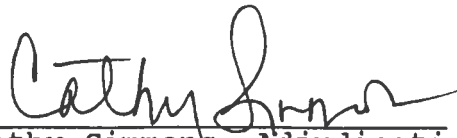
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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: UPW Local 646 DATE: December 17, 1997
1426 N. School Street
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

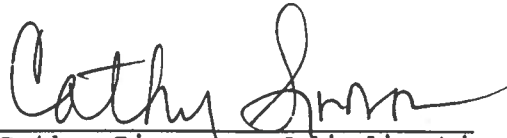
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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: AFL-CIO State Federal DATE: December 17, 1997
320 Ward Avenue, Suite 205
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Mark Obatake, Executive Director DATE: December 17, 1997
Hawaii Center for Independent Living
414 Kuwili Street, #102
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 16, 1997

TO: State Coordinating Council on Deafness
919 Ala Moana Blvd., Room 101
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

TRANSMITTED HEREWITH

For your information

Per your request

For signature & return

Per our conversation

For signature & forwarding

For Review & comment

For necessary action

*Hawaii State
Coordinating Council
on Deafness -
Call - 586-8131*

Enclosed: Copy of one set of Hawaii Administrative Rules, Chapter 100, Hawaii Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"

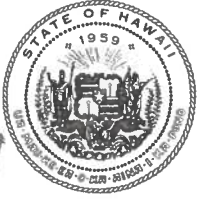
Receipt
; and

A copy of the "Notice Of Public Hearing" dated December 10, 1997.

Advertiser,

Cathy Simmons

Cathy Simmons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 16, 1997

TO: State Planning Council on Developmental Disabilities
919 Ala Moana Blvd., Room #113
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

Was hand delivered from another agency

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<input type="checkbox"/> For necessary action	<input type="checkbox"/> Please _____ upon receipt

Call 586-8100

Enclosed: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"; and

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Cathy Simmons

Cathy Simmons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Human Resources Department DATE: December 17, 1997
Bank of Hawaii
P. O. Box 2900
Honolulu, Hawaii 96846

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

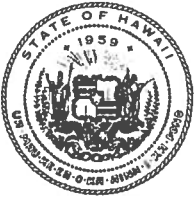
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() Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

Enclosed: Copy of one set of Hawaii Administrative Rules;
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Robert Toyofuku, Esq. DATE: December 17, 1997
1000 Bishop Street, Suite 902
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Wayson Chow, Esq. DATE: December 17, 1997
Century Square
1188 Bishop Street, Suite 801
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

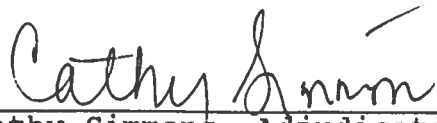
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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Carpenters Union Local 745 DATE: December 17, 1997
1311 Houghtailing Street
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Teamsters Local 996 DATE: December 17, 1997
 904 Kohou Street Suite 102
 Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination

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Cathy Simmons

Cathy Simmons, Adjudication
 Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Anthony Gill, Esq. DATE: December 17, 1997
Gill & Zukeran
547 Halekauwila Street, Suite 202
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

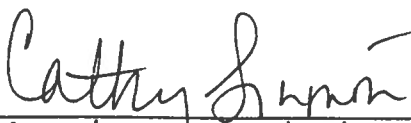
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Secretary to JOHN ISHIHARA



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

TRANSMITTAL MEMO

TO: HERE LOCAL 5--AFL-CIO DATE: December 17, 1997
1701 Ala Wai Blvd.
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

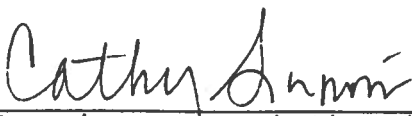
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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Clayton Ikei, Esq. DATE: December 17, 1997
1100 Ward Avenue, Suite 1065
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

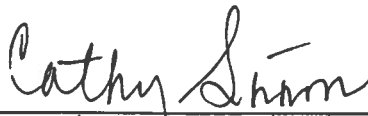
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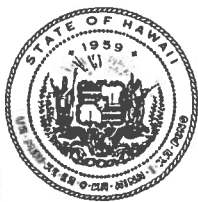
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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Herbert R. Takahashi, Esq. DATE: December 17, 1997
Takahashi Masui & Vasconcellos
547 Halekauwila St., Suite 206
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: HGEA - Local 152 AFSCME DATE: December 17, 1997
888 Mililani Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination


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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Commission On Persons With Disabilities
Attention: Debbie Jackson
919 Ala Moana Blvd., Room 101
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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Cathy Simmons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Lawrence Gregory Carter, Esq.
Koshiha Agena & Kubota
1001 Bishop Street, Suite 2600
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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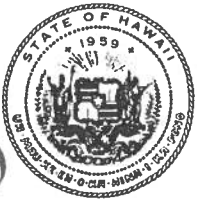
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Susan Arnett, Esq.
Office Of Public Defender
81 N. Market Street, Suite 200
Wailuku, Maui, Hawaii 96793

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: William A. Harrison, Esq.
841 Bishop Street, Suite 800
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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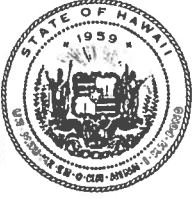
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Kathleen Leahy, Director Of Operations
Classic Resort
68-1310 Maunala Drive
Kohala Coast, Hawaii 96743

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Library
Cades Schutte Fleming & Wright
Attention: Debbie
P.O. Box 939
Honolulu, Hawaii 96808

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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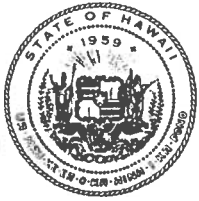
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 15, 1997

TO: Susan H. Kitsu, Affirmative Action Officer
The Judiciary, State of Hawaii
417 South King Street, #209
Honolulu, Hawaii 96813-2902

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

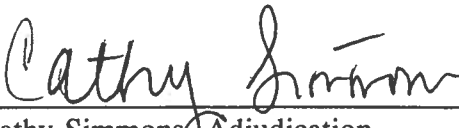
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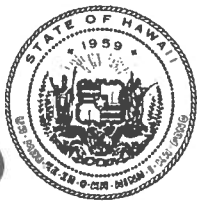
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 12, 1997

TO: Tom Yamashita
Superintendent Office
Department Of Education
1319 Miller Street, Room 416
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

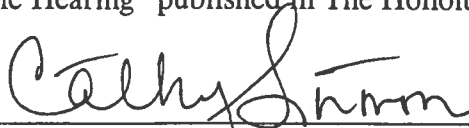
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<input type="checkbox"/> For signature & return	<input type="checkbox"/> Per our conversation
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<input type="checkbox"/> For Review & comment	<input type="checkbox"/> See remarks below
<input type="checkbox"/> For necessary action	<input type="checkbox"/> Please contact this office upon receipt

Enclosed: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"; and

A copy of the "Notice Of Public Hearing" published in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to John Ishihara

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
Telephone: (808) 586-8659

TRANSMITTAL MEMO

TO: Anna M. Elento-Sneed, Esq. DATE: December 10, 1997
 Carlsmith, Ball, et al
 P. O. Box 656
 Honolulu, HI 96809

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination


TRANSMITTED HEREWITH:

Enclosed Via () Hand Delivery () Mail (x) Messenger

(XX) For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
(XX) Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

Enclosed: Copy of one set of Hawaii Administrative Rules;
Chapter 46 Civil Rights Commission; Subchapter 10
"Arrest and Court Record Discrimination"; and

A copy of the "Notice of Public Hearing" published
in The Honolulu Advertiser, December 10, 1997.


Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA

MODE = MEMORY TRANSMISSION

START=DEC-10 09:04

END=DEC-10 09:15

FILE NO. = 149

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	S	98336731	018/018	00:10'21"

***** - ***** - *****

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: December 10, 1997

TO: Connie Hastert

FAX: (808) 833-6731

FROM: John Ishihara

SUBJECT: Hawaii Administrative Rules (Arrest and Court Record
Discrimination) Public Hearing January 16, 1998

NO. OF PAGES INCLUDING THIS COVERSHEET: eighteen

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=DEC-10 12:01

END=DEC-10 12:03

FILE NO. = 160

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	S	98336731	002/002	00:01'21"

***** - ***** - *****

**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION**

830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: December 10, 1997

TO: Connie Hastert

FAX: (808) 833-6731

FROM: John Ishihara

SUBJECT: Hawaii Administrative Rules (Arrest and Court Record
Discrimination) Public Hearing January 16, 1998
The above was faxed to you earlier. A copy of the Notice of
Public Hearing that was published in the Honolulu Advertiser
this same day is also being faxed to you for reference.

NO. OF PAGES INCLUDING THIS COVERSHEET: two

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Holly Bachini
233 Keawe Street, #625
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

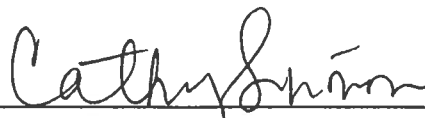
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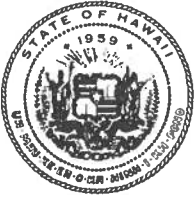
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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Kim Moore, Director Of Human Resources
Honolulu Mortgage
201 Merchant Street, Suite 1700
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

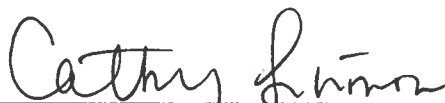
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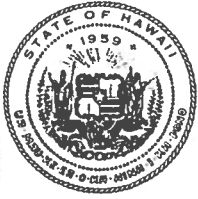
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Cathy Simons, Adjudication
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Richard Hashimoto
Sr VP & Dir Prsnl Indus Relations
ITT Sheraton Corporation
2155 Kalakaua Avenue
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Tim Lyons Executive VP
HI Business League
677 Ala Moana Blvd, #815
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

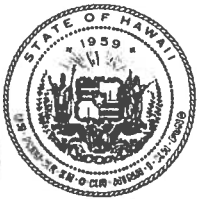
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Roy King, Jr. Sr. Vice President
First Hawaiian Bank
P.O. Box 3200
Honolulu, Hawaii 96847

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Gene Murata
Human Resources Department
Servco Pacific
89 South King Street, 4th Floor
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Marti Wukelic
Human Resources Director
Hotel Hana Maui
P.O. Box 9
Hana, Maui, Hawaii 96713

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Elizabeth J. Fujiwara, Esq.
Attorney At Law
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 1655
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Ann Isobe, Esq.
Devens Lo Nakano Saito Lee & Wong
220 S. King Street, Suite 1600
Honolulu, Hawaii 96913

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: John Manion
1580 Makaloa Street, #1060
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

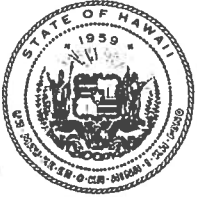
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Stan Yates
P.O. Box 417
Ele'ele, Kauai, Hawaii 96705

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Barbara Date, Ph.D Case Manager
Big Island Aids Project
P.O. Box 11510
Hilo, Hawaii 96720

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Myles Iyo
State Of Hawaii
Public Safety Department
RFD-1 Kawiki Road
Hilo, Hawaii 96720-98001

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: John Howard Association Of Hawaii
200 N. Vineyard Blvd
Suite 300
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Denice Vongnechten
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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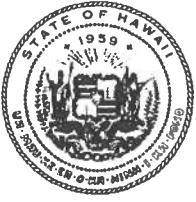
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Allicyn Hikida Tasaka
1334 Kaihee Street, #101
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Claudio R. Suyat
45-596 Apuakea Street, #14
Kaneohe, Hawaii 96744

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Jack Law
1877 Kalakaua Avenue
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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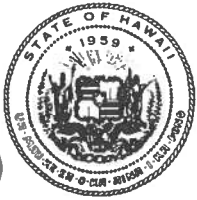
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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Faye Kennedy
3071 Felix Street
Honolulu, Hawaii 96816

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Harry Yee, Esq.
Attorney At Law
333 Queen Street, Suite 803
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaii Centers For Independent Living
677 Ala Moana Blvd
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Liz Crisp
Ogden Aviation
P.O. Box 29568
Honolulu, Hawaii 96820

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

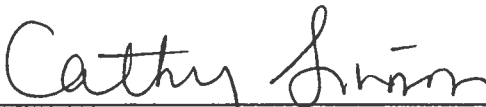
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Richard S. Ekimoto, Esq.
Penthouse One
707 Richards Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Na Loio No Na Kanaka
810 North Vineyard Blvd.
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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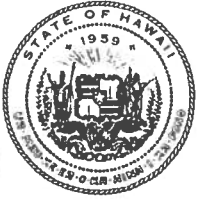
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: William W. Watkins, Esq.
1001 Bishop Street, Suite 2010
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Terri Montano
Sultan Company
2255 Kuhio Avenue, Suite 2000
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Mark Obatake Executive Director
Hawaii Center For Independent Living
677 Ala Moana Blvd., Suite 118
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

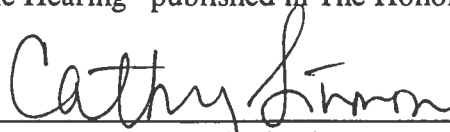
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Richard Botti
Legislative Information Services
677 Ala Moana Blvd., Suite 815
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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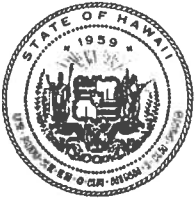
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: John Gasher
Alexander & Baldwin
822 Bishop Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Gerry Ikuta Personnel Specialist
Ala Moana Hotel
410 Atkinson Drive
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAI' CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Operations Manager DATE: December 17, 1997
 Select Temporary Services
 550 Paiea Street, Suite 222
 Honolulu, HI 96819-1837

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
 rules to Arrest and Court Record Discrimination

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		()	See Remarks	

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Cathy Simmons, Adjudication
 Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Allison Price, Director Of Hum. Res.
Tube 29
Straub Clinic & Hospital
888 South King Street
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Geoffrey Johnson Director Of Employment
Hawaiian Electric
P.O. Box 2750
Honolulu, Hawaii 96840

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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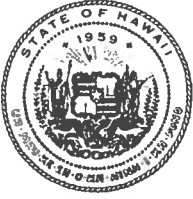
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Becky Dixon
East-West Center
1777 East West Road
Honolulu, Hawaii 96848

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Diane C. Freekin, Ex VP and Dir
Human Resources Department
Bank of Hawaii
111 S. King Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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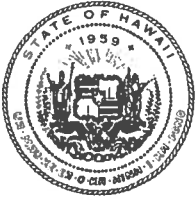
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Aaron M. Chaney
Chaney Brooks & Company
P.O. Box 212
Honolulu, Hawaii 96810

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Deborah Pratt
P.O. Box 1449
Kailua-Kona, Hawaii 96748

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Boys & Girls Club Of Honolulu
June Raymond, Financial Manager
1704 Waiola Street
Honolulu, Hawaii 96826

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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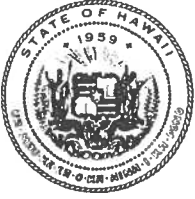
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Judy Gorman
Hawaii Association Of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

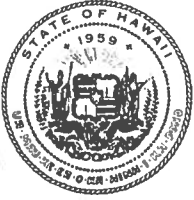
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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Kathleen Tavete
Librarian
745 Fort Street Mall, 5th Floor
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

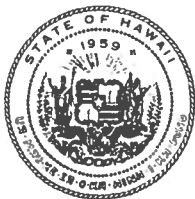
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Committee on Welfare Concerns
c/o 810 North Vineyard Blvd.
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Wendy Vanderburgh
Carlsmith, et al.
1001 Bishop Street, Suite 2200
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: ~~Diane Tizard~~
Hawaii Center for Independent Living
~~677 Ala Moana Blvd., Suite 118~~
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination


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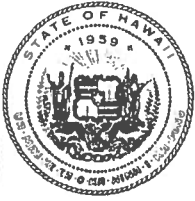
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Robert Hall
P.O. Box 4124
Honolulu, Hawaii 96812

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

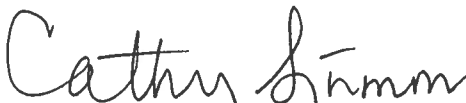
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: May Goya Employee Relations Manager
Zippy's Inc.
1765 S. King Street
Honolulu, Hawaii 96826

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

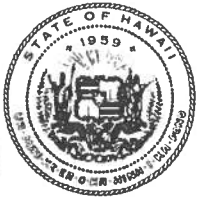
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Scott I. Batterman, Esq.
Davies Pacific Center
841 Bishop Street, Suite 1500
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

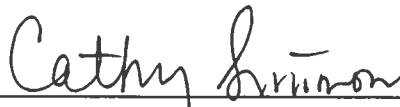
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Michelle Azuma
Personal & Labor Relations
Hawaiian Tug & Barge
P.O. Box 3288
Honolulu, Hawaii 96801

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

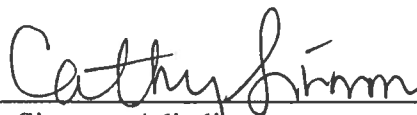
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Dennis W.S. Chang, Esq.
735 Bishop Street, Suite 320
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Donald Bender President
Haleakala Dairy
55 South Wakea Avenue
Kahului, Hawaii 96732

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

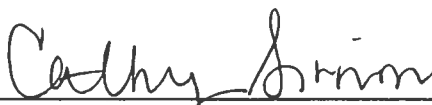
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Beth Weaver, Librarian
Cades Schutte Fleming & Wright
1000 Bishop Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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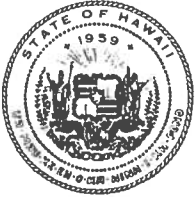
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Agnes Ringle
Pacific Village
98-314 Ualo Street, #G-1
Aiea, Hawaii 96701

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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DATE: December 11, 1997

TO: Mark Skirmstad, Librarian
Torkildson & Katz, et al.
700 Bishop Street, 15th Floor
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Merrilyn-Ann K. Ing Director Of Government Affairs
Hawaii Association Of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Jake Manegdeg
Oahu Filipino Community Council
1270 Queen Emma Street, Suite 606
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Honolulu Start Bulletin
Attention: Ben Seto
P.O. Box 3080
Honolulu, Hawaii 96802

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Lunsford D. Phillips, Esq.
Pioneers Plaza
900 Fort Street Mall, #1620
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

TRANSMITTAL MEMO

TO: Personnel Manager DATE: December 17, 1997
Hawaiian Cement
1100 Alakea Street #2300
Honolulu, Hawaii 96813-2833

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

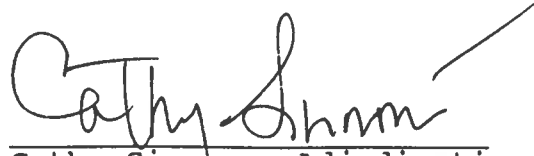
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() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
() Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Glenn Takahashi
Director Of Recruitment/Public Relations
Zippy's
1765 S. King Street
Honolulu, Hawaii 96828

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Wesley M. Fujimoto, Esq.
1800 Pioneer Plaza
900 Fort Street Mall
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

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A copy of the "Notice Of Public Hearing" published in The Honolulu Advertiser, December 10, 1997.

Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Lowell K.Y. Chun-Hoon, Esq. DATE: December 17, 1997
King Nakamura & Chun-Hoon
220 S. King Street, Suite 980
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via () Hand Delivery (x) Mail () Messenger

(XX) For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
() Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Wilfredo Tunglo, Esq.
Filipino Chamber Of Commerce
2512 Komo Mai Drive
Pearl City, Hawaii 96782

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Director, Governor's Committee on Aids
591 Ala Moana Boulevard Room, #118
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

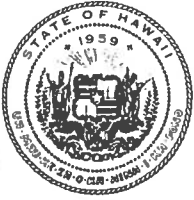
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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Carleen Choo Human Resources Director
Food Pantry, Ltd.
3536 Harding Avenue, Suite 401
Honolulu, Hawaii 96816

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

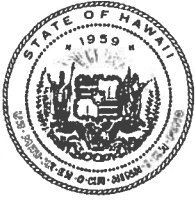
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Peter Labrador, Esq.
President Hawaii Filipino Lawyers Association
550 Halekauwila Street, Suite 102
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Alfredo G. Evangelista, Esq.
Grauly Evangelista & Quiban
Ocean View Center
707 Richards Street, Suite 710
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Department Of Health
Affirmative Action Office
P.O. Box 3378
Honolulu, Hawaii 96801-3378

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: State Coordinating Council on Deafness
5 Waterfront Plaza
500 Ala Moana Boulevard, Rm. 210
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Helen Cavazoa
McDonald's Restaurant of Hawaii
237 Queen Emma Square
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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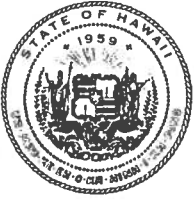
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Helen Sadorra
Kobayashi Watanabe
Hawaii Building
745 Fort Street, 8th Floor
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Naomi Tsujioka
Oliver Lee Lawn
707 Richards Street, Suite 600
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Office Of Consumer Protection
DCCA
P.O. Box 3767
Honolulu, Hawaii 96812

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Debbie Yotogo
Title Guaranty Escrow Services, Inc.
235 Queen Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Mel Kutara
City & County Of Honolulu
Department Of Personnel
550 S. King Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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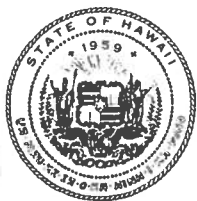
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Hawaii Women Lawyer's
P.O. Box 2072
Honolulu, Hawaii 96805

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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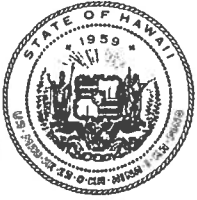
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: State Planning Council on Developmental Disabilities
Five Waterfront Plaza
500 Ala Moana Boulevard, #200
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Robert Keller
1001 North School Street
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Richard Chong
1155 Fort Street Mall
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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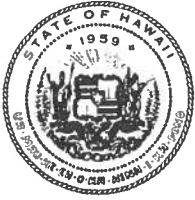
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: American Civil Liberties Union Of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Reynold Shishido
P.O. Box 166
Wailuku, Hawaii 96793

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

TRANSMITTAL MEMO

TO: Fuku Construction, Inc. DATE: December 17, 1997
Attn: Nick
P. O. Box 1455
Wailuku, Maui 96793

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

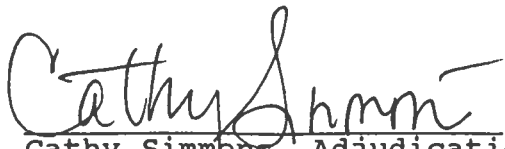
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Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Kathy Oyadomari Employee Relations Manager
Outrigger Hotels Hawaii
2375 Kuhio Avenue
Honolulu, Hawaii 96815-2939

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

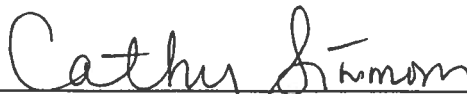
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Enclosed: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"; and

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Protection & Advocacy Agency Hawaii
1580 Makaloa Street, Suite 1060
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Amy Kurihara Vice-President
Title Guaranty Escrow Services
235 Queen Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Diane Suehisa Director Of Human Services
Turtle Bay Hilton & Country Club
P.O. Box 187
Kahuku, Hawaii 96731

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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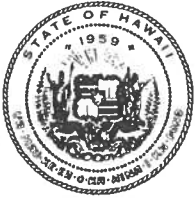
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Cathy Simons

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Sheila Sumida
Commercial Savings
First Hawaiian Tower
1132 Bishop Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

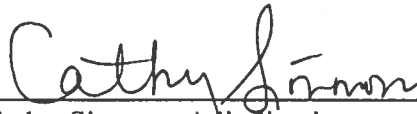
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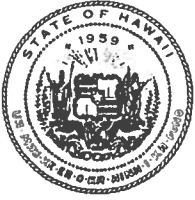
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Y.W.C.A.
Public Policy Committee
P.O. Box 337
Honolulu, Hawaii 96809

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

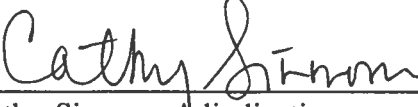
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: D. Yogi
C. Brewer & Company
827 Fort Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Daniel R. Foley, Esq.
Partington and Foley
2450 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813-3608

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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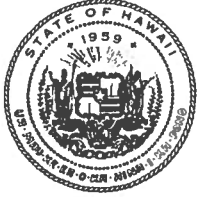
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Chris Chun
Title Guaranty Escrow Services, Inc.
235 Queen Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Handicapped Rights Project
1108 Nuuanu Avenue
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Julie Walker Personnel Manager
Hilton Hawaiian Village
2005 Kalia Road
Honolulu, Hawaii 96815-1999

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Darrell Tajima Human Resources Director
Meadow Gold Dairies, Inc.
P.O. Box 1880
Honolulu, Hawaii 96805

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

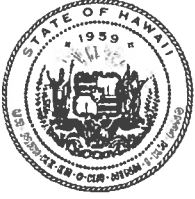
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Dennis Washington Director Of Operations
Eagle Distributors, Inc.
99-877 Iwaena Street
Aiea, Hawaii 96701

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

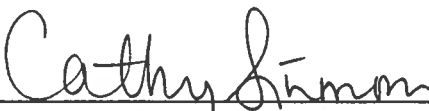
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Barbara A. Petrus, Esq.
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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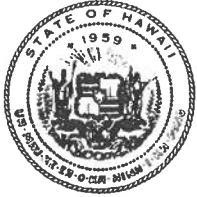
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Cathy Simons

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Daniel Dinell Executive Office
Hilton Hawaiian Village
4331 Kauai Beach Drive
Lihue, Kauai, Hawaii 96766-9158

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Kay Matsuno
Meadow Gold Dairies, Inc.
P.O. Box 1880
Honolulu, Hawaii 96805

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: American Association Of University Of Women
Honolulu Branch
1802 Keeaumoku Street
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

TRANSMITTAL MEMO

TO: Chamber of Commerce of Hawaii DATE: December 17, 1997
1132 Bishop Street, Suite 200
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed
rules to Arrest and Court Record Discrimination

TRANSMITTED HEREWITH:

Enclosed Via () Hand Delivery (x) Mail () Messenger

(XX) For Your Information	() For Recordation
() For Signature and Return	() For Correction
() For Signature & Forwarding as Noted	() For Payment
() For Review and Comment	() Approved
() Per Your Request	() Approved as Noted
() For Necessary Action	() Disapproved
() Per Our Conversation	() For Your Files
	() See Remarks

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"Arrest and Court Record Discrimination"; and

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Cathy Simmons, Adjudication
Secretary to JOHN ISHIHARA



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaii Women's Political Caucus
P.O. Box 61659
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

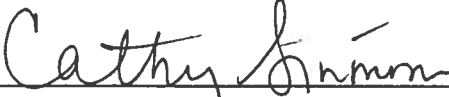
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Mike Ben
Department Of Civil Services
101 Aupuni Street, #133
Hilo, Hawaii 96720

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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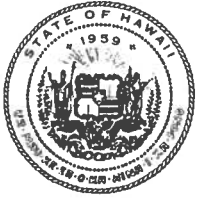
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Peter Fritz, Esq.
1142 Auahi Street, #3316
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Stanley G. Yates
P.O. Box 417
Ele'ele, Hawaii 96705

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

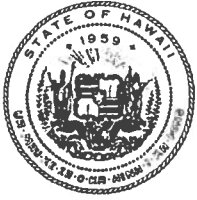
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Edwin s. Taira
Assistant Housing Administrator
50 Wailuku Drive
Hilo, Hawaii 96720-2484

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Charles W. Kerle, Director Human Resources Services
GTE Hawaiian Tel
P.O. Box 2200
Honolulu, Hawaii 96841

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaii Electric Light Company, Inc.
P.O. Box 1027
Hilo, Hawaii 96721

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

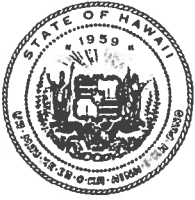
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Maui Electric Company, Ltd.
P.O. Box 398
Kahului, Hawaii 96733

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Mary Ananian
President, Board Of Directors
Fairway Villa, AOA
2345 Ala Wai Boulevard, 2301
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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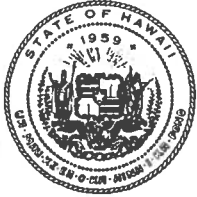
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawaii 96840

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

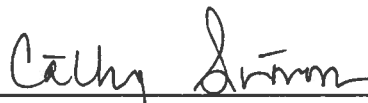
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Peter H. Schall, Area General Manager
Hilton Resorts Hawaii
2005 Kalia Road
Honolulu, Hawaii 96815-1999

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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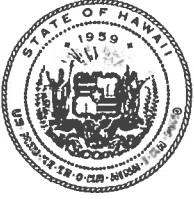
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaiian Tug And Barge Corporation
Young Brothers, Ltd.
P.O. Box 3288
Honolulu, Hawaii 96801

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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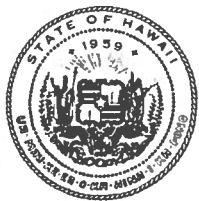
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Murray Towill, President
Hawaii Hotel Association
Suite 1103
2270 Kalakaua Avenue
Honolulu, Hawaii 96815-2564

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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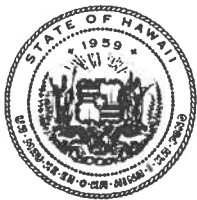
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Jane Sugimura, President
Hawaii Council Of AOA
677 Ala Moana, Suite 701
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Medford G. Dyer, President
M. Dyer & Sons, Inc.
98-054 Kuleana Road
Pearl City, Hawaii 96782

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Bob Lee
Sr. VP Of Human Resources
American Savings Bank
915 Fort Street Mall
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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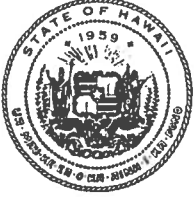
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Larry W. Pang
American Linen Company
2771 Wai Wai Loop
Honolulu, Hawaii 96819

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Andre S. Wooten, Esq.
Attorney At Law
1188 Bishop Street, Suite 1909
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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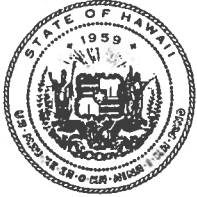
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: The Greenwood Condominium
AOAO
1128 Ala Napunani Street
Honolulu, Hawaii 96818

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Joyce Hedani, Employee Relations Director
Liberty House
P.O. Box 2690
Honolulu, Hawaii 96845

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Jan Berman, President
Retail Merchants of Hawaii
539 Cooke Street, Suite 203
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Barry Taniguchi, President
KTA Super Stores
50 E. Puainako Street
Hilo, Hawaii 96720

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Wayne Ogino Director Of Human Resources
ITT Sheraton Hotels in Waikiki
2255 Kalakaua Avenue
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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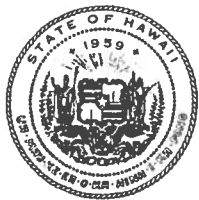
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Enclosed: Copy of one set of Hawaii Administrative Rules; Chapter 46 Civil Rights Commission; Subchapter 10 "Arrest and Court Record Discrimination"; and

A copy of the "Notice Of Public Hearing" published in The Honolulu Advertiser, December 10, 1997.

Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Wayne G. Carvalho, Police Chief
County of Hawaii Police Department
349 Kapiolani Street
Hilo, Hawaii 96720-3998

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaii Island Chamber Of Commerce
202 Kamehameha Ave
Hilo, Hawaii 96720

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

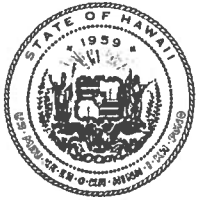
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Dwayne T. Mukai, Business Manager
Office Of Prosecuting Attorney
34 Rainbow Drive
Hilo, Hawaii 96720

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

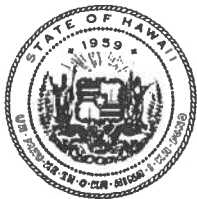
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Frances E.H. Lum, Esq.
Department Of The Attorney General
425 Queen Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Adult Probation Office
777 Punchbowl Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Alu Like
Ex Offender Project
567 S. King, Suite 105
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Janis D. Casco, Executive Director
The Whaler, AOA
2481 Kaanapali Parkway
Lahaina, Hawaii 96761-1994

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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

DATE: December 11, 1997

TO: State Of Hawaii
Department Of Public Safety
919 Ala Moana Blvd., 4th Floor
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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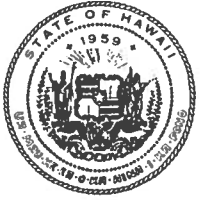
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Robert Boettcher, Firm Administrator
Shigeji Sato & Company
1299 S. Beretania Street, Suite 200
Honolulu, Hawaii 96814

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Suzanne Young, Staff Attorney
Protection and Advocacy Agency of Hawaii
1580 Makaloa Street, Suite 1060
Honolulu, Hawaii 96814-3280

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

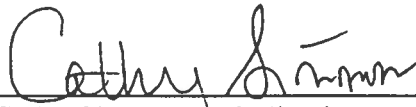
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Signe Godfrey
Olsten Staffing Services
900 Fort Street Mall
Pioneer Plaza, Suite 1202
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAI'I CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Amefil "Amy" Agbayani
3432-1 Kalihi Street
Honolulu, Hawaii 96819

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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For Review & comment

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Honolulu Police Department
801 S. Beretania Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination


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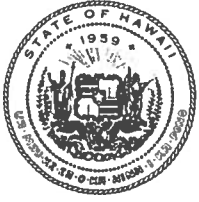
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Department Of Human Resources Department
235 S. Beretania Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Ruth I. Tsujimura, Esq.
Department Of The Attorney General
Employment Relations Division
465 South King Street, Room B-2
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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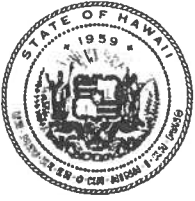
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Choy & Nauyokas
Grosvenor Center, Makai Tower
733 Bishop Street, Suite 2300
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Simons & Ichinose
Penthouse One
Ocean View Center
707 Richards Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Department Of Corporation Counsel
530 S. King Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: Public Defender
1130 North Nimitz Highway
Suite A-135
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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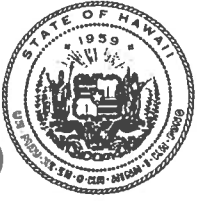
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: G. Todd Withy, Esq.
707 Richards Street
Suite, #711
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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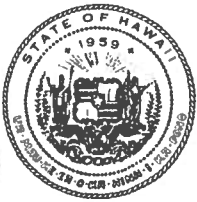
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Frederick R. Troncone, Esq.
Case Myrdal Bigelow & Lombardi
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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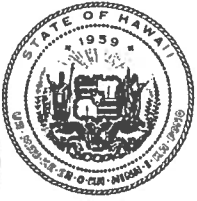
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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAI' CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Ellen Godbey Carson, Esq.
Alston Hunt Floyd & Ing
1001 Bishop Street, 18th Floor
Pacific Tower
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record Discrimination

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Lynette Jee
1710 Punahou, Apt. 903
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Goodsill Anderson Quinn & Stifel
P.O. Box 3196
Honolulu, Hawaii 96801

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

ENCLOSED VIA: Hand Delivery MAIL MESSENGER

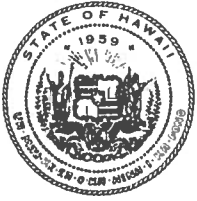
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Daphne E. Barbee-Wooten
1188 Bishop Street, Suite 1909
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Richard J. Port
1600 Ala Moana Blvd.
#3100
Honolulu, Hawaii 96815

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Office Of The Prosecuting Attorney
1060 Richards Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Jackie Mahi Erickson
P.O. Box 2750
Honolulu, Hawaii 96840-0001

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: City And County Personnel Department
550 S. King Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Betty Tatum, State Director
National Federation of Independent Businesses
1588 Piikea
Honolulu, Hawaii 96818

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Dr. William Puette
UH Center for Labor, Education & Research
1420 Lower Campus Drive
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Coralie Chun-Matayoshi, Executive Director
HSBA
1136 Union Mall, PH-1
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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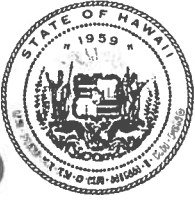
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Mark Fox, Esq.
Carlsmith, Ball, Et al.
P.O. Box 656
Honolulu, Hawaii 96809

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Karen Kamisato Risk Manager
Fletcher Pacific Construction
707 Richards Street, Suite 400
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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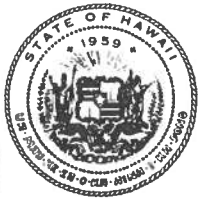
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Hawaii State Commission On The Status Of Women
335 Merchant Street, Room 253
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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Cathy Simons

Cathy Simons, Adjudication
Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: Honolulu Community Action Program, Inc.
1120 Maunakea Street, Suite 280
Honolulu, Hawaii 96817

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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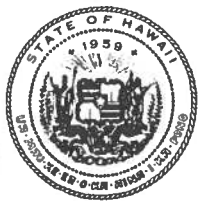
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HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: GTE Hawaiian Tel
1177 Bishop Street
Honolulu, Hawaii 96813

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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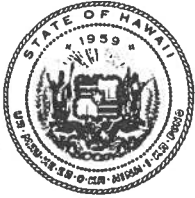
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Secretary to John Ishihara



HAWAII CIVIL RIGHTS COMMISSION

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

DATE: December 11, 1997

TO: American Friends Service
Committee/Hawaii Area Program Office
2426 Oahu Avenue
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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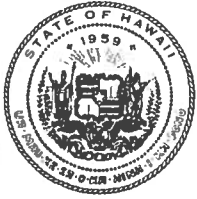
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

DATE: December 11, 1997

TO: Richard H. Haake Managing Director
County Of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
Discrimination

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

DATE: December 11, 1997

TO: William Tagupa
3425 Loulu Street
Honolulu, Hawaii 96822

FROM: John Ishihara, Chief Counsel

RE: Notice of Public Hearing regarding proposed rules to Arrest and Court Record
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HAWAII CIVIL RIGHTS COMMISSION

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

September 1, 1998

Honorable Benjamin J. Cayetano
Governor
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Re: Hawaii Civil Rights Commission Proposed Rules on Arrest
and Court Record Discrimination

Dear Governor:

On August 14, 1998, the Commission voted to withdraw its proposed rules on Arrest and Court Record Discrimination. In light of the enactment of Act 175, S.L.H. 1998, the Commission believes that the proposed rules would be inconsistent with the law.

A public hearing was held on January 16, 1998, based upon your authorization to our request dated November 3, 1997.

The Commission thanks you for your continued support of civil rights and the Hawaii Civil Rights Commission.

Sincerely,


William D. Hoshije
Executive Director



HAWAII CIVIL RIGHTS COMMISSION

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

November 4, 1997

MEMORANDUM

TO: JACK LAW AND HARRY YEE, RULES SUBCOMMITTEE

FROM: JOHN ISHIHARA 

RE: ARREST AND COURT RECORD RULES

Enclosed are the draft rules which are being sent to the Governor for his approval. The AG and the Director of Labor signed off.

I will keep you posted on its progress. It has to be reviewed by Budget and Business and Economic Development.

cc: Bill




STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

November 3, 1997

MEMORANDUM

To: The Honorable Benjamin J. Cayetano
Governor

From: Lorraine H. Akiba, Director 
Department of Labor and Industrial Relations

Subject: AMENDMENTS TO CHAPTER 12-46, CIVIL RIGHTS COMMISSION,
HAWAII ADMINISTRATIVE RULES

Your preliminary approval is requested to hold public hearings for the adoption by the Civil Rights Commission of Subchapter 10, Arrest and Court Record Discrimination, attached as Exhibit A. Because of legislative concern that the Commission adopt administrative rules on arrest and court record discrimination prior to the upcoming session, the Commission seeks to have these rules adopted by December 31, 1997. As a result the Commission seeks to have your approval by November 15, 1997, to go to public hearing.

In accordance with Administrative Directive 94-04, the following explanation of the proposed rules and their effect on operations is presented:

(1) Exact changes and reasons for changes.

The proposed rules add a new Subchapter 10 to Title 12, Chapter 46, of the rules of the Hawaii Civil Rights Commission to implement the statutory protections in Chapter 378, Part I, HRS, which prohibit employment discrimination because of an individual's arrest and court record. Presently, there are no administrative rules on arrest and court record discrimination. The proposed rules are needed to inform the public (employers and employees) about how the law will be enforced. The Commission has met with employer representatives and groups working with ex-offenders to receive their input about the content of these rules.

The difficulty in drafting rules is due to the conflicting goals in the law. On one hand, there is the goal of rehabilitation, of allowing individuals who have paid their debt to society to have an opportunity to work in order to be self-sufficient and not have to resort to crime. On the other hand, there is the goal of allowing businesses to protect their property and the safety of their employees and customers by not hiring persons with a criminal history that reflects upon their suitability to do the work they are hired to do. The Commission has attempted to balance these conflicting goals by proposing rules which clarify how employers can lawfully consider the arrest and court records of prospective and current employees.

Hawaii is one of four states with a law prohibiting discrimination because of an arrest and court record. No other state has administrative rules governing such discrimination. Thus, the Commission has drafted these rules without the benefit of other state's rules to use as a model or their experience in enforcing such rules.

The proposed rules establish the general policy that rehabilitation of individuals with an arrest and court record is essential to society and that gainful employment is necessary for rehabilitation. Therefore, records of arrests without conviction, i.e., for charges which are recent and still pending, shall not be used by an employer, except in limited circumstances. Arrests may only be considered if there is a safety risk to the employees or public based upon the nature of the offense; or if there is a statutory exemption or bona fide occupational qualification (BFOQ) and the offense charged relates to the exemption or BFOQ.

The rules differentiate between statutory exemptions and BFOQs. The rules recognize that certain employers have a statutory exemption to consider the suitability of individuals who have been convicted of certain crimes. For example, the State, DOE and private schools, condominiums, banks, and security guard firms have statutory exemptions. The rules allow such employers to inquire at anytime whether an individual has a conviction for an offense within the statutory exemption and to make employment decisions based upon the individual's conviction record.

For the BFOQ exception, the rules define how to establish a BFOQ. The rules also identify several situations where the Commission will recognize a potential BFOQ for certain employers, i.e., child care providers whose employees work in close proximity to children, hotel and hotel/condos for security guards

and other employees with access to room keys, liquor licensees' security personnel, and health care facilities whose employees work in close proximity to patients. The first three BFOQs parallel statutory exemptions for the DOE and private schools, condominiums, and security guard services. The last BFOQ is based upon Act 365, SLH 1997, which created a BFOQ for health care facility employees who work in close proximity to patients. The BFOQs identified in the rules do not preclude other employers from establishing a BFOQ for other jobs.

If there is a potential BFOQ, an inquiry into an individual's arrest and court record can be made only after a conditional offer of employment. If the individual has a record of conviction for a specified offense within the BFOQ, the employer must consider the suitability of the individual to do the work under the "no acceptable alternative with less discriminatory impact" factors. Based upon these factors, the employer can decide whether the individual is suited to be an employee. Under this suitability analysis, an individual will not be automatically eliminated because of having a conviction within the BFOQ. If there is no BFOQ, an employer may not inquire about or consider an individual's arrest and court record.

(2) Manner in which the rules will affect the operations or programs of the Commission.

The adoption of the rules will assist the Commission in the investigation and resolution of complaints for arrest and court record discrimination. The rules have been designed to eliminate the most common situation where there is a technical violation of the law for an unlawful inquiry. In such cases, job applicants are asked on an application form about their arrest and court record. If an applicant truthfully answers yes, the individual is usually not considered for employment. After being rejected, the individual can file a complaint with the Commission. In many instances, the individual may not be the most qualified for the position but the Commission must still investigate because the law prohibits such inquiries. In order to eliminate these types of cases, the rules prohibit pre-offer inquiries about one's arrest and court record on application forms and require a conditional job offer before an inquiry can be made, if there is a BFOQ. (If there is no BFOQ, an inquiry cannot be made. If there is a statutory exemption, employers can make an inquiry at any time.)

The requirement of a conditional job offer, if there is a BFOQ, means that the employer will have to consider each

applicant on the merits and cannot disqualify anyone on the basis of an arrest and court record until after a preliminary selection is made. This will isolate the reason for an adverse employment decision and focus the inquiry where an employer decides not to hire based upon the results of an inquiry after a conditional offer is made. In such cases, the investigation will focus on whether there is a BFOQ and how the suitability factors were applied.

The rules will help employers because they address the thorny situation of what to do if an employee is arrested for an offense within a statutory exemption or BFOQ, or for an offense against the person, such as murder or kidnapping, and there is no conviction because the charge is pending. In such cases because there is no conviction, an employer would not be able to act upon the fact of a pending charge. However, the rules allow the employer to inquire about the pending charge and consider the individual's eligibility for continued or future employment based upon the statutory exemption, the BFOQ suitability factors, or public safety reasons, if the pending charge is for an offense against the person.

(3) Program improvement expected by instituting proposed amendment of rules.

The rules provide a uniform procedure for employers to follow in making inquiries. This should eliminate the most common violation--unlawful inquiries on application forms. As a result, there should be fewer cases where an individual is screened out at the application stage because of an arrest and court record.

The remaining claims should be cases where the issue of discrimination is squarely raised--when individuals, who are conditionally offered a job, are not hired when an inquiry reveals a conviction for an offense within the BFOQ. The employer must establish the BFOQ and demonstrate that the individual should not be an employee based upon the suitability factors.

(4) Program and financial impact upon State.

a. Long- and short-range program and financial impact.

The long-range program impact should be fewer complaints being filed for arrest and court record discrimination. A short-range program impact may not materialize because the rules need

to be understood by the public. However, once employers become familiar with the rules, there should be fewer technical violations. Ultimately, the Commission believes that there will be fewer cases for arrest and court record discrimination, so the financial impact of these rules should be positive for the Commission and the State.

b. Funding implications.

The Commission does not anticipate any additional funding needs resulting by the adoption of these rules. The number of cases alleging arrest and court record discrimination made up 4.6% of the employment cases filed in FY 96-97 for a total of 19 cases. A reduction in these cases will not have a significant impact on the Commission's overall funding needs.

- (5) Long- and short-term impacts on the public, on economic growth, economy of the state, and on individuals and businesses which must comply.

The rules eliminate the most common technical violation and clarify grey areas, thus there should be a positive long-term impact upon business which must comply. Because the law has been in effect for over 24 years, since 1973, the Commission does not foresee any negative long-term or short-term impacts on the public, economic growth, economy of the state, and on individuals.

The rules recognize that safety and performance concerns may justify taking an adverse action against an individual, the rules reflect the state policy, embodied in HRS §378-2 and the Uniform Act on Status of Convicted Persons, Chapter 831, supporting gainful employment for persons who have paid their debt to society. The rules require that individuals be judged on their ability, not merely on their past involvement with crime. While there is always some risk in employing individuals with a criminal record, the harm to our society is far greater if they are forever barred from working because of their criminal records.

- (6) Other alternatives explored to resolve problem, other than adoption of rules.

At recent legislative sessions, bills have been introduced to create more statutory exemptions, water down the law, or repeal it. These bills are due in part to the difficulty in complying with the law. This past session, the Commission

Honorable Benjamin Cayetano
November 3, 1997
Page 6

informed subject matter chairs that it intended to adopt rules to clarify the law in order to forestall bills which proposed to eliminate the law. The Commission sincerely believes that there is no alternative to adopting these rules.

APPROVED/DISAPPROVED

Governor, State of Hawaii

Date

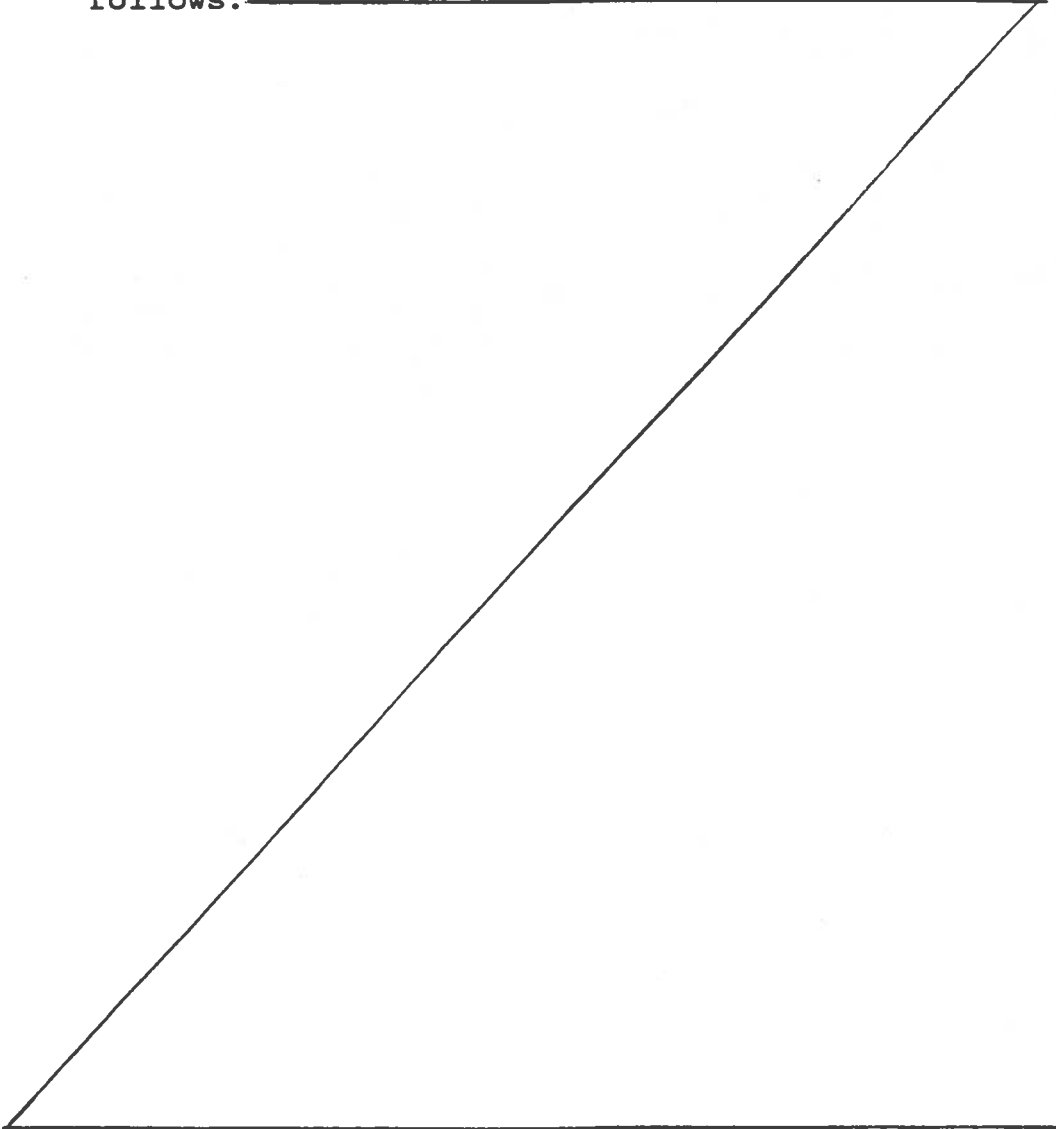
Attachment

cc: Director of Finance
Director, Department of Business, Economic Development and
Tourism

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII CIVIL RIGHTS COMMISSION

Amendments to Chapter 12-46
Hawaii Administrative Rules
date of adoption

1. Chapter 12-46, Hawaii Administrative Rules, is amended by adding a new Subchapter 10, consisting of sections 12-46-201 to 12-46-211, to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 46

CIVIL RIGHTS COMMISSION

SUBCHAPTER 10

ARREST AND COURT RECORD DISCRIMINATION

§12-46-201 General policy. Chapter 378, HRS, prohibits any employer or other covered entity from discriminating in employment because of an individual's arrest record and court record, unless there is a statutory exemption or a bona fide occupational qualification (BFOQ). This subchapter reflects the protections under state law for individuals with an arrest record or court record and is declaratory of existing law. Rehabilitation of individuals convicted of crimes is essential to society, and gainful employment is necessary for rehabilitation. Information in an arrest record or court record where there is no conviction shall not be used in making an employment decision, except under limited circumstances. Unless there is a statutory exemption or BFOQ, individuals should not be discriminated against because of a conviction record. If a statutory exemption allows an employer to consider an individual's conviction record, an inquiry and employment decision may be made as allowed under the exemption. For an applicant, where there is a potential BFOQ, inquiries about a conviction record may be made after making a conditional offer of employment. If the applicant has been convicted of a specified offense within the potential BFOQ, the employer shall consider the suitability of the individual. For an employee, if there is a potential BFOQ and the employee

judgment, conviction, conviction record, presentence report, sentence, parole matter, and criminal court pleading or paper. It includes any of the above information contained in court records, including military court, police records or reports, criminal justice data files, criminal history or other records maintained by the state or federal government, computer databases or other records maintained by persons or non-governmental entities, and newspaper, magazine, or television reports.

"Conviction" includes but is not limited to a judicial, military, or law enforcement judgment, verdict, deferred acceptance of guilt, deferred acceptance of no contest, or adjudicatory finding that an individual has committed an offense, and the judgment, verdict, acceptance, or finding has not been reversed, annulled, expunged, or vacated.

"Conviction record" includes but is not limited to information about a judicial, military, or law enforcement judgment, verdict, deferred acceptance of guilt, deferred acceptance of no contest, or adjudicatory finding that an individual has committed an offense, and the judgment, verdict, acceptance, or finding has not been reversed, annulled, expunged, or vacated.

"Employment agency" means any person engaged in the business of providing employment information, procuring employment for applicants, or providing its employees for temporary placement with employers upon request of such employers.

"Hotel or hotel-condo" means an establishment consisting of any building or structure used primarily for the business of providing for consideration transient accommodation lodging facilities and that furnishes, as part of its routine operations, one or more customary lodging services, other than living accommodations and the use of furniture and fixtures, including, but not limited to, restaurant facilities, or room attendant, bell, telephone, switchboard, laundering, or concierge services, and is subject to the transient accommodations tax under chapter 237D, HRS.

"Inquire" means:

(1) In general:

(A) Asking an applicant or employee about their arrest record, court record, or

contemporaneous newspaper, magazine, or television reports, or an unsolicited disclosure by an applicant, employee, or person. An employer or covered entity may not use a contemporaneous report or unsolicited disclosure relating to an arrest record, court record, or conviction record to seek additional information or for any other purpose, unless there is a statutory exemption, potential BFOQ, or an inquiry is allowed under this subchapter.

"Misconduct at work" means conduct by an employee in the course of employment which results in disciplinary action by the employer or other covered entity.

"Offense" means penal offenses and crimes, and traffic violations and infractions.

"No acceptable alternative with less discriminatory impact" means consideration of the following factors to determine whether an individual is suitable for employment:

- (1) Whether the individual has an unresolved arrest or charge for a specified offense as opposed to having a conviction for such offense;
- (2) Whether the individual was charged or adjudicated for a specified offense as a juvenile under family court or juvenile court jurisdiction;
- (3) The length of time since the unresolved arrest or charge, or conviction for the specified offense;
- (4) Any evidence of the individual's rehabilitation, including but not limited to whether the individual has been discharged from probation or parole supervision, pardoned, or if two years have elapsed after final discharge or release from any term of imprisonment;
- (5) Any mitigating circumstances, including but not limited to whether the circumstances leading to the specified offense still exist or are likely to recur, or the number and severity of such offenses;
- (6) Length of time the individual has effectively performed the essential functions and

Example:

Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution may consider the conviction of any criminal offense involving dishonesty or breach of trust and can deny employment to an applicant or discharge an employee with a conviction of such offenses, unless the institution has the prior written consent from the federal agency with jurisdiction to hire or retain the individual. [Eff] (Auth: HRS §368-3) (Imp: HRS §§378-1, 378-2, 378-3)

§12-46-203 Causation standard. (a) In determining whether a discriminatory practice constituting disparate treatment has been committed under this subchapter, it must be shown by a preponderance of the evidence that:

- (1) A causal connection existed between an individual's arrest record, court record, or conviction record and the alleged discriminatory conduct; and
- (2) The individual's arrest record, court record, or conviction record was any part of the reason for the conduct.

(b) Notwithstanding subsection (a), an employer or other covered entity may take an adverse action against an employee for misconduct at work, even though the employee was arrested for, charged with, or convicted of an offense arising from such misconduct.

(c) Notwithstanding subsection (a), after an offer of employment, an employer or other covered entity may take adverse action against an applicant based upon an applicant's misconduct at work in current or former employment, even though the applicant was arrested for, charged with, or convicted of an offense arising from such misconduct. [Eff]
(Auth: HRS §368-3) (Imp: HRS §§378-2, 378-3)

§ 12-46-204 Information about arrest records, court records, and conviction records. (a) All

(d) If there is a statutory exemption or potential BFOQ, an employer or other covered entity may, after making an offer of employment in section 12-46-209, inquire if an applicant has been arrested for or charged with a specified offense that would be within the exemption or potential BFOQ and such arrest or charge has not been resolved at the time of the offer. Based upon the inquiry, the employer or other covered entity may act in accordance with the statutory exemption or the "no acceptable alternative with less discriminatory impact" factors if there is a potential BFOQ.

(e) An employer or other covered entity may bar an employee from the premises, with pay, if the individual while currently employed has been arrested for or charged with an offense against the person, under chapter 707, HRS, or a similar offense in the jurisdiction where the offense allegedly occurred; the arrest or charge has not been resolved; and the type of offense indicates that the individual may reasonably be considered a substantial threat to the safety of other employees or customers.

(f) If there is a statutory exemption or potential BFOQ, an employer or other covered entity may bar an employee from the premises, with pay, if the individual while currently employed has been arrested for or charged with a specified offense within the exemption or potential BFOQ and the arrest or charge has not been resolved.

(g) Under subsections (e) and (f), an employer or other covered entity is not required to pay an individual who is incarcerated, receiving workers' compensation or temporary disability benefits, disqualified under a collective bargaining agreement, or otherwise unable to work.

(h) An employer or other covered entity, which bars an employee from the premises as allowed under subsections (e) and (f), shall meet with the individual within a reasonable time to inquire about the offense from the individual and determine if the individual should be allowed to return to work. The employer or other covered entity may also seek information from law enforcement, prosecutorial, or court personnel, or the individual's attorney. If there is a statutory exemption, the employer or other covered entity may act in accordance with the exemption. If there is a

(b) The employer or other covered entity has the burden of establishing the specific offenses within a potential BFOQ and must do so before conducting an inquiry.

(c) If there is a potential BFOQ, the employer or other covered entity must make a conditional offer of employment before conducting an inquiry.

(d) If there is a potential BFOQ, the employer or other covered entity shall apply the "no acceptable alternative with less discriminatory impact" factors before taking any adverse employment action where as a result of an inquiry, contemporaneous report, or unsolicited disclosure there is information that an individual has a conviction record for a specified offense within a potential BFOQ.

(f) The following situations are recognized by the commission as those in which a potential BFOQ exists:

- (1) Agencies, businesses, organizations, or groups, which provide care for, instruction to, or have custody of children, may consider the conviction of any offense which indicates that an individual is unsuited to working in close proximity with children.
- (2) Hotels or hotel-condos may consider the conviction of any offense which indicates that an individual may be unsuited for employment as security guard, manager, or other positions allowing the employee to have access to the keys of, or entry into the units.
- (3) Establishments holding liquor licenses may consider the conviction of any offense which indicates that an individual may be unsuited for employment as security guard, bouncer, or other positions responsible for the safekeeping of persons or customers of the establishment;
- (4) Health care facilities may consider the conviction of any criminal offense which indicates that an individual is unsuited to working in close proximity with patients.
[Eff] (Auth: HRS §368-3)
(Imp: HRS §§378-2, 378-3)

or charges for specified offenses within the statutory exemption or potential BFOQ, as allowed under this subchapter.

(f) An employer or other covered entity may make pre-employment inquiries into the ability of an applicant to perform job functions and responsibilities but may not use the opportunity to inquire into an individual's arrest record, court record, or conviction record. [Eff _____] (Auth: HRS §368-3) (Imp: HRS §§378-2, 378-3)

§12-46-209 Post-offer employment practices. (a)

If there is a potential BFOQ, an employer or other covered entity after making an offer of employment may:

- (1) Inquire into an applicant's conviction record;
- (2) Condition the offer based on the results of the inquiry;
- (3) Require completion of the inquiry before the individual begins employment duties; and
- (4) Withdraw the offer based upon the results of the inquiry and after applying the "no acceptable alternative with less discriminatory impact" factors.

(b) If there is a potential BFOQ, an employer or other covered entity shall seek only the information that relates to the potential BFOQ.

(c) If there is a statutory exemption, potential BFOQ, or an inquiry is allowed under this subchapter and an applicant refuses to comply with an inquiry, it shall not be an unlawful discriminatory practice for the employer or other covered entity to refuse to hire that individual on the basis of the refusal to comply.

(d) After making an offer of employment, an employer or other covered entity may ask an applicant about misconduct at work in the individual's current or former employment. The employer or other covered entity may condition the offer based on the results of the inquiry, require completion of the inquiry before the individual begins employment duties, and withdraw the offer based upon the results of the inquiry. Such inquiry shall not be used to obtain information about the applicant's arrest record, court record, or conviction record. In seeking information about

such inquiry could be an indirect inquiry into an arrest record, court record, or conviction record. Notwithstanding this subsection, an employer or other covered entity may inquire into an applicant's current use of illegal drugs as allowed under sections 12-46-191 and 192.

Example:

The following written question would constitute an unlawful indirect inquiry into arrest record, court record, or conviction record:

"Have you engaged in the following misconduct:

"Theft or stealing.

"Assault, violence against a person, or fighting." [Eff]

(Auth: HRS §368-3) (Imp: HRS §§378-2, 378-3)

§12-46-210 Terms, conditions, and privileges of employment. (a) It is an unlawful discriminatory practice for an employer or other covered entity to make inquiries as to whether an employee has an arrest record, court record, or conviction record unless there is a statutory exemption, potential BFOQ, or an inquiry is allowed under this subchapter.

(b) In the event there is a statutory exemption, potential BFOQ, or an inquiry is permitted under this subchapter, an employer or other covered entity shall seek only information to address the concerns which make the inquiry necessary.

(c) It is an unlawful discriminatory practice for an employer or other covered entity to utilize the services of an employment agency, persons, or its own employees to inquire about an applicant's or employee's arrest record, court record, or conviction record, unless there is a statutory exemption, potential BFOQ, or an inquiry is allowed under this subchapter.

(d) It is an unlawful discriminatory practice for an employer or other covered entity to refuse to hire or employ, or to bar or discharge from employment, or

or employee who indicates a desire to be placed in the position or on a referral list for the position of the existence of the exemption or potential BFOQ.

(f) After being informed as provided in subsection (e), if an applicant or employee desires to be employed by the employment agency for temporary placement with another employer in a position for which there is a statutory exemption or potential BFOQ, the agency may make a post-offer inquiry about the individual's conviction record for a specified offense within the statutory exemption, potential BFOQ, or about unresolved arrests or charges as allowed under this subchapter. Any decision on placement or future referral may be conditioned on the results of the inquiry. If there is a statutory exemption, the agency may act in accordance with the exemption. If there is a potential BFOQ, the agency must apply the "no acceptable alternative with less discriminatory impact" factors. The agency or the employer or other covered entity seeking the referral have the burden of establishing the statutory exemption or potential BFOQ.

(g) Where an individual is using the services of an employment agency to seek a position with another employer or covered entity, it is an unlawful discriminatory practice for an employment agency to inquire into the individual's arrest record, court record, or conviction record unless there is a statutory exemption. An employer or covered entity may not authorize an employment agency to inquire where there is a potential BFOQ for a specified offense or an inquiry into an unresolved arrest or charge is allowed under this subchapter." [Eff] (Auth: HRS §368-3) (Imp: HRS §§378-2, 378-3)

2. The adoption of subchapter 10 of chapter 12-46, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of Lieutenant Governor.

LORRAINE AKIBA, Director
Department of Labor and
Industrial Relations

APPROVED AS TO FORM:

Francis E. D. Jones

Deputy Attorney General

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2. Murray Towill	Hawaii Hotel Assoc.	923-0407
3. Walter Benavitz	WAIHAWA Business & Community Assoc.	621-1216
4. ELBRIDGE SMITH	National Employment Lawyers Assoc.	523-5050
5. Barbara Petrus (end)	Hawaii Employee Council	836-1511
6. Lisa Fonseca / SHRM	Society for Human Resource Mgmt.	
7. Faye Maeda / HECON	P.O. Box 2750, 96840	943-4642
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9. Anna Elento-Sneed	Carlsmith Hall 1001 Bishop St., 96813	523-2681
10. DENNIS DACEY	PROSTAFFING, INC.	524, 1733
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27. STEPHEN		
28. Michael Bateman	Stephen Morcra	456-9063
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33. JILL BROWN	Retail Merchants of HI	597-4200
34. TIM LYONS	Hawaii Business Ledger	533-5619
35. Scott	John Howard Assoc	537-2917

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48.		
49.		
50.		
51.		
52.		

●A-B●

TESTIMONIES SUBMITTED

LISTING

No.	NAME/COMPANY	Oral Also?
1	1. ABC STORES; Paul Kosasa, Executive Vice President	
1	2. ADECCO PERSONNEL SERVICES; President	yes
2	3. AFRO AMERICAN LAWYERS ASSOCIATION OF HAWAII	yes
1	4. AIG HAWAII INSURANCE COMPANY	
8	5. ALOHA AIRLINES; Albert J. Pattison, Vice President Human Resources	
1	6. AMERICAN SAVINGS BANK; Thelma Yoshida, Vice President-Human Resources	
1	7. ANCO UNITED, INC.; George Ananian, President	
1	8. ANCO UNITED, INC.; John F. Bucca (signed petition)	
3	9. ASSOCIATION OF TEST PUBLISHERS (ATP); William G. Harris, Executive Director	
4	10. AVIS RENT A CAR SYSTEMS; Jeffrey D. Fields, Vice President	
4	11. BANK OF HAWAII; Alexander D. Jamile, Vice President & Director of Governmental Affairs	
4	12. CADES SCHUTTE FLEMING & WRIGHT LABOR AND EMPLOYMENT LAW PRACTICE GROUP; David F.E. Banks & Sarah Wang	
7	13. CARLSMITH BALL WICHMAN CASE & ICHIKI; Anna M. Elento-Sneed, Chairperson-Labor and Employment Law Section	yes
4	14. CHAMBER OF COMMERCE OF HAWAII; Perry Confalone, Chair-Human Resources Committee	yes
1	15. CHANEY BROOKS & COMPANY; Kim Akana (signed petition)	

-
16. CHANEY BROOKS & COMPANY; Royal Alan Belshe (signed petition)
-
17. CHANEY BROOKS & COMPANY; Brandie Brackin (signed petition)
-
18. CHANEY BROOKS & COMPANY; Ruth D. Crockett (signed petition)
-
19. CHANEY BROOKS & COMPANY; Ronald N. Kan (signed petition)
-
20. CHANEY BROOKS & COMPANY; Stephen Lee (signed petition)
-
21. CHANEY BROOKS & COMPANY; Annette Miller (signed petition)
-
22. CHANEY BROOKS & COMPANY; A. Mohiden (signed petition)
-
23. CHANEY BROOKS & COMPANY; Judy Nakamoto (signed petition)
-
- 2 24. CITY & COUNTY OF HONOLULU; Sandra H. Ebesu, Director of Personnel
-
- 1 25. CITY MILL COMPANY, LTD.; Carol Ai, Vice President
-
- 14 26. COUNTY OF HAWAII-OFFICE OF THE CORPORATION COUNSEL; Ted H.S. Hong, Assistant Corporation Counsel
-
- 2 27. COUNTY OF HAWAII-POLICE DEPARTMENT; Wayne G. Carvalho, Police Chief
-
- 1 28. CRAZY SHIRTS; Sybil Saito, Benefits Administrator
-
- 1 29. CRAZY SHIRTS; Susan Tagawa, Human Resources
-
- 1 30. EASTER SEAL SOCIETY OF HAWAII; John F. Howell, President/CEO
-
- 2 31. EVA AIRWAYS CORPORATION-HAWAII BRANCH; Michael Ho, General Manager
-
- 1 32. AOA FAIRWAY VILLA; Mary Ananian, President of the Board of Directors
-
- 1 33. FIRST AMERICAN LONG & MELONE TITLE COMPANY, LTD.; Lynn E. Ikehara, Human Resources Director
-
- 2 34. GOODENOW ASSOCIATES, INC.; Charlene Corniel, Manager-Research Services Division
-
- 3 35. GOODENOW ASSOCIATES, INC.; Terry B. Pennington, President
-

-
- 8 36. GOODSILL ANDERSON QUINN & STIFEL;
Barbara A. Petrus, Esq. & Chris Yeh,
Esq. yes
-
- 2 37. GOODWILL INDUSTRIES OF HONOLULU, INC.;
Rudy Menon, Human Resources Manager
-
- 1 38. HTH CORPORATION (Pacific Beach Hotel,
Pagoda Hotel, & King Kamehameha Kona
Beach Hotel); Human Resources Manager
-
- 2 39. HALL, MARIANNE; Private Citizen
-
- 6 40. HAWAII ASSOCIATION OF INDEPENDENT
SCHOOLS; Robert M. Witt, Executive
Director
-
- 5 41. HAWAII BUSINESS LEAGUE; Tim Lyons,
Executive Vice President
-
- 3 42. HAWAII COUNCIL OF ASSOCIATIONS OF
APARTMENT OWNERS; Jane Sugimura,
President
-
- 10 43. HAWAII ELECTRIC LIGHT COMPANY, INC.
(HELCO) (Shared Testimony) yes
-
- 2 44. HAWAI'I HOTEL ASSOCIATION; Murray
Towill, President yes
-
- 1 45. HAWAII HOTEL SECURITY ASSOCIATION; Wayne
K. Ogino, President
-
- 2 46. HAWAII NEWSPAPER AGENCY; Miki H.
Sugikawa, Human Resources Administration
Manager
-
- 1 47. HAWAII PACIFIC UNIVERSITY; Linda
Kawamura, Human Resources Director
-
- 1 48. HAWAII RESTAURANT ASSOCIATION; Kathleen
H. Masunaga, Executive Director
-
- 3 49. HAWAII TRANSPORTATION ASSOCIATION;
Gareth Sakakida, Managing Director
-
- 3 50. HAWAII VISITOR INDUSTRY SECURITY
ASSOCIATION (HVISA); Warren J. Ferreira,
President yes
-
- 2 51. HAWAIIAN CRUISES, LTD. (Navatek I);
Susan C. Matsuura, President
-
52. HAWAIIAN ELECTRIC COMPANY (HECO); See
HELCO yes
-
53. HAWAIIAN TUG & BARGE CORP. (HTB); See
HELCO yes
-
- 3 54. HEALTHCARE ASSOCIATION OF HAWAII;
Richard E. Meiers, President/CEO
-

-
- 1 55. HILO HATTIE (Pomare, Ltd.); Lena Young,
Vice President of Human Resources
-
- 2 56. HILTON RESORTS HAWAII (including Hilton
Hawaiian Village, Turtle Bay Hilton Golf
& Tennis Resort, and Hilton Waikoloa
Village) yes
-
- 2 57. HONOLULU SHIPYARD; Ken Fukuji,
Controller
-
- 2 58. HONOLULU SHIPYARD; Fred J. Moore,
General Manager
-
- 2 59. ILWU LOCAL 142
-
- 2 60. ITT SHERATON HOTELS & RESORTS HAWAII;
Mary Lee Sharp, Area Director of Human
Resources (Waikiki)
-
- 2 61. JOHN HOWARD ASSOCIATION; Gerald J.
Reardon, Executive Director yes
-
- 1 62. KAHALA SHOPPING MALL; Melvin DeCosta,
Chief of Security
-
- 2 63. KAPI'OLANI HEALTH; Gail Lerch, Director-
Human Resources
-
- 1 64. LEGISLATIVE INFORMATION SERVICES OF
HAWAII; Richard C. Botti, President
-
- 2 65. LIBERTY HOUSE; Robert Flating,
Security/Loss Prevention Director
-
- 2 66. LIBERTY HOUSE; Joyce Hedani, Managing
Director-Employee Relations yes
-
- 3 67. LONGS DRUG STORES CALIFORNIA, INC.;
Gerald H. Saito, Senior Vice President &
Hawaii District Manager
-
- 2 68. LOUIS VUITTON; Gary L. Hahn, Vice
President & Chief Operating Officer
-
- 2 69. MAUI LAND & PINEAPPLE COMPANY, INC.;
Iris Y. Matsumoto, Director of Human
Resources
-
- 1 70. MAXWELL, DEBBIE; Private Citizen
-
71. MAUI ELECTRIC COMPANY, LTD. (MECO); See
HELCO yes
-
- 1 72. MONARCH SEAFOODS; Thomas Mukaigawa,
President
-
- 3 73. NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
(NELA)-Hawai'i Chapter; Elbridge W.
Smith, President yes
-

- | | | | |
|----|-----|--|-----|
| 1 | 74. | NEIGHBORS OF THE ALA WAI; Sam Bren,
Vice-President | |
| 4 | 75. | OLSTEN STAFFING SERVICES; Signe Godfrey,
Owner/Manager | |
| 2 | 76. | OTAKA, INC.; Marsha Azuma, Director of
Human Resources and Owner and/or
Manager-Hawaiian Regent Hotel, Hawaiian
Waikiki Beach Hotel, & Kona Surf Resort
and Country Club | |
| 2 | 77. | OTAKA, INC.; Marsha Azuma, Director of
Human Resources;-ADDENDUM TO ABOVE
TESTIMONY | yes |
| 1 | 78. | OUTRIGGER HOTELS & RESORTS; Vice
President, Human Resources | Yes |
| 2 | 79. | PARTINGTON AND FOLEY; Daniel R. Foley,
Esq. | |
| 2 | 80. | PROSTAFFING, INC.; Dennis P. Daley,
Human Resource Consultant | |
| 2 | 81. | REID PSYCHOLOGICAL SYSTEMS; Stephen
Coffman, President | yes |
| 1 | 82. | REMEDY INTELLIGENT STAFFING; Mary
Pattee, President/Owner | yes |
| 1 | 83. | RETAIL MERCHANTS OF HAWAI'I; Jan Berman,
President | |
| 2 | 84. | SAFEGUARD SERVICES, INC.; Albert B.
Denis, President/CEO | |
| 1 | 85. | ST. FRANCIS HEALTHCARE SYSTEM OF HAWAII | |
| 2 | 86. | SEARS; Elton T. Tanaka, District General
Manager (Hawaii District-Pearl City) | |
| 2 | 87. | SEVEN-ELEVEN HAWAII, INC.; Blake
Yokotake, Human Resources Manager | |
| 2 | 88. | SHIROKIYA INC.; Michael Shihara,
Personnel Manager | |
| 17 | 89. | SOCIETY FOR HUMAN RESOURCE MANAGEMENT-
HAWAII CHAPTER (SHRM); Lisa Fonseca,
President | yes |
| 5 | 90. | SPECIAL EDUCATION CENTER OF HAWAII
(SECOH); Jared H. Jossem, Esq. | yes |
| 2 | 91. | STAFFING PARTNERS (SOS STAFFING
SERVICES); Wendy Rose, Staffing Manager | yes |
| 2 | 92. | STAFFING PARTNERS (SOS STAFFING
SERVICES); Vicki von Stroheim-Seay, Area
Manager | yes |

- | | | | |
|----|------|---|-----|
| 3 | 93. | STATE OF HAWAII-DEPT. OF THE ATTORNEY
GENERAL-EMPLOYMENT LAW DIVISION | |
| 4 | 94. | STATE OF HAWAII-DEPT. OF THE ATTORNEY
GENERAL-OFFICE OF INFORMATION PRACTICES;
Moya T. Davenport Gray, Director or Lynn
M. Otaguro, Esq. | yes |
| 49 | 95. | STATE OF HAWAII-DEPT. OF EDUCATION;
Herman M. Aizawa, Superintendent of
Education | yes |
| 5 | 96. | STATE OF HAWAII-DEPT. OF HUMAN RESOURCES
DEVELOPMENT; James H. Takushi, Director | yes |
| 3 | 97. | STATE OF HAWAII-DEPT. OF HUMAN SERVICES;
Susan M. Chandler, Director | |
| 4 | 98. | STATE OF HAWAII-DEPT. OF PUBLIC SAFETY;
Ted Sakai, Administrative Assistant to
the Director | yes |
| 2 | 99. | STATE OF HAWAII-HAWAII PAROLING
AUTHORITY; Anthony Commendador,
Administrator | yes |
| 1 | 100. | STATE OF HAWAII-THE JUDICIARY; Susan H.
Kitsu, Affirmative Action Officer | |
| 6 | 101. | STATE OF HAWAII-COUNTY OF KAUAI (OFFICE
OF THE COUNTY ATTORNEY); Jonathan Chun,
First Deputy County Attorney | yes |
| 7 | 102. | STATE TERMITE & PEST CONTROL, INC.;
President & Six Employees | |
| 2 | 103. | STRAUB CLINIC & HOSPITAL; Patti Martin,
Human Resources Administrator | yes |
| 7 | 104. | TORKILDSON, KATZ, FONSECA, JAFFE, MOORE
& HETHERINGTON; John L. Knorek, Esq. | yes |
| 2 | 105. | UNITEK SOLVENT SERVICES, INC.; Sally
Davis, Vice President | |
| 2 | 106. | UNITEK INSULATION, INC.; Tammy L. Nakao,
Human Resources Manager | |
| 2 | 107. | WAHIAWA COMMUNITY AND BUSINESS
ASSOCIATION; Walter R. Benavitz,
President | yes |
| 1 | 108. | WAIKIKI TRADE CENTER; Clem Enoka, Jr.,
Director of Security | |
| 1 | 109. | WAILEA GOLF RESORT, INC.; Anne M.
Takabuki, Vice President/General Counsel | |
| 5 | 110. | WITHY, G. TODD; Esq. | yes |
| 2 | 111. | Y. HATA & CO., LTD. (Maui); Stevette
Santiago, Director of Human Resources | |

112. YOUNG BROTHERS, LIMITED (YB); See HELCO

yes



ABC STORES Mister K
DIVISIONS OF MNS, LTD.
766 POHUKAINA STREET HONOLULU, HAWAII 96813-5391
TELEPHONE: (808) 591-2550 FAX: (808) 591-2039

**TESTIMONY OF ABC STORES REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am the Executive Vice President of ABC Stores. We employ 750 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, our customers and the public for the following reasons.

The Commission's attempt to protect the civil rights of a group of individuals with arrest and court records, instead infringes on the rights of the majority, particularly the business community. It threatens an employer's ability to provide employees with a safe working environment, customer's and business associates the best service personnel available, and deny employment to those that are most qualified and skilled.

We do not support rules that give an advantage to those that were not satisfactory performers at their prior places of employment. The proposed rules appear to disallow employers to inquire into applicants past work performance, such as discipline, discharge, tardiness, absences, company policy violations, and productivity. This discriminatory advantage is given to poor performers, giving them a conditional offer of employment before inquiring into their prior work history.

The rules punish businesses because it forces us to hire individuals who have committed crimes, an overly burdensome civil responsibility for private sector employers to carry while the HCRC and the State of Hawaii remain exempt.

The citizens of Hawaii have the right to trust their employers to make good hiring decisions, hiring only those that do not pose an elevated risk of danger to them.

We urge the Commission to withdraw, in their entirety, these rules.

Yours truly,

A handwritten signature in dark ink, appearing to read "Paul Kosasa", written over a horizontal line.

Paul Kosasa
Executive Vice President, ABC Stores

TESTIMONY OF ADECCO PERSONNEL SERVICES REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the President of the Hawaii franchise of Adecco Personnel Services. The temporary/contract employment services in the State of Hawaii, according to 1996 State of Hawaii Department of Labor statistics, employ approximately 11,500 people daily with total wages of over \$210,000,000 a year. Our company alone employs between 500-1000 Hawaii residents daily. The proposed Arrest and Court Record rules threaten the safety of our employees, clients and the general public.

Our clients, which include all the major companies in the State of Hawaii, depend upon our ability to send them qualified bondable employees. It is impossible to adequately bond employees who cannot be questioned about their past indiscretions that could have a negative impact on a client's company. In any given week, our employees can be at a bank on Monday, at a law firm on Tuesday, at a condo on Wednesday and at a hospital for the rest of the week. It is critical to know if these people have a past record that could endanger the safety or business operations of any of our clients.

The rules as drafted are unworkable. Adecco Personnel Services in Hawaii agrees with the Society of Human Resource Management's position. These rules are overly complex and foster disrespect for the law and the Commission. These rules will be ignored rather than followed.

These rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace. The law requires that employers take reasonable precautions to avoid foreseeable injuries or losses caused by employees. These proposed rules could conceivably or possibly endanger our clients. A criminal background check is a reasonable precaution to take before hiring any person in any capacity.

Felony convictions for crimes against property should be sufficient to disqualify a person for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be sufficient to disqualify a person for any position involving unsupervised contact with co-employees, customers, clients or the public.

The economic burden the proposed rules will place on business if adopted is unreasonable. They would require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. These rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is exempt from these rules, as is the state. Adecco provides temporary employees to various state departments but yet we are not afforded the same hiring privilege. Why does the state practice screening employees more stringently than Adecco can screen our employees who are working in various departments of the state? Why are private sector employers selectively targeted by these rules?

In summary, we support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

AFRO AMERICAN LAWYERS ASSOCIATION OF HAWAII
1188 Bishop Street, Suite 1909 PO Box 4661
Honolulu, Hawaii 96812-4661



Rustam A. Barbee
President
(808) 671-8886

Andre S. Wooten
Vice President
(808)545-4165

AFRO AMERICAN LAWYERS ASSOCIATION(AALA)
TESTIMONY IN SUPPORT OF HAWAII CIVIL RIGHTS RULES
ON ARREST AND COURT RECORDS

Daphne Barbee-Wooten
Treasurer
(808)533-0275

Karen L. McKinnie **The Afro American Lawyers Association of Hawaii (AALA)**
Secretary

supports the rules prohibiting discrimination on the basis of arrest and court records. However, we would like included under the definition of "arrest" and "court records" any temporary restraining orders and civil judgements. This is very important because temporary restraining orders are obtained ex parte, without any due process rights. Often, police an sheriffs serve people with temporary restraining orders which creates the impression by employers that the employee has done something wrong. There is a growing number of people who have been fired because they were served with temporary restraining orders.

The same is true with civil judgements. Our society is extremely litigious. We want to encourage people to use the judicial system, rather than to take matters into their own hands. Just because someone exercises their rights in court should be no reason for an employer to discriminate. Therefore, AALA would like the Civil Rights Commission to include temporary restraining orders and civil judgments in their definition of "arrest" and "court records". Civil judgments

include bankruptcy, discrimination lawsuits, workers compensation claims and
personal injury suits.

DATED: Jan. 15, 98 HONOLULU, HI

Andre' S. Wooten

ANDRE' S. WOOTEN
AFRO AMERICAN LAWYERS ASSOCIATION

**TESTIMONY OF AIG HAWAII INSURANCE COMPANY, INC. REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am the Human Resources Supervisor of AIG Hawaii Insurance Company, Inc. We employ close to 300 Hawaii residents in our business. Our employees and customers trust us to use sound discretion in hiring persons who do not pose an elevated risk of danger to them. The proposed arrest and court record rules will threaten the safety of our employees and customers by depriving us of critical information about an applicant's competence and suitability for our available positions.

Many of our positions require working with or having access to sensitive documents containing personal and confidential information about our employees and customers. A person's criminal background is an important factor to consider when determining a candidate's suitability for these sensitive positions.

The rules as drafted expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring a person in any capacity.

A person with a felony conviction for a crime against property should be recognized as unqualified for a position which involves access to the cash or property of our company or that of our employees and customers. Wouldn't it be reckless for us to place a convicted embezzler in one of our Claims Adjuster positions where he/she will have the authority to request payments for claimants of up to \$1,500 without approval?

Likewise, a person with a felony conviction for a crime against persons should be recognized as unqualified for a position involving unsupervised contact with co-workers and customers. Wouldn't placing a convicted rapist in one of our supervisory positions which requires evening work or travel jeopardize the safety of our employees and customers?

The rules as drafted will prohibit us from asking or inquiring about an applicant's misconduct at their current or former employment prior to making that individual an offer of hire. This turns our hiring process on its head as it will require us to blindly offer employment to individuals without having inquired about prior work related misconduct.

The proposed rules will impose an unfair burden on our business. The rules will require separate filings of arrest and court record information, require us to pay for an employee's absence from work while under indictment or arrest and make accommodations for criminals to transfer to less sensitive positions.

We support the alternative rules proposed by the Society for Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.



A I R L I N E S

FILE

January 16, 1998

Albert J. Pattison
Vice President
Human Resources

'98 JAN 20 P 7:42
P.O. Box 30028
Honolulu, Hawaii 96820
Facsimile 808 836-0303
Telephone 808 836-4239

HAWAII CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Hawaii Civil Rights Commission
830 Punchbowl Street
Honolulu, Hawaii 96813

RE: **Proposed Arrest and Court Record Regulations**

Dear Commissioners:

Aloha Airlines, Inc. (Aloha) opposes the Arrest and Court Record Regulations and hereby submits the following comments.

Aloha employs hundreds of employees who are required to obtain security clearances as part of their jobs. These security clearances are necessary in order for them to obtain an Airport Operating Area (AOA) badge which allows them to access the security areas at the airport. Federal law, FAR Part 107.11 (f), prohibits an employee from obtaining an AOA badge if they have been convicted for a number of various offenses.

Moreover, the U.S. Customs Service, requires employees or prospective employees to disclose prior criminal convictions (refer to Exhibit B, page 2). This information is required pursuant to Title 19 Code of Federal Regulations, Section 122. Anyone with a prior conviction will not be issued a U.S. Customs Seal, and therefore, will not be able to perform their job duties. Under the proposed HCRC rules, our Company would be required to spend much time, effort, and money in "processing" a candidate who cannot be employed much less have continued employment without the Customs Seal. The irony of the situation: the rule changes may result in placing a convicted felon on the unemployment line. It is not unusual that we offer employment to an individual who may be already employed with another employer. The individual accepts Aloha's employment offer, and in turn, submits his/her resignation with his/her current employer. Seemingly, the convicted felon is declined a U.S. Customs Seal and the employment offer is rescinded. The end result is that this individual could possibly be jobless.



The proposed regulations do not even acknowledge the fact that Aloha and other air carriers must comply with this federal mandate. Aloha submits that it makes no sense to allow Aloha to conduct the criminal background check only after making a conditional offer of employment since regardless of when Aloha conducts the check, the result is the same; if the employee has a conviction record for one of the offenses specified by federal law, the employee is disqualified from employment with Aloha in one of those positions.

In addition, Aloha may hire an employee into a position where a Customs Seal badge is not required and then the employee requests a transfer in accordance with our collective bargaining agreements, into a position where the seal is required. Under such circumstances, Aloha must conduct a criminal background check required by federal law and Aloha does not believe this is consistent with federal law for the State to require it to prove a BFOQ. Instead, Aloha and other air carriers and any other companies who are required by federal law to conduct criminal background checks for their employee should have a specific regulatory exemption from the Arrest and Court Record Statute.

Aloha notes that other industries which have exemptions under State law are given exemptions in their proposed regulations. It is ironic that those employers who must comply with a federal mandate for criminal background checks are given no such recognition. Aloha does not understand this distinction and asks that the regulations be amended to exempt those employers who are required by a federal regulation, or statute or other mandate to conduct criminal background checks upon applicants or employees who are transferred into the positions for which the background check is required.

In addition, Aloha finds the regulations as proposed to be unreasonable and untenable. Aloha, like many other companies, employs individuals who handle cash, credit cards or other negotiable instruments. To severely limit Aloha's ability to ascertain the person's criminal background as the proposed regulations would do would unnecessarily fetter Aloha's ability to hire honest and trustworthy employees. In addition, Aloha does not understand why the State itself is exempt from these regulations but they apply only to the private sector. The State should not hold the private sector to a higher standard than it holds itself.

Respectfully submitted,



Albert J. Pattison
Vice President Human Resources



A I R L I N E S

HUMAN RESOURCES ADMINISTRATION

P. O. BOX 30028

Honolulu, Hawaii 96820-0028

Phone: (808) 836-4141 - 8:30 AM to 5:00 PM

FAX: (808) 836-7432/24 hours a day

FACSIMILE TRANSMITTAL COVER SHEET

DATE January 16, 1998 **TO FACSIMILE NO:** 586-⁸⁶⁵⁵~~8656~~

TO: William D. Hoshijo
Executive Director
HAWAII CIVIL RIGHTS COMMISSION

TELEPHONE: _____

FROM: Albert J. Pattison
Vice President Human Resources

TELEPHONE: (808) 836-4239

TOTAL NUMBER OF PAGES, INCLUDING TRANSMITTAL COVER LETTER: 7

Hard copy to be mailed.



A I R L I N E S

January 16, 1998

Albert J. Pattison
Vice President
Human Resources
P.O. Box 30028
Honolulu, Hawaii 96820
Facsimile 808 836-0303
Telephone 808 836-4239

Hawaii Civil Rights Commission
830 Punchbowl Street
Honolulu, Hawaii 96813

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Hawaii Civil Rights Commission

Page 2
January 16, 1997

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Respectfully submitted,



Albert J. Pattison
Vice President Human Resources

ACCESS INVESTIGATION

FAR Part 107.31 specifically prohibits unescorted access in the Security Identification Display Area to anyone convicted or found not guilty by reason of insanity, in any jurisdiction, of any of the following crimes:

- (i) Forgery of certificates, false making of aircraft, and other aircraft registration violations.
- (ii) Interference with air navigation.
- (iii) Improper transportation of a hazardous material.
- (iv) Aircraft piracy.
- (v) Interference with flightcrew members or flight attendants.
- (vi) Commission of certain crimes aboard aircraft in flight.
- (vii) Carrying a weapon or explosive aboard an aircraft.
- (viii) Conveying false information and threats.
- (ix) Aircraft piracy outside the special aircraft jurisdiction of the United States.
- (x) Lighting violations involving transporting controlled substances.
- (xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements.
- (xii) Destruction of an aircraft or aircraft facility.
- (xiii) Murder.
- (xiv) Assault with intent to murder.
- (xv) Espionage.
- (xvi) Sedition.
- (xvii) Kidnapping or hostage taking.
- (xviii) Treason.
- (xix) Rape or aggravated sexual abuse.
- (xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (xxi) Extortion.
- (xxii) Armed robbery.
- (xxiii) Distribution of, or intent to distribute, a controlled substance.
- (xxiv) Felony arson.
- (xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

Have you been convicted or found not guilty by reason of insanity of any of the foregoing crimes during the past ten years?

YES _____ NO _____

If yes, please provide crime, date, justification, and any sentence or penalties. If subsequently convicted of any of the foregoing crimes I will report it to Airport Management and surrender my AOA badge within 24 hours.

Signature of Applicant

I certify that all statements contained in this verification are to the best of my knowledge true and correct, and agree to abide by the requirements prescribed by the airport to obtain security area access clearance to include payment of any prescribed penalties which may result from any security violation, falsification or other fraudulent representation.

Signature of Employer/Company Official

Date



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

APPLICATION FOR IDENTIFICATION CARD

19 U.S.C. 86, 1551, 1555, 1565, 1624, 1641;
19 CFR 112.42, 122.182

Approved through
07/31/96
OMB No. 1515-0026
See back of form
for Paperwork
Reduction Act
Notice and
Privacy Act Notice

Please Type or Print

1. TYPE OF ACTIVITY REQUIRING IDENTIFICATION CARD

Cartman/Lighterman Broker's Employee Customs Security Area Identification Warehouse Officer or Employee Container Station Employee Foreign Trade Zone Employee

2. DATE OF THIS APPLICATION

3. NAME (Last, First, & Middle)

4. SOCIAL SECURITY NUMBER

5. LIST ANY OTHER NAMES YOU HAVE EVER BEEN KNOWN BY (Nicknames, aliases, etc.)

6. DATE OF BIRTH

7. HOME ADDRESS (Number, Street, City, State, and ZIP Code)

8. NAME AND ADDRESS OF PRESENT EMPLOYER
ALOHA AIRLINES, INC.
P.O. Box 30028
Honolulu, HI 96820

9. HOME PHONE NUMBER

10. BUSINESS PHONE NUMBER

11. PLACE OF BIRTH (City, County, State, and Country)

12. HEIGHT

13. WEIGHT

14. COLOR HAIR

15. COLOR EYES

16. VISIBLE SCARS OR MARKS

17. U.S. COAST GUARD PORT SECURITY CARD NUMBER

18. U.S. MERCHANT MARINE CARD NUMBER

19. HAVE YOU EVER APPLIED FOR CARD IN ITEM 17 OR ITEM 18?
 YES NO (Skip Items 20 and 21)

20. HAS APPLICATION FOR EITHER CARD IN ITEM 17 OR 18 BEEN DENIED?
 YES (If Yes, explain in Item 21) NO (Skip Item 21)

21. EXPLANATION OF APPLICATION DENIAL

22. LIST ALL RESIDENCES DURING THE LAST 5 YEARS (List in reverse order, beginning with the present address)

DATES		Number and Street	City	State
From	To			
	PRESENT			

23. HAVE YOU EVER SERVED IN THE ARMED SERVICES OF THE U.S.? YES NO (Skip Items 24 - 28)

24. BRANCH OF SERVICE

25. DATES OF SERVICE

26. SERIAL NUMBER

27. TYPE OF DISCHARGE

28. IF DISCHARGE WAS OTHER THAN HONORABLE, EXPLAIN IN FULL DETAIL

29. HAVE YOU EVER APPLIED FOR AN IDENTIFICATION CARD WITH THE U.S. CUSTOMS SERVICE? YES (If Yes, explain details) NO

ACCESS INVESTIGATION

FAR Part 107.31 specifically prohibits unescorted access in the Security Identification Display Area to anyone convicted or found not guilty by reason of insanity, in any jurisdiction, of any of the following crimes:

- (i) Forgery of certificates, false making of aircraft, and other aircraft registration violations.
- (ii) Interference with air navigation.
- (iii) Improper transportation of a hazardous material.
- (iv) Aircraft piracy.
- (v) Interference with flightcrew members or flight attendants.
- (vi) Commission of certain crimes aboard aircraft in flight.
- (vii) Carrying a weapon or explosive aboard an aircraft.
- (viii) Conveying false information and threats.
- (ix) Aircraft piracy outside the special aircraft jurisdiction of the United States.
- (x) Lighting violations involving transporting controlled substances.
- (xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements.
- (xii) Destruction of an aircraft or aircraft facility.
- (xiii) Murder.
- (xiv) Assault with intent to murder.
- (xv) Espionage.
- (xvi) Sedition.
- (xvii) Kidnapping or hostage taking.
- (xviii) Treason.
- (xix) Rape or aggravated sexual abuse.
- (xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (xxi) Extortion.
- (xxii) Armed robbery.
- (xxiii) Distribution of, or intent to distribute, a controlled substance.
- (xxiv) Felony arson.
- (xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

Have you been convicted or found not guilty by reason of insanity of any of the foregoing crimes during the past ten years?

YES _____ NO _____

If yes, please provide crime, date, justification, and any sentence or penalties. If subsequently convicted of any of the foregoing crimes I will report it to Airport Management and surrender my AOA badge within 24 hours.

Signature of Applicant

I certify that all statements contained in this verification are to the best of my knowledge true and correct, and agree to abide by the requirements prescribed by the airport to obtain security area access clearance to include payment of any prescribed penalties which may result from any security violation, falsification or other fraudulent representation.

Signature of Employer/Company Official

Date



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

APPLICATION FOR IDENTIFICATION CARD

Approved through
07/31/88
OMB No. 1515-0028
See back of form
for Paperwork
Reduction Act
Notice and
Privacy Act Notice

Please Type or Print

19 U.S.C. 86, 1551, 1555, 1605, 1624, 1641;
19 CFR 112.42, 122.162

1. TYPE OF ACTIVITY REQUIRING IDENTIFICATION CARD

Cartman/
Lighterman

Broker's
Employee

Customs
Security Area
Identification

Warehouse Officer
or Employee

Container Station
Employee

Foreign
Trade Zone
Employee

2. DATE OF THIS APPLICATION

3. NAME (Last, First, & Middle)

4. SOCIAL SECURITY NUMBER

5. LIST ANY OTHER NAMES YOU HAVE EVER BEEN KNOWN BY (Nicknames, aliases, etc.)

6. DATE OF BIRTH

7. HOME ADDRESS (Number, Street, City, State, and ZIP Code)

8. NAME AND ADDRESS OF PRESENT EMPLOYER

ALOHA AIRLINES, INC.
P.O. Box 30028
Honolulu, HI 96820

9. HOME PHONE NUMBER

10. BUSINESS PHONE NUMBER

11. PLACE OF BIRTH (City, County, State, and Country)

12. HEIGHT

13. WEIGHT

14. COLOR HAIR

15. COLOR EYES

16. VISIBLE SCARS OR MARKS

17. U.S. COAST GUARD PORT SECURITY CARD NUMBER

18. U.S. MERCHANT MARINE CARD NUMBER

19. HAVE YOU EVER APPLIED FOR CARD IN ITEM 17 OR ITEM 18?

YES NO (Skip Items 20 and 21)

20. HAS APPLICATION FOR EITHER CARD IN ITEM 17 OR 18 BEEN DENIED?

YES (If Yes, explain in Item 21) NO (Skip Item 21)

21. EXPLANATION OF APPLICATION DENIAL

22. LIST ALL RESIDENCES DURING THE LAST 5 YEARS (List in reverse order, beginning with the present address)

DATES		Number and Street	City	State
From	To			
	PRESENT			

23. HAVE YOU EVER SERVED IN THE ARMED SERVICES OF THE U.S.?

YES NO (Skip Items 24 - 28)

24. BRANCH OF SERVICE

25. DATES OF SERVICE

26. SERIAL NUMBER

27. TYPE OF DISCHARGE

28. IF DISCHARGE WAS OTHER THAN HONORABLE, EXPLAIN IN FULL DETAIL

29. HAVE YOU EVER APPLIED FOR AN IDENTIFICATION CARD WITH THE U.S. CUSTOMS SERVICE?

YES (If Yes, explain details) NO

30. PREVIOUS EMPLOYMENT - LIST IN CHRONOLOGICAL ORDER, GIVING EARLIEST EMPLOYMENT FIRST (LAST 10 YEARS)

DATES		EMPLOYER NAME AND ADDRESS	OCCUPATION
From	To		

31. HAVE YOU EVER BEEN CONVICTED OF ANY CRIME OR OFFENSE (other than traffic violations, you may exclude any crime which occurred before your 18th birthday) IN THIS COUNTRY OR ELSEWHERE? YES (If Yes, explain in item 32.) NO

32. EXPLANATION OF ALL CONVICTIONS (Federal, State, Military, or Foreign)

Date	Place	Charge	Court	Final Disposition

33. DO YOU NOW USE OR HAVE YOU EVER USED NARCOTIC DRUGS?

YES (If Yes, explain below) NO

34. ATTACH PHOTOGRAPH HERE

35. CERTIFICATION

I certify that all of the statements made in this Application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

SIGNATURE AND DATE

X

Paperwork Reduction Act Notice: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for this information to carry out the Customs Service laws of the United States. This form is used by licensed custommen or lightermen or their employees as an application to apply for a Customs Identification card and is required to obtain or retain a benefit.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 18 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington DC 20220, and to the Office of Management and Budget, Paperwork Reduction Project (1515-0026), Washington DC 20503.

Pursuant to the requirements of Public Law 93-502 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Customs Form 3078 is 5 U.S.C. 552, Organization Plan No. 1 of 1990; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 1591, 1865, 1824, 1841; 19 CFR 112.42. The principal purpose for collecting the information is to enable the Customs Service to conduct a background investigation and thereby determine whether the applicant meets the criteria required for the issuance of an identification card. The information collected and contained in the applicant's file may be provided to those employees of the Customs Service and the Department of the Treasury who have a need for the records in the performance of their duties. The information may also be used, when deemed appropriate, in a proceeding to revoke or suspend the identification card.

Disclosure of all information requested on Customs Form 3078 is voluntary; however, failure to disclose some or all of this information may result in the Customs Service's inability to conduct the required background investigation.

**TESTIMONY OF AMERICAN SAVINGS BANK REGARDING
FINAL ARREST & COURT RECORD RULES OF THE
HAWAII CIVIL RIGHTS COMMISSION**

January 13, 1998

I am the Thelma Yoshida, Vice President of Human Resources for American Savings Bank. We employ 1300 Hawaii residents throughout the state. We oppose the proposed arrest and court record rules. The current statutory exemption for financial institutions insured by the federal government is sound and protects both our customers as well as our employees.

As a federal depository we are held at a high standard to ensure the safety of our customers' deposits and to follow sound business practices that promote economic success. Our employees have access to the cash, negotiable instruments, and sensitive personal records of our customers. Our employees must believe in and practice a high standard of personal honesty and integrity. They must be trustworthy as demonstrated through their past and present actions and behaviors in their relationships with co-workers and the general public. Therefore, past criminal offenses in burglary, theft, robbery, forgery, computer crime, credit card offenses, money laundering, crimes relating to drug and intoxicating compounds, extortion and other crimes relating to honesty are important factors relating to employment in a financial institution.

Our business is serving customers in person, on the telephone and through the mail on a daily basis. Our customers deserve to be served by individuals with a record of trustworthiness and friendliness.

The conduct of sound business practices include the employment of individuals who have the skills, knowledge, ability and suitability to best serve and meet the standards set for a financial institution by the FDIC. The proposed rules do not support this goal.

We strongly urge the Commission to withdraw its proposed rules.

FILE

Fax Transmittal Form



UNITED, INC.

P.O. Box 381 ■ Honolulu, Hawaii 96809
Telephone (808) 923-5659 ■ Fax (808) 923-5500

To: BOARD OF COMMISSIONERS

Company: HAWAII CIVIL RIGHTS COMMISSION, 830 PUNCHBOWL ST., HON., HI.

Fax #: 586-8655

Subject: CHAPTER 46 - SUBCHAPTER 10 ADMINISTRATIVE RULES
"ARREST AND COURT RECORD DISCRIMINATION"

Date: JANUARY 15, 1998 Time: 1:00 PM

From: GEORGE ANANIAN, PRESIDENT ANCO UNITED, INC.

Number of pages being sent, including transmittal page: 1

URGENT PLEASE REPLY NO REPLY NECESSARY

Remarks: TESTIMONY

Message: MY NAME IS GEORGE ANANIAN, PRESIDENT OF ANCO UNITED, INC.
MY COMPANY HAS BEEN IN BUSINESS IN THE STATE OF HAWAII SINCE 1975.

WE ARE A COMPANY THAT PROVIDES A SERVICE TO HOMES, CONDOMINIUMS,
APARTMENT BUILDINGS, ETC., THAT REQUIRES US TO SEND OUR EMPLOYEES INTO
THESE AREAS AND BUILDINGS TO MAKE DELIVERIES AND PREFORM THE SERVICES
THAT WE PROVIDE.

WE STRONGLY OBJECT TO YOUR PROPOSED RULES BECAUSE YOU DENY ME THE
RIGHT TO QUESTION AN APPLICANT FOR EMPLOYMENT ON MATTERS RELATING TO
THEIR BACKGROUND ON PRIOR ARRESTS AND COURT RECORDS THAT WILL MAKE
OUR COMPANY LIABLE IF WE ARE FORCED TO HIRE A RAPIST AND SEND THEM
INTO A RESIDENCE AND THEY RAPE MY CUSTOMER WHICH MY COMPANY WILL BE
SUED FOR THE ACTIONS OF MY EMPLOYEES BECAUSE YOUR COMMISSION HAS DENIED
ME ACCESS TO THOROUGHLY CHECK OUT THE BACKGROUND OF MY EMPLOYEES.
WE THEREFORE REQUEST THAT YOU ABOLISH YOUR PROPOSED RULES ON ARREST AND
COURT RECORD DISCRIMINATION.

THANK YOU FOR THE OPPORTUNITY TO SHARE OUR VIEWS THROUGH THIS TESTIMONY
ON THIS IMPORTANT ISSUE THAT EFFECTS ALL THE BUSINESSES IN THE STATE
OF HAWAII.

SIGNED, George Ananian
GEORGE ANANIAN, PRESIDENT
ANCO UNITED, INC.

PLEASE DELIVER TO THE ABOVE NAMED PERSON A.S.A.P.

If you do not receive all pages, contact sender as soon as possible

January 15, 1998

Executive Director, Civil Rights Commission, 830 Punchbowl Street, Room 411,
Hon., Hi., 96813 Phone 586-8636 FAX 586-8655

**RE: Hawaii Administrative Rules, Chapter 46 - Civil Rights Commission,
Subchapter 10 "arrest and Court Record Discrimination".**

WE THE UNDERSIGNED are filing this petition with the Civil Rights Commission in our capacity as a private citizen and resident in a condominium, co-op, and/or Community Association in the state of Hawaii **IN OPPOSITION** to Subchapter 10 "Arrest and Court Record Discrimination".

Your proposed rules prohibit and forbid employers access to or the right to conduct a criminal background check on their prospective employees thereby exposing me to physical harm, emotional and mental stress, and financial loss.

On any given day within our living complex it is necessary for an employer to send one of their employees into our building for inspections, meter readings, servicing equipment, installing new equipment, repairs, deliveries, movers, etc.

With your restrictions on a criminal background check on their employees these employers will be sending rapists, assaulters, kidnappers, robbers, on to our property and into our living quarters which is a threat to my safety and well-being.

It is our hope that you will carefully consider our plea to abandon your Subchapter 10 Arrest and Court Record Discrimination.

Thank you for the opportunity to provide **Testimony** on this important public issue.

PRINT NAME	ADDRESS	SIGNATURE
JOHN F. BUCCA	4300 WAIALAE HON. 96816	<i>John Bucca</i>

FILE

ATP Association of Test Publishers

FAX Transmission

From: Maureen Toner Date: January 16, 1998
To: William Hoshijo, Executive Director Time: 4:44 PM
Company: Hawaii Civil Rights Commission FAX #: 808.586.8655

Please deliver to William Hoshijo, Executive Director of the Hawaii Civil Rights Commission, for today's hearing regarding the Final Arrest and Court Record Rules.

Enclosed is a fax of William G. Harris' testimony for today's meeting regarding the proposed Arrest and Court Record Rules. Please take this letter into consideration when deliberating upon the proposed Rules.

Total number of pages including this cover is 3.

VOICE: 312.938.9200 x3405 FAX: 312.094.0140

1201 Pennsylvania Avenue N.W., Suite 300, Washington, DC 20005



ASSOCIATION
OF TEST
PUBLISHERS

1201 PENNSYLVANIA AVENUE N.W.
SUITE 300
WASHINGTON D.C. 20005
202.857.8444

FAX: 808.586.8655

January 16, 1998

William Hoshijo
Executive Director
Hawaii Civil Rights Commission
Room 411
830 Punchbowl Street
Honolulu, Hawaii 96813

Re: Testimony of the Association of Test Publishers
Regarding Final Arrest and Court Record Rules

I, William G. Harris, serve as the executive director of the Association of Test Publishers, a North American trade organization with more than sixty test publishing members. Many of our members provide preemployment selection and assessment tools to businesses in Hawaii.

A review of the proposed Arrest and Court Record Rules shows that the intent of these proposed rules conflicts with existing federal law. The Equal Employment Opportunity Commission ("EEOC") documents unequivocally that the gathering of non-medical information on a prospective employee is to occur only at the pre-offer stage of the hiring process. During the pre-offer assessment phase, the employer is expected to inquire about an applicant's misconduct in employment settings. Section 12-46-210(d) shifts such inquiries to the post-offer stage, which is not only inimical to federal law, but also places an unnecessary burden on the Hawaiian business community.

The intent of Section 12-46-210(d) is ill conceived and requires businesses to ignore their fiduciary responsibilities when staffing their companies. Simply put, this section compels businesses to overlook past behavior, character/personality flaws and other telltale signs of deviancy when recruiting employees. This section completely ignores the wealth of accumulated knowledge which shows the importance of considering an applicant's past actions when making a hiring decision.

BOARD OF DIRECTORS
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EXECUTIVE DIRECTOR
William G. Harris

The proposed Arrest and Court Record Rules clash with federal employment law and undermine the business community's need to prudently manage risk. I strongly urge the Hawaii Civil Rights Commission to study the impact of the proposed rules on the business community. Such rules violate the rights of employers and undermine their responsibility to maintain a safe workplace for their employees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William G. Harris". The signature is fluid and cursive, with a large initial "W" and a checkmark-like flourish at the end.

William G. Harris, Ph.D

WGH/mpt

FILE

January 16, 1998

Executive Director William Hoshijo
Hawaii Civil Rights Commission
830 Punchbowl St., Rm 411
Honolulu, Hawaii 96813

'98 JAN 16 P12:40

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Director Lorraine Akiba
Department of Labor and Industrial Relations
830 Punchbowl St.
Honolulu, Hawaii 96813

Re: Proposed Administrative Rules on Arrest and Court
Record Discrimination

Dear Directors:

As Vice-President and Deputy General Counsel of AVIS Rent A Car System, Inc., I offer this public commentary to the Commission's proposed administrative rules on arrest and court record discrimination. Like many businesses in Hawaii, AVIS has built a reputation of integrity and caring for its customers, employees, and the people of Hawaii. In keeping with our commitment to quality and integrity, we are vigilant in our efforts to make the work place safe. This includes careful selection of employees and reasonable background checks. We believe that the arrest and court record rules proposed by the Commission exceed the scope of Hawaii's employment discrimination law, are unworkable, expose employers, their employees, customers and the public to unreasonable risks, and threaten the operations and efficiency of all businesses.

Chapter 378-2, Hawaii Revised Statutes, provides that it is an unlawful discriminatory practice for an employer to refuse to hire, or employ or to bar or discharge from employment, or otherwise discriminate because of arrest or court record. Section 378-3(2) recognizes an exception exists when the policy, rule or practice that is at issue is "reasonably necessary to the normal operation of business" and "has a substantial relationship to the functions and responsibilities of the prospective or continued employment."

The Rules go beyond the scope of Chapter 378 and radically alter the *bona fide occupational qualification* (BFOQ) exception embodied in Section 378-3(2). Under the Commission's rules, a BFOQ exists only if (1) the essence of the business would be undermined if all persons with a conviction record for a specified offense are not excluded; (2) all or substantially all individuals with a conviction record for a specified offense would be unable to perform the functions and responsibilities of prospective or continued employment in the position; and

January 16, 1998

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(c) there is no acceptable alternative with less discriminatory impact. This goes beyond the traditionally accepted legal definition of *bona fide occupational qualification*. Furthermore, to determine if there is no acceptable alternative with less discriminatory impact, employers must consider seven factors to determine the individual's suitability for employment. What happens if the Commission attempts to second guess an employer's honest, good faith attempt to consider all the prescribed factors resulting in a decision not to hire? The rules do not provide for this reality, ignore the practical and economic realities of operating a business and exceed the scope of HRS §378-2 and 378-3(2), the very laws the rules were drafted to interpret.

Second, the Rules unreasonably expose employers to potential actions under Hawaii law which currently requires employers to maintain a safe work place and take all reasonable precautions to minimize danger and avoid foreseeable risks and injuries to employees. Employers would not be allowed to ask about an individual's background regarding assaults, fighting in the work place, or other matters which indicate that the individual poses a threat of violence to co-workers, customers and the general public, until after an offer has been made, and only if the inquiry relates to a specific offense for which there is a potential BFOQ.

The proposed rules also require employers to place employees who are arrested and/or charged with an offense against the person with leave **with** pay until the matter is resolved, and engage in a dialogue with the individual to determine his or her suitability to return to work. We know of no legal authority that requires an employer to engage in a "dialogue" with an employee the employer believes has engaged in inappropriate or unsafe conduct. Further, the proposed rules assume that absent a conviction, the individual must be innocent. Although the presumption of innocence is necessary in the **criminal** context, adopting such a presumption in **employment** prevents employers from acting to good faith to avoid recurrence of what the employer regards as unsafe or inappropriate conduct.

The rules also preclude employers from asking about an applicant's conviction record or for that matter even work misconduct until the post-offer stage. Delaying inquiries into an individual's conviction record or work misconduct would require companies to invest considerable time and resources to select a particular individual **before** determining whether the individual is in fact qualified for the position. Under the proposed rules, an employer would have to make an offer, wait for the individual to accept the offer, and **only then** determine if the applicant is qualified for the job. The employer runs the risk of having to revoke the offer and beginning the entire

selection process all over again. This is unreasonable and impractical. Furthermore, work misconduct which may not even involve an arrest or conviction is beyond the scope of the law the rules were designed to interpret.

Moreover, under the rules, every employer must determine for each position whether a specific offense qualifies as a BFOQ. Instead of requiring employers to make offense-specific determination, the Commission should recognize that certain types or categories of crimes qualify as a BFOQ. When legislators enacted statutory exceptions to the arrest and court record law (e.g. for condominium associations, financial institutions, department of education and private schools, etc.), they recognized that a certain type or category of crime would automatically qualify as a BFOQ. For example, HRS §378-3(9) provides:

Nothing in this part shall be deemed to:

(9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust... [emphasis supplied]

The Commission should recognize that certain types or categories of crimes qualify as a BFOQ. Convictions for crimes against property should be recognized as disqualifying an individual to work in any position involving the handling of or access to cash, finances, valuables, or the property of the employer or that of the employer's clients, customers or the general public. Convictions for crimes against the person would disqualify the individual from working in any position involving unsupervised contact with co-employees, customers, clients or the general public.

The rules also expand present employment law to prohibit employment actions where the arrest, court record, or conviction "play any part" in the employer's decision. This changes the law in traditional employment discrimination cases, which have generally held the plaintiff must show that alleged discrimination was a substantial or motivating factor for the termination or nonhire decision.

To compound matters, the rules, while extensive, do not provide any real guidance on exactly which offenses do and do not qualify as potential BFOQs. The various "examples" cited in the proposed rules simply reiterate the situations already embodied

January 16, 1998
Page - 4 -

in statutory exemptions from Chapter 378-2, and thus provide no additional guidance to employers.

These are just some examples of the problems inherent in the proposed Rules. At AVIS, we seek to engender a sense of trust and comradery in our employees, and our employees have the right to trust us to exercise sound discretion to maintain safe hiring and employment practices. The Commission's proposed rules are contrary to this effort. Accordingly, we respectfully request that the Commission withdraw the proposed rules in their entirety.

Very truly yours,
Jeffrey D. Fields
AVIS RENT A CAR SYSTEMS, INC.

0166795.01

'98 JAN 16 P12:30

January 16, 1998

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: Proposed Rules Prohibiting Employment Discrimination Based
Upon Arrest and Court Record - Hearing Dated
January 16, 1998 before the Hawaii Civil Rights Commission

To: The Executive Director of the Hawaii Civil Rights Commission

Attached are seven copies of the Bank of Hawaii's testimony concerning the above.

Thank you for the opportunity to present our views. We strongly urge the Commission to
withdraw the proposed rules.

Very truly yours,


Alexander D. Jamile
Vice President and Director of Governmental Affairs

TESTIMONY OF BANK OF HAWAII REGARDING PROPOSED ADMINISTRATIVE RULES FOR ARREST AND COURT RECORD DISCRIMINATION

Bank of Hawaii is a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and, thus, qualifies for a "statutory exemption" under the proposed administrative rules for arrest and court record discrimination promulgated by the Hawaii Civil Rights Commission ("Proposed Rules"). The Bank is compelled, however, to comment on all aspects of the Proposed Rules in the interests of its affiliated companies and the Hawaii business community generally.

1. Identifying Specific Offenses Is Unreasonably Burdensome

Employers covered by a statutory exemption have the burden under the Proposed Rules of "establishing the specific offenses within the statutory exemption" before making any inquiries (Section 12-46-206(b)). The statutory exemption covering Bank of Hawaii allows consideration of criminal offenses involving dishonesty or breach of trust. The broad term, "specific offenses," creates an extraordinary burden on the Employer to research, maintain, and update its employment procedures so that the myriad criminal offenses existing at both the federal and state levels, as well as in foreign countries (given the Bank's international operations), are readily identified and properly presented prior to any inquiry.

The statutory exemption covering Bank of Hawaii involves the fingerprinting of each applicant after an offer of employment is made. The fingerprints are sent to the Federal Bureau of Investigation and a report is returned listing the applicant's arrest and conviction record, if any. This longstanding procedure generates a standardized FBI report listing *all* arrests and convictions in the FBI's database for the particular applicant. Bank of Hawaii and all the other covered financial institutions in the State of Hawaii, collectively, are in no position to instruct the FBI to alter this standard report (which is issued to financial institutions nationwide) to meet the special limitations imposed by the Proposed Rules as to "specific offenses." The requirement to identify and inquire into only "specific offenses" is thus unworkable as it applies to the federal reporting scheme in effect and which Bank of Hawaii is powerless to alter.

2. It Is Impossible To Satisfy The BFOQ Definition

Consideration of any aspect of arrest or court record, absent a statutory exemption, requires an employer to prove that such consideration is a bona fide occupational qualification ("BFOQ"). All three prongs of the BFOQ definition under the Proposed Rules (Section 12-46-202) must be satisfied for an employer to carry its burden of proof.

An employer does not satisfy the first prong if there exists a single individual with a conviction record for a specified offense, regardless of the remoteness

in time of the conviction, whose employment would not undermine the "essence of the business."

The second prong is much more troublesome. An employer cannot satisfy this second requirement if there exist some individuals with a conviction record for a specified offense who are able to perform the "functions and responsibilities" of the position. A "conviction record for a specified offense" provides valuable information to an employer regarding an individual's propensity to commit a criminal act in the workplace or be a threat of harm to customers or co-employees. Our system of tort liability imposes a duty on employers to consider and evaluate these propensities. This consideration encompasses *all* employees and *all* positions. The issue of "functions and responsibilities" of a position are very specific to the position, driven by very particularized job duties and physical requirements. Given this background, any individual with a conviction record for a specified offense is in a position to show that he or she is able to perform the particularized "functions and responsibilities" of a position. A person convicted of theft can still show that he or she is able to perform the tasks of a cashier or manager with a key to the cash register. Using this example, this second prong will lead an employer to impose honesty as a bona fide function and responsibility for *all* positions, disqualifying the person convicted of theft from *any* position he or she can perform with his or her work experience and background. The black and white standard imposed by this second requirement ignores the realities of the workplace and, thus, places an insufferable burden on all participants in the workplace.

It is in the third prong of the BFOQ definition that an employer can consider such factors as the remoteness in time of a conviction, or the degree of rehabilitation evidenced, under the "no acceptable alternative with less discriminatory impact" language. The opportunity for an employer to evaluate such factors is completely undermined, however, by the placement of this opportunity as a required third prong in the BFOQ definition.

Using the example of an individual convicted of theft applying for a cashier's position, an employer may decide that the conviction was sufficiently remote in time, with intervening job positions held and satisfactorily performed, to warrant the extension of a job offer. To preserve the right to consider theft convictions regarding future applicants for the cashier's position, however, the employer must continue to be able to show that the essence of the business would be undermined if *all* persons with a theft conviction are not excluded (first prong) and *all or substantially all* persons with a theft conviction are unable to perform the functions and responsibilities of the cashier's position (second prong). To maintain the BFOQ, as defined by the Proposed Rules, this employer cannot offer the cashier's position to *any* person convicted of theft, even though the employer feels a particular applicant has been satisfactorily rehabilitated. The definitions of BFOQ and the derivative "potential BFOQ" are thus fundamentally flawed for requiring such unnatural results in the workplace.

3. The Sweeping Definition Of "Court Record" Should Be Limited To Criminal Matters

The policy statement for the Proposed Rules states: "Rehabilitation of individuals convicted of crimes is essential to society, and gainful employment is necessary for rehabilitation" (Section 12-46-201). The definition of "court record," however, includes jury selection records, verdicts, and judgments, including newspaper, magazine, or television reports of the foregoing, without limitation to criminal matters (Section 12-46-202). This inclusion of the length and breadth of civil matters, including divorces, personal injury matters, or probate proceedings, as an improper category of information for an employer to have knowledge of, even when reported by the media, is a huge and unwarranted expansion of this category of illegal discrimination and has no support in the policy statement underlying the Proposed Rules.

4. Violent Employees Are Rewarded If Their Actions Are Criminal

If an employee engages in misconduct which leads an employer to reasonably believe that the employee is a threat to the safety of customers or co-employees, the employer may prevent the employee from coming to work. The employer may take this action and not pay the employee as long as the misconduct does not rise to the level of a criminal offense. If the misconduct, however, is so serious as to be a criminal offense, the Proposed Rules require the employer to provide full pay to the employee accused of the crime (Section 12-46-205). The perverse effect is to reward employees whose violent misconduct rises to the level of a criminal act. Employers are also given a perverse incentive to avoid their civic duty of reporting criminal acts. If they do so, they suffer economic consequences.

5. Misconduct In Prior Jobs Is Protected If Criminal

An employer is permitted to make a post-offer inquiry into misconduct at prior jobs, but must direct the applicant to not provide any information about any arrest, court, or conviction record (Section 12-46-209). The Proposed Rule and the proposed sample disclaimer will lead an applicant to reasonably assume that he or she need not disclose any misconduct that led to an arrest, court, or conviction record, even though it may be highly relevant to a statutory exemption or BFOQ. The applicant may reveal prior workplace misconduct that was not criminal, but conceal criminal workplace conduct. The Proposed Rule thus has the effect of shielding from scrutiny an applicant's more serious misconduct.

6. The Rules On "Resolved" Arrests Unduly Limit Employer Discretion And Produces Absurd Results

An employee charged with criminal activity may not be convicted of a criminal offense for technical, procedural reasons, because witnesses are intimidated

and do not testify, or because of a plea bargain. In addition, a deferred acceptance of guilty plea may leave open the issue of conviction for a period of years and, if the probationary conditions are satisfied, result in the ultimate expungement of the criminal charge. The Proposed Rules require the employer in each of these situations to reinstate the charged employee to his or her same or comparable position with full backpay and benefits (Section 12-46-205(i)). Thus, if an employer witnesses criminal activity by an employee, discharges the employee as a result of this personal knowledge of the employee's demonstrated unfitness for the job, but the criminal activity does not result in a conviction, the Proposed Rules require reinstatement of the discharged employee with backpay and the restoration of all benefits. Again, the black and white application of the Proposed Rules produces an absurd result. The Proposed Rules produce similar absurd results with regard to applicants who have engaged in criminal misconduct that is not later "resolved."

7. Conclusion

The statutory exemption covering Bank of Hawaii involves the Bank's participation in a federal crime reporting scheme administered by the FBI. The Proposed Rules require the Bank to preliminarily identify "specific offenses" before an inquiry and limits the inquiry to the identified "specific offenses" (Section 12-46-206). The FBI reporting scheme does not and cannot work in accordance with this "specific offenses" limitation and would thus place Hawaii financial institutions in an impossible position. The federal statute and federal scheme thoroughly regulates this area. Hawaii Revised Statutes Section 378-3(9) confirms this statutory exemption as a matter of State law. No statutory authority exists, therefore, for the Proposed Rules to regulate "statutory exemptions."

The cornerstone statutory concept of a BFOQ in Hawaii Revised Statutes Section 378-3(2) recognizes the legitimacy of an employer's concern over the criminal activity of employees. As transformed and incorporated into the Proposed Rules, however, the BFOQ exception becomes unworkable and literally provides no legitimacy to the employer's concern. Each Proposed Rule is inextricably intertwined with each other rule through this fundamental BFOQ concept. The BFOQ problem, along with the other problems discussed above, requires a wholesale and thorough reconsideration and revamping of the Proposed Rules in their entirety. This reevaluation process must include the participation and comments of Hawaii employers to achieve a workable balance of interests in the workplace.

Bank of Hawaii therefore strongly urges that the Proposed Rules be withdrawn.

●C-D●

**Testimony Regarding Proposed
Arrest and Court Record Discrimination Rules**

David F. E. Banks and Sarah Wang

Cades Schutte Fleming & Wright
Labor and Employment Law Practice Group

Cades Schutte Fleming & Wright provides legal representation for hundreds of employers in the State of Hawai'i. This law firm also employs approximately 100 employees.

As an employer in its own right, and as counsel to hundreds of employers throughout the State, Cades Schutte Fleming & Wright agrees with the Chamber of Commerce of Hawai'i's view that the State Legislature should amend Hawai'i's Fair Employment Practices Law to delete "arrest and court record" as one of the categories of protected classes.

Of greater relevance to this forum, Cades Schutte Fleming & Wright also shares the Chamber's view that the proposed rules regarding arrest and court record discrimination promulgated by the Hawai'i Civil Rights Commission ("HCRC") are incoherent, inconsistent, and unduly burdensome. We offer the following comments to the proposed rules not specifically addressed in the Chamber's testimony:

(1) The proposed rules' definition of "potential BFOQ" essentially precludes any employer who is not specifically exempted by statute or rule from inquiring into the conviction record of a job applicant. Even the "situations" described in proposed section 12-46-207, in which the HCRC claims a potential BFOQ exists, are not situations that would otherwise meet the HCRC's proposed test for a potential BFOQ.

Section 12-46-207 recognizes potential BFOQs for businesses that provide for the care and custody of children, hotel guests, bar patrons and patients. It is not clear, however, that those businesses could satisfy the "potential BFOQ" test set forth in proposed section 12-46-202. That section requires an employer to prove, based upon a preponderance of the evidence, that (1) the essence of its business would be undermined if

all persons with a conviction record for a specified offense are not excluded; and (2) all or substantially all individuals with a conviction record for a specified offense would be unable to perform the functions and responsibilities of prospective or continued employment in the position.

No doubt each of the businesses listed in Section 12-46-207 could satisfy the first prong of the definition of potential BFOQ, and establish that the essence of their business would include the safety concerns of their respective patrons, e.g., children, hotel guests, bar patrons, and hospital patients. However, how could any of those businesses prove that "all individuals with a conviction record for a specified offense would be unable to perform the functions or responsibilities" of a particular job?

A janitor in a healthcare facility convicted of multiple assaults is still capable of pushing a broom, mopping a floor, and performing other functions and responsibilities of his job. A hotel security guard convicted of rape and terroristic threatening is still capable of patrolling the premises. Absent the express exceptions provided in section 12-47-207, any child-care facility, hotel, bar operation or hospital would be substantially at risk of litigation if it made an inquiry into the conviction record of a job applicant.

Furthermore, how are the situations described in section 12-47-207 materially different from cable and telephone service providers, or other similar businesses, whose employees need access to private homes and apartments units? How are the situations described in section 12-47-207 materially different from businesses providing security, maintenance and janitorial staff for office and commercial buildings? Should it make a legal difference that the individual at risk in the latter situation are businessmen and businesswomen, rather than children, hotel guests, bar patrons, or patients, who enjoy express regulatory protection? Absent a section 12-47-207 exemption, businesses that appear to face safety and management concerns that are identical to the concerns of businesses described in section 12-46-207 are precluded from making any inquiry into prior convictions of job applicants.

(2) The HCRC's proposed rules appear to unreasonably restrict private employers from making common and sensible inquiries. Are employers not permitted to

ask prospective route drivers to provide abstracts from the Department of Motor Vehicles? What about businesses that are required to meet bonding qualifications under contract or statute? Are they precluded from soliciting information from regarding prior convictions of job applicants?

(3) Section 12-46-205(e) of the proposed rules requires employers to pay a suspended employee pending investigation of an arrest for an offense against a person under Haw. Rev. Stat. ch. 707, after the employer has come to the conclusion "that the type of offense indicates that the individual may reasonably be considered a substantial threat to the safety of other employees or customers." If an employer concludes that an individual is a substantial threat to the safety of other employees and customers, why should the employer have to provide the employee with a paid vacation at its expense? Where such a conclusion has been reached, any suspension cannot be deemed arbitrary, baseless or unwarranted.

Where an employee has a felony arrest of a nature that raises safety concerns vis-a-vis other employees and customers, the burden should be on the employee, not the employer, to establish that the employee should be reinstated pending resolution of the arrest. The proposed rules effectively provide an at-will employee arrested for a serious felony with greater due process protection than that afforded a public employee who may only be terminated for cause under similar circumstances. See, e.g., Gilbert v. Homar, 117 S. Ct. 1807 (1997). In Gilbert, the United States Supreme Court held that a security guard at a state university arrested for possession of marijuana outside the workplace on a weekend was properly suspended without pay pending the employer's investigation and hearing of the matter.

(4) The Occupational Safety and Health Act ("OSHA") requires employers to provide employees with a safe workplace. 29 U.S.C. § 654(a)(1). Moreover, the Hawai'i Supreme Court in Janssen v. American Hawaii Cruises, 69 Haw. 31 (1987), has recognized that an employer can be liable to a third party based upon the tort of negligent hiring. An employer's potential legal liability, as well as good business sense, mandate that employers take reasonable steps to prevent injury to third parties and to employees. The HCRC's proposed rules significantly impair employers' legal and ethical obligations.

The safety of employees and third parties must be a primary concern of every employer -- not just child-care facilities, hotels, establishments with liquor licenses and hospitals. Safety concerns are paramount whether the essence of the business is growing pineapples or manufacturing widgets. An employer should have the unfettered right to inquire into an applicant's conviction record prior to making an employment decision regarding the applicant. If a conviction record of an applicant has a substantial bearing on the suitability of the applicant for a particular position, the employer should not be forced to hire the applicant.

FILE

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OUR REFERENCE NO.
903-440

January 16, 1998

HAND DELIVERY

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: Testimony on Proposed Regulations for
Arrest and Court Record Discrimination

Dear Mr. Hoshijo:

I am the Chairperson of the Labor and Employment Law Section of our firm. We represent employers in the State of Hawaii and in the Asia-Pacific Region. I am submitting this testimony, as a labor/employment law attorney, to urge you to reconsider the proposed regulations for the following reasons.

1. The proposed regulations exceed the Hawaii Civil Rights Commission's (HCRC) statutory authority as prescribed by HRS Chapter 378. HRS Chapter 368 authorizes the HCRC to enact regulations to enforce HRS Chapter 378. The Employment Practices Law:

- * Makes it an unlawful discriminatory practice for an employer to "refuse to hire or employ or to bar or discharge from employment or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of

employment” on the basis of the individual’s “arrest and court record,” HRS § 378-2;

- * Exempts certain industries such as schools, financial institutions, and health care facilities from compliance, HRS §§ 378-3(8), (9) and (10); and
- * Permits employers to establish a BFOQ which is “. . . reasonably necessary to the normal operation of [the] business . . . and [has] a substantial relationship to the functions and responsibilities of the prospective or continued employment . . .,” HRS § 378-3(2).

Despite these statutory parameters, the proposed regulations establish additional protections and privileges for individuals with arrest, court and/or conviction records which are far beyond those contemplated by the law. For example, the proposed regulations:

- * Provide individuals with arrest, court and/or conviction records with *preferential treatment* by requiring employers to give them leave with pay while resolution of their legal problem is pending, guaranteed reinstatement (usually with backpay and benefits) upon resolution of the problem, and “accommodation” through consideration of “less discriminatory alternatives.” See §§ 12-46-202, -205 and -209.
- * Restrict the use of statutory exemptions to “jobs for which an employer or other covered entity is specifically authorized by statute” to inquire about the “specific offenses within the statutory exemption.” See §§ 12-46-202 and -206.
- * Define a BFOQ as a job qualification for which an employer or other covered entity has the burden of proving that: (a) the essence of the business would be undermined if all persons with a conviction record for a specified offense are not excluded; (b) all or substantially all individuals with a conviction record for a specified offense would be unable to perform the functions and responsibilities of prospective or continued employment in the

position; and (c) there is no acceptable alternative with less discriminatory impact. § 12-46-202.

As an administrative agency, the HCRC is prohibited from adopting regulations which exceed the parameters of the law. The proposed regulations for arrest and court record are materially and substantially different from the Employment Practices Law. Accordingly, enactment of the proposed regulations would be an *ultra vires* act subject to legal challenge.

2. Certain provisions in the proposed regulations conflict with one another. The Employment Practices Law and one part of the proposed regulations seem to suggest that statutory exemptions are simply that -- exempt from the law. See HRS § 378-3; §§ 12-46-202 and -206. However, another part of the proposed regulations suggest that statutory exemptions must still satisfy the BFOQ standard. § 12-46-207(f). This apparent conflict within the proposed regulations will result in legal challenges to the regulations.

3. Other provisions are so vague that they encourage litigation. The proposed regulations state that in order to establish a BFOQ, an employer must prove: (a) *the essence of the business* would be undermined if all persons with a conviction record for a specified offense are not excluded; (b) all or substantially all individuals with a conviction record for a specified offense would be unable to perform the *functions and responsibilities* of prospective or continued employment in the position; and (c) there is no *acceptable alternative* with less discriminatory impact. But what do these terms mean?

- * Does the *essence of the business* refer to the employer's operations in general or the specific purpose for which the company was established?
- * Are the *functions and responsibilities* of a position limited to the individual's actual job duties or can character traits which distinguish a "good" employee (ie. honesty, dependability, common sense and judgment, a sense of responsibility, and morals) be considered?

The concept of *acceptable alternative* is particularly problematic. Although the proposed regulations identify seven factors which employers must consider in determining whether there is an *acceptable alternative with less discriminatory impact*, the regulations do not indicate how each factor should be weighed individually and as a group. For example:

- * Does the absence or presence of these factors weigh in favor of the employer?
- * Must the employer prove all seven factors in order to satisfy the *no acceptable alternative* prong of the regulations?
- * If all seven factors are met, can the employer reject the applicant or terminate the employee outright, or does this simply mean that the employer must find another position where the individual can perform the functions and responsibilities of the job?

There are no apparent answers to these basic questions in the proposed regulations. As a result, adoption of the proposed regulations will result in litigation on § 12-46-202 to clarify the foregoing issues.

4. The burden of proof imposed upon employers is so high that most, if not all, employers will be unable to meet their burden. The proposed regulations state that discrimination exists if the following *causation standard* is met: (a) a causal connection exists between an individual's arrest, court and/or conviction record and the alleged discriminatory conduct; and (b) the individual's arrest, court and/or conviction record is any part of the reason for the conduct. § 12-46-203. Under the HCRC's Treehouse decision, the burden is on the employer to *disprove discrimination*. The combination of the proposed regulations and the Treehouse decision will result in an employer having to prove, by a preponderance of the evidence, that *management's knowledge of an arrest, court and/or conviction record did not play any part in the employment decision*.

This high burden of proof will be practically impossible for an employer to meet. This is because the regulations define illegal inquiries to include, among other things, "obtaining or reviewing computer databases or other records maintained by persons or non-governmental entities, or newspaper, magazine, and television reports

containing information about an individual's arrest record, court record, or conviction record" and "having a third party do any of the above activities." § 12-46-202. Given the daily barrage of information Hawaii residents receive on criminal activities, it will be impossible for an employer to prove that its *knowledge of an arrest, court and/or conviction record did not play any part in the employment decision.*

You may argue that the proposed regulations do not intend such a result. Indeed, another provision in the proposal specifies that "inquire does not include situations where an employer or other covered entity is not seeking information contained in an arrest record, court record, or conviction record but becomes aware of such information through contemporaneous newspaper, magazine, or television reports, or an unsolicited disclosure by an applicant, employee, or person." § 12-46-202. *But what is the legal difference between "reviewing" such information and "becoming aware" of such information?* The regulations do not make a distinction. As a result, this issue will result in significant litigation.

5. The defenses available to employers will be difficult to use. The proposed regulations provide employers with three basic affirmative defenses. However, the level of proof required for these defenses is so high that most employers will be unable to utilize them.

For example, the "statutory exemption" defense requires proof that: (a) the employer is specifically authorized by statute to consider the individual's arrest, court and/or conviction record, § 12-46-202; and (b) the specific offense committed by the individual is within the statutory exemption, § 12-46-206(b). Unfortunately most statutory exemptions do not identify specific jobs that are covered by the exemption or specific offenses that disqualify the individuals from the job. Statutory exemptions in federal and state laws are written broadly and, accordingly, employers may be unable to utilize them as a "statutory exemption" defense. Moreover, some inquiries are necessitated by court decisions (ie. negligent hiring, negligent supervision and negligent retention) rather than statutes. These legitimate inquiries would not be covered at all by the statutory exemption defense.

The "BFOQ" defense is equally difficult. Like the statutory exemption defense, the BFOQ defense requires evidence that a specific offense relates to an individual's ability to perform specific functions and responsibilities of a specific job. Furthermore, as set forth above, the BFOQ test is vaguely worded and will result in

disputes over the proper interpretation of the regulations. In short, any attempt to use the BFOQ defense will surely result in litigation.

The "misconduct" defense is also severely limited. Since most, if not all, employers will refuse to provide information to prospective employers about misconduct committed by former employees (because of tort liabilities), the defense is of no practical use in refusal-to-hire cases. See § 12-46-203. Use of the defense will be infrequent in other employment cases. This is because the only forms of misconduct that can be considered are those that occur *at work and which result in disciplinary action*. §§ 12-46-202 and -209(e). Few employees commit crimes while at work, get caught, and thereafter receive discipline for the "misconduct." Most criminal offenses occur *off-duty*. Nevertheless, this does not mean that an individual's arrest, court and conviction record is unrelated to the job or the employer's business. Stealing that occurs off duty is still relevant to a hotel, restaurant or store that employs the individual as a cashier. Unfortunately, such *off-duty misconduct* does not fall within the defense.

In summary, the severe restrictions placed on affirmative defenses, when combined with the unusually high burden of proof placed upon employer's, will result in an unfair evidentiary burden for employers. As a labor/employment law attorney, I would advise my clients to retain expert witnesses to testify about the nature of the business, industry standards and trends, as well as criminal psychology and recidivism rates. Such measures would be the only effective way to meet the burdens HCRC proposes to place upon an employer in arrest and court record cases. Needless to say, this will result in increasingly complex investigation and litigation of such cases.

6. The proposed regulations will significantly increase litigation. The proposed regulations were obviously modeled after the regulations governing disability discrimination under federal and state law. Like the disability regulations, the proposed regulations for arrest, court and/or conviction records are vague in some areas and extremely complicated in others. Like the situation that developed after the disability regulations were adopted, the proposed regulations on arrest and court record will cause a significant increase in fair employment litigation as employers attempt to defend their business decisions and clarify the regulations. (Indeed, after the adoption of the ADA, the number of charges filed with the EEOC rapidly increased to the point that the case backlog caused the agency to adopt a triage approach to case processing.) The result will be a *legal quagmire* which will take years to resolve.

Mr. William Hoshijo
January 16, 1998
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7. The proposed regulations will further deteriorate Hawaii's negative business climate. Our State is already viewed by companies as "anti-business" and unfairly biased in favor of employees. The proposed regulations will exacerbate that negative image by making it *more difficult and more expensive* for employers to do business in Hawaii. Certain "growth" industries (such as federal government contracting, insurance, and health care) routinely check into applicants' and employees' arrest, court and/or conviction records. If the proposed regulations are enacted, they will have a significant and direct adverse impact on these "growth" industries.

In conclusion, the proposed regulations will make it much more difficult for employers to properly and effectively manage their workforces. The increased administrative burdens, costs and litigation risks inherent in the proposed regulations will create additional stress for our overburdened business community. Rather than improving the business climate, the proposal will worsen it. The Labor and Employment Law Section of Carlsmith Ball urges you to reconsider the proposed regulations.

If you have any questions or require further information, please let me know. We will be happy to provide any additional information you may need.

Very truly yours,

CARLSMITH BALL WICHMAN
CASE & ICHIKI


ANNA M. ELENTO-SNEED

AES:fya

01240432.1.903-440

cc: Governor Benjamin Cayetano
DLIR Director Lorraine Akiba



FILE

**The Chamber of
Commerce of Hawaii**
Since 1850

**Testimony to the Hawaii Civil Rights Commission
Keelikolani Building, Room 310, 830 Punchbowl Street
Friday, January 16, 1998, 1:00 p.m.**

Chair Suyat and Members of the Commission:

**RE: PROPOSED SUBCHAPTER 10 OF TITLE 12, SUBTITLE 7, CHAPTER 46,
HAWAII ADMINISTRATIVE RULES -- ARREST AND COURT
RECORD DISCRIMINATION**

My name is Perry Confalone and I am the Chair of the Human Resources Committee of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to testify in opposition to the proposed Subchapter 10 of Title 12, Subtitle 7, Chapter 46, Hawaii Administrative Rules pertaining to Arrest and Court Record Discrimination.

The Chamber believes that the proposed rules implementing the so-called arrest and court record employment discrimination law represent a step backward in our efforts to promote economic growth and opportunity in Hawaii through a stable business environment. The cause of economic revitalization most certainly is not advanced by threatening businesses with civil liability for their refusal to associate themselves with convicted criminals.

In a sense, these draft regulations are an opportunity. They demonstrate that the statute itself represents an ill-advised and unworkable approach to an important social issue.

We accept the premise that gainful employment may deter criminal conduct. However, The Chamber strongly questions whether this public policy objective is achieved by elevating all convicted criminals to the status of a "protected classification" alongside race, sex, age, disability, national origin, marital status and sexual orientation (H.R.S. § 378-2)

Traditionally, employment discrimination law was meant to prohibit companies from making employment decisions motivated by human characteristics which should be irrelevant -- such as a person's sex or the color

**Testimony to the Hawaii Civil Rights Commission
Proposed Rules on Arrest and Court Record Discrimination
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Page 2**

of skin. But can it really be said that a person's history of dishonesty, deceit or violence must, as a matter of law, be discounted? Must Hawaii employers be forced to hire (and thus associate themselves professionally) with convicted criminals under pain of civil liability?

The present arrest and court record "discrimination" statute imposes an unfair burden on Hawaii's businesses. If our society is committed to reducing crime through jobs, then government must work with business to achieve that end -- not threaten business with lawsuits and more regulatory morass. To that end, The Chamber is committed to working with concerned lawmakers during this legislative session to repeal this ill-founded law. In its place, the Legislature should consider a mechanism to promote criminal rehabilitation through jobs that encourages voluntary employer participation. A jobs clearinghouse comes to mind. Much can be accomplished when an appeal is made to community spirit and good citizenship. Businesses do not need litigation and regulations to achieve this goal.

The Chamber offers the following comments on specific sections of the proposed rules without prejudice to its position that this law fundamentally should be repealed:

- (1) **Definition of "Bona Fide Occupational Qualification" (Proposed H.A.R. § 12-46-202):** The proposed definition contains terms that are so vague that even the most well-meaning and sophisticated employers will be confused. How does one determine what is the "essence of the business"? Isn't the fair and honest treatment of customers the "essence" of any business? How does one determine whether "substantially all individuals with a conviction record for a specified offense" cannot perform the job.
- (2) **Definition of "Inquire" (Proposed H.A.R. § 12-46-202(1)(C)):** The proposed rule would make it unlawful to "obtain" or "review" public information concerning arrest and conviction records. This clearly exceeds legislative intent and may be an unconstitutional incursion into freedom of speech. The Chamber does not believe that the Legislature, in enacting this law, ever contemplated barring public access to public information.

- (3) **Causation Standard (Proposed H.A.R. § 12-46-203(a)(2))**: This section purports to hold employers liable if arrest and court records "[were] any part of the reason for the conduct". Thus, in mixed motive cases, an employer would be liable even if an employee would have been terminated regardless of arrest and court record. This proposed rule is an attempt by any agency to amend the substantive terms of a statute via administrative rule making. The operative statutory words are "because of". (H.R.S. § 378-2) The Hawaii Supreme Court has interpreted "because of" to mean that an employer is not liable for wrongful termination if the employer can demonstrate that it would have taken the same action irrespective of the protected classification. Crosby v. State Dept. of Budget and Finance, 76 Haw ___, 876 P.2d 1301 at 1310, "[t]he employer can defend affirmatively by showing that the termination would have occurred regardless of the protected activity". [citing NLRB v. Howard Electric Co., 873 F.2d 1287 at 1290 (9th Cir. 1989)] The Hawaii Civil Rights Commission cannot alter the meaning of these statutory words via rule making.
- (4) **Unlawful Discriminatory Practices (Proposed H.A.R. § 12-46-205 (d))**: It may be inferred that the proposed rule requires employers to identify in advance the "specified offense[s]" that would constitute a bona fide occupational qualification. This will be virtually impossible to implement since the proposed rule would require employers to have a working knowledge of criminal law -- an assumption that should not be reasonably expected on employers.
- (5) **Unlawful Discriminatory Practices (Proposed H.A.R. § 12-46-205 (e) and (f))**: The proposed rule would require employers to pay employees suspended after being arrested for violent crimes. The Chamber believes that this provision exceeds legislative intent. What happens if the employee is convicted? How does the employer get its money back? The time period between arrest and trial can exceed a year. Must the employer pay the suspended employee for that time period?

- (6) **Unlawful Discriminatory Practices (Proposed H.A.R. § 12-46-205(h))**: The proposed rule requires employers who bar an employee from the premises after being arrested for violent behavior to ". . . meet with the individual within a reasonable time to inquire about the offense". This is unrealistic. Persons accused of crimes are routinely instructed by legal counsel not to discuss the case with anyone because their statements can be used against them in court.

- (7) **Post Offer Employment Practices (Proposed H.A.R. § 12-46-209(d))**: The proposed rule would make it unlawful for prospective employers to inquire about work misconduct without first making a conditional offer of employment. At that point, the prospective employer is entitled to ask the employee about misconduct in past employment, but is not entitled to know whether that misconduct resulted in a criminal conviction. In fact, the employer has to warn the employee not to inform the employer about criminal convictions. Human resource professionals would thus be deprived of critical information bearing on applicant competence and suitability before making offers of employment. The Chamber does not believe the Legislature ever intended this result.

Thank you for this opportunity to testify. I'd be happy to answer any questions that you may have.

FILE

Executive Director, Civil Rights Commission, 830 Punchbowl Street, Room 411,
Hon., Hi., 96813 Phone 586-8636 FAX 586-8655

RE: Hawaii Administrative Rules, Chapter 46 - Civil Rights Commission,
Subchapter 10 "Arrest and Court Record Discrimination".

WE THE UNDERSIGNED are filing this petition with the Civil Rights Commission in our capacity as a private citizen and resident in a condominium, co-op, and/or Community Association in the state of Hawaii IN OPPOSITION to Subchapter 10 "Arrest and Court Record Discrimination".

Your proposed rules prohibit and forbid employers access to or the right to conduct a criminal background check on their prospective employees thereby exposing me to physical harm, emotional and mental stress, and financial loss.

On any given day within our living complex it is necessary for an employer to send one of their employees into our building for inspections, meter readings, servicing equipment, installing new equipment, repairs, deliveries, movers, etc.

With your restrictions on a criminal background check on their employees these employers will be sending rapists, assaulters, kidnappers, robbers, on to our property and into our living quarters which is a threat to my safety and well-being.

It is our hope that you will carefully consider our plea to abandon your Subchapter 10 Arrest and Court Record Discrimination.

Thank you for the opportunity to provide Testimony on this important public issue.

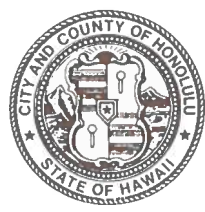
PRINT NAME	ADDRESS	SIGNATURE
✓ Royal Alan Belshe	1422 Heale St. B200	<i>Royal Alan Belshe</i>
✓ Ronald N. Kan	1422 Heale St. B-106	<i>Ronald N. Kan</i>
✓ Ruth D. CROCKETT	3215 Pawale Pl.	<i>Ruth D. Crockett</i>
✓ Stephen Lee	110 Hanohano Place	<i>Stephen Lee</i>
✓ Brandie Brackin	3458-F Kalihi St.	<i>Brandie Brackin</i>
✓ Kim Akana	2306 Amoamoo St.	<i>Kim Akana</i>
<i>Aysha Mohamed</i>	3413 Francis St.	<i>Aysha Mohamed</i>
✓ ANNETTE J. MILLER	1065 KAWAIAHAO ST #1801	<i>Annette J. Miller</i>
<i>Judy Nakamoto</i>	2107 KEEAUMOKU	<i>Judy Nakamoto</i>

FILE

DEPARTMENT OF PERSONNEL
CITY AND COUNTY OF HONOLULU

550 SOUTH KING STREET • HONOLULU, HAWAII 96813
PHONE: (808) 523-4809 • FAX: (808) 527-5563

JEREMY HARRIS
MAYOR



SANDRA H. EBESU
DIRECTOR

January 15, 1998

Mr. William D. Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

**RE: Adoption of Title 12, Subtitle 7, Chapter
46, Subchapter 10: Proposed Rules Relating
to Arrest and Court Record Discrimination.**

Dear Executive Director Hoshijo and Commission Members:

The Department of Personnel, City and County of Honolulu concurs with the written testimony submitted by Ted H.S. Hong, Assistant Corporation Counsel, on behalf of the County of Hawaii, and request that this document be viewed as a joinder to said testimony in opposition to the adoption of the above-entitled proposed rules.

It is the position of the City and County of Honolulu that Section 831-3.1, Hawaii Revised Statutes (hereinafter referred to as "H.R.S."), relating to prior convictions; criminal records; noncriminal standards, statutorily exempts the State of Hawaii and the several counties from the prohibition against access to and consideration of an individuals' conviction record in making employment decisions. This statutory exemption is available provided adherence to the standards and procedures articulated in Section 831-3.1(b), H.R.S. are complied with. In the public sector, regulation of employment suitability is governed by civil service rules and regulations, Chapter 76, H.R.S. relating to the Civil Service Law, relevant provisions of the county charter, and adherence to Section 831-3.1, H.R.S. Consequently, there is sufficient regulation regarding employment suitability determinations in the public sector.

Mr. William D. Hoshijo
January 15, 1998
Page Two

Although the City and County of Honolulu maintains that Section 831-3.1, H.R.S. affords the counties a statutory exemption from the scope of Chapter 378, H.R.S., we join in the legal arguments and concerns discussed in the written testimony submitted by the County of Hawaii, and urge this Commission to defer adoption of the above-entitled proposed rules until resolution of the public sector employers' concerns are squarely addressed.

Respectfully submitted,

Sandra H. Ebesu

SANDRA H. EBESU
Director of Personnel

SHE:kc

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P.O. BOX 1559, HONOLULU, HAWAII 96806


CITY MILL COMPANY, LTD.
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January 16, 1998

Dear Members of the Hawaii Civil Rights Commission:

My name is Carol Ai and I am the Vice President of City Mill Company, Ltd., which employs 400 members of the community. The proposed arrest and court record rules threaten the safety of our employees, customers, and the public. We urge you to withdraw these rules in its entirety. We support the alternative rules proposed by the Society of Human Resource Management.

City Mill deals with the public. We hire associates who will drive and handle trucks, forklifts and other heavy equipment. Under the proposed rules, we cannot even require a driving abstract before offering employment to a truck driver. Under these rules, we could not deny employment to a rapist who wanted to be a custodian. Our employees, customers and the public would be at risk.

These rules are unworkable and place an undue burden on business. It doesn't seem fair that you, the HCRC, and the State, are both exempt from these laws. If these rules are so reasonable, then you and the State should not hesitate to abide by them as well.

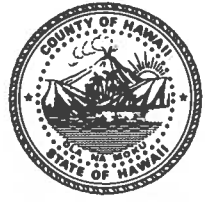
Please do not add additional burdens for existing businesses. We have weathered good and bad economic times in Hawaii, a poor business climate, and 7 years of recession. Government and business, together, need to work to provide a healthy, workable business environment so that Hawaii can start to grow again. Thank you for your time.

Sincerely,

Carol Ai
Vice President

FILE

Stephen K. Yamashiro
Mayor



Richard Wurdeman
Corporation Counsel

County of Hawaii

JAN 15 P12:28

OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawai'i 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

**RE: Adoption of Proposed Rules, Title 12, Subtitle 7, Chapter 46, Subchapter 10,
Arrest and Court Record Discrimination.**

Dear Director and Commission Members:

1. Summary of Position:

The County of Hawaii opposes the adoption of the above entitled proposed rules. The proposed rules conflict with existing statutes concerning the public sector employment of individuals who have been arrested and convicted of crimes. In the screening or selection process of public sector employment, the proposed rules conflict with Chapter 831, Hawaii Revised Statutes (hereinafter referred to as "HRS"). In terms of arrests and convictions which occur while employed, Chapter 89, HRS supersedes and preempts the proposed rules. Finally, the proposed rules preclude the County and its governmental departments and agencies from legitimately requesting, obtaining and sharing information concerning an applicant's criminal history record.

2. Law and Analysis:

A. Administrative Rules May Not Conflict or Contradict Statutes.

It is well established that administrative rules and regulations are subordinate to statutory law. *State v. Feldhacker*, 76 Hawai'i 354, 356, 878 P.2d 169, 171 (1994); see also, *Hyatt Corp. v. Honolulu Liquor Comm'n*, 69 Haw. 238, 241, 738 P.2d 1205, 1206 (1987). In the *Feldhacker*, supra, case, the Hawaii State Supreme Court also reaffirmed that:

An agency "may not enact rules and regulations which enlarge, alter, or restrict the provisions of the act being administered."
Jacober v. Sunn, 6 Haw.App. 160, 167, 715 P.2d 813, 819 (1986).

Feldhacker, supra, 76 Hawai'i at 356, 878 P.2d at, 171.

Moreover, Sec. 378-3(1), HRS, is a clear expression of legislative intent that Chapter 378, HRS, and the rules promulgated by the Commission, shall not conflict with any other law, ordinance or

rule.

B. The Proposed Rules Conflict with Chapter 831, HRS.

The proposed rules conflict with and violate Chapter 831, HRS regarding the public sector pre-employment screening process. Section 831-3.1, HRS states:

§ 831-3.1. Prior convictions; criminal records; noncriminal standards

(a) **A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission.**

(b) **The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:**

- (1) Records of arrest not followed by a valid conviction;
- (2) Convictions which have been annulled or expunged;
- (3) Convictions of a penal offense for which no jail sentence may be imposed;
- (4) Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.

Except as provided in paragraphs (1) to (4), the State or **any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (i) to the applicant's possible performance in the job applied for, or (ii) to the employee's possible performance in the job which the employee holds, or (iii) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.**

For the purpose of this subsection, **such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service,**

after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors to determine sufficiency of rehabilitation. A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person.

(c) When considering noncriminal standards such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like, in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the agency shall not take into consideration the conviction of any crime except as provided by subsection (b). Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.

(d) This section shall not apply to:

- (1) Denials by the department of human services of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapter 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33; and
- (4) Denials of employment as a staff member of a correctional facility operated under chapter 353.

Emphasis added.

L 1974, c 205, § 2; am L 1975, c 54, § 1; am L 1976, c 113, § 2; am L 1979, c 53, § 3; am L 1985, c 155, § 3 and c 209, § 8; gen ch 1985; am L 1987, c 339, § 4; am L 1989, c 74, § 2 and c 116, § 1; am L 1993, c 40, § 2.

In adopting the original version of Sec. 831-3.1, HRS, the Hawaii State Legislature specifically intended that:

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from

employment or licensure by the State or its political subdivisions **solely** by reason of a prior conviction of a crime. Under the bill, **employment or occupations licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime when the offense directly relates to the occupation in which the convicted person seeks or holds employment or for which he seeks or holds a license.**

Emphasis added and included.

Journal of the House of Representative, Seventh Legislature, Regular Session, 1974, Standing Committee Report No. 129-74, at 612; attached as Exhibit "1" hereto.

The proposed rules conflict with already existing statutes. Section 831-3.1, HRS establishes a standard for pre-employment screening. It also establishes a process where a person, who feels discriminated against because of his or her arrest or conviction record, is entitled to a Chapter 91, HRS contested case hearing. The results of that hearing may be appealed to the applicable circuit court. See, Sec. 91-14, HRS.

The proposed rules unlawfully expands the jurisdiction of the Hawaii Civil Rights Commission. The proposed rules as currently worded, clearly apply to the counties, despite the process established in Chapter 831, HRS and any public pronouncements. The underlying promulgating statute includes the counties under the definition of "employers." See, Sec. 378-1, HRS. Additionally, the stated purpose of the rules in Sec. 12-46-201 refers to "any employer" and does not distinguish between public and private sector employers.

Although it may be argued that the reference to "statutory exemption" was intended to refer to Chapter 831, HRS and disqualify the State and counties from enforcement, a cursory review of the proposed rules would lead any reasonable person to the opposite conclusion. Section 12-46-202 defines "statutory exemption" as follows:

"Statutory exemption" means jobs for which an employer or other covered entity is specifically authorized by statute to inquire about or consider an individuals' arrest record, court record, or conviction record and the inquiry or consideration is not authorized as a BFOQ.

The proposed rules define the same term in a contradictory manner:

Sec. 12-46-206 **Statutory exemptions.** (a) An employer or other covered entity which has a statutory exemption to inquire about or consider an individual's conviction record may make inquiries and employment decisions as allowed by the exemption.

(b) An **employer** or other covered entity **has the burden of**

establishing the specific offenses within the statutory exemption and must do so before conducting an inquiry.

Emphasis added and included.

Given the purpose and breadth of the underlying statute and proposed rules, unless the rules specifically and clearly exclude the counties, the counties must assume that they are included under the proposed rules. Moreover, it would be up to the counties to prove by a “preponderance of the evidence” that the rule does not apply. Sec. 12-46-203 (a).

The proposed rules contradict already existing statutes and are an unlawful expansion of the Commission’s authority, because a statutory system or process already exists concerning pre-employment screening by public sector employers. The proposed rules unlawfully supersede the current process by creating higher standards of proof and penalties for public sector employers without any statutory basis. The proposed rules place an unnecessary burden on employers by mandating adherence to a separate process and remedy despite the already existing process. There is no reason or demonstrable need to expand on statutory protections that already exist.

C. The Proposed Rules Violate Chapter 89, Concerning Employment Practices.

The proposed rules also attempt to regulate public sector employers’ ability to monitor, screen and take any adverse employment actions for employees who violate the law. See, Section 12-46-210. Chapter 89, HRS preempts, by statute, this section of the proposed rules:

§ 89-19. Chapter takes precedence, when

This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, or rules adopted by the State, a county, or any department or agency thereof, including the departments of human resources development or of personnel services or the civil service commission.

Emphasis added.

L 1970, c 171, pt of § 2; am L 1994, c 56, § 15; see, *State Organization of Police Officers (SHOPO) v. Society of Professional Journalists-University of Hawai'i Chapter*, 83 Hawai'i 378, at 403, 927 P.2d 386, at 411 (Hawai'i 1996).

The scope of public sector employers’ rights are set out in Sec. 89-9, HRS which states in relevant part:

§ 89-9. Scope of negotiations

* * *

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits, and the salary ranges now provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable. **The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies; provided that the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees, and procedures governing the layoff of employees; provided further that violations of the procedures so negotiated may be the subject of a grievance process agreed to by the employer and the exclusive representative.**

Emphasis added.

L 1970, c 171, pt of § 2; am L 1975, c 31, § 1 and c 164, § 1; am L 1980, c 253, § 6; am L 1984, c 254, § 1; gen ch 1985; am L 1986, c 156, § 1; am L 1987, c 27, § 4; am L 1988, c 399, § 4; am L 1993, c 364, § 16; am L 1988, c 399, § 4, eff. June 30, 1995.

Chapter 89, HRS establishes a two (2) step process for the resolution of labor disputes. First, any employee against whom disciplinary action has been taken for violating any criminal law may file a grievance according to the applicable collective bargaining agreement. See, 89-11, HRS. Second, the employee and its applicable union may file a prohibited practice complaint before the Hawaii Labor Relations Board. See, Sec. 89-5, HRS; 89-13, HRS; 89-14, HRS. Section 89-13(a)(3), HRS, specifically precludes public sector employers from discriminating in regard to hiring or any term or condition of employment. Section 89-13(a)(8), HRS, also precludes public sector employers from violating any of the terms of a collective bargaining agreement. All

collective bargaining agreements currently in effect with public sector employers contain language that prohibits discrimination.

The Hawaii State Supreme Court in the *SHOPO*, supra, case clearly stated that Sec. 89-19, HRS preempts attempts by either collective bargaining agreements or other statutes and rules from regulating or restricting the rights of public sector employers to set standards for their employees. The proposed rules violate the public sector employers' statutory right, under Chapter 89, HRS, to set and enforce standards of conduct and behavior for their employees. The proposed rules unlawfully restrict public sector employers from disciplining employees who commit criminal acts while on or off duty. The proposed rules unlawfully circumvents the statutorily created labor dispute resolution process.

Clearly, the proposed rules unlawfully attempt to restrict the public sectors employers' ability to discipline employees who violate the criminal laws.

D. The Proposed Rules Violates Chapter 92F, HRS.

Currently, in the employment context governmental departments, agencies and offices, are permitted by law to share arrest, conviction, court records and other information that may be relevant to the qualifications of an applicant. In relevant part, Sec. 92F-19, HRS provides:

§ 92F-19. Limitations on disclosure of government records to other agencies

(a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

(1) Necessary for the performance of the requesting agency's duties and functions and is also:

(A) Compatible with the purpose for which the information was collected or obtained; or

(B) **Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;**

* * *

(10) To the department of human resources development, **county personnel agencies, or line agency personnel offices for the performance of their respective duties and functions, including employee recruitment and examination, classification and compensation reviews**, the administration and auditing of personnel transactions, **the administration of training and safety**, workers' compensation, and **employee benefits and assistance**

programs, and for labor relations purposes;

* * *

Emphasis added.

L 1988, c 262, pt of § 1; am L 1993, c 250, § 2; am L 1994, c 56, § 21.

Chapter 92F, HRS allows governmental agencies to share information concerning an applicant's and employee's criminal history record. This information may take several forms and there are clear prohibitions concerning the distribution and use of the information as well as severe sanctions for any unlawful disclosures. The public sector employers rely and depend on other governmental agencies to assist them by providing the necessary information to make informed, intelligent and fair employment decisions. Public sector employers also have a responsibility to the citizenry and must be able to meet and enforce the high standards of conduct and behavior that the public demands of public sector employees.

The proposed rules unlawfully restrict the access of public sector employers to this vital information. The proposed rules expressly prohibit all access and unnecessarily burden access through prohibitive procedures to obtain access to this vital source of employment information. The proposed rules should not restrict, limit or impose additional procedures on the public employers' ability to obtain, analyze and utilize such important employment information.

3. Conclusion:

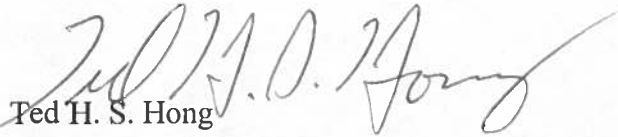
The County of Hawaii suggests the proposed rules, although comprehensive and thorough, are unlawful. The proposed rules enlarge the jurisdiction of the Commission, without statutory support or basis. The proposed rules are superseded or preempted by Chapter 89 in terms of the employment relationship between public sector employers, their respective employees and the public sector labor unions. The proposed rules unlawfully restrict the public sector employers from obtaining the necessary criminal history information to make informed, intelligent and fair decisions in employment.

The County of Hawaii submits that the proposed rules are unnecessary and unlawful. The County of Hawaii respectfully submits that the adoption of the proposed rules will force unnecessary inter-governmental litigation which will be a waste of time and resources. The County of Hawaii respectfully urges the Commission to decline to adopt the proposed rules and allow the status quo, including its current statutory provisions to remain in effect.

The County of Hawaii appreciates the time, effort and careful consideration the Commission brings to this important issue.

If the Commission has any further questions or concerns, it may contact me at my office at the above address.

Respectfully,



Ted H. S. Hong
Assistant Corporation Counsel

cc: Stephen K. Yamashiro, Mayor
James Y. Arakaki, Chairperson, Hawaii County Council
Wayne G. Carvalho, Chief of Police
Michael R. Ben, Director of Personnel

JOURNAL
of the
HOUSE OF REPRESENTATIVES
of the
SEVENTH LEGISLATURE
STATE OF HAWAII
REGULAR SESSION OF 1974

Convened Wednesday, January 16, 1974
Adjourned Thursday, April 11, 1974

EXHIBIT 1

The purpose of this bill is to establish a system of environmental review at State and county levels, which will insure that environmental policies of the legislature are given appropriate consideration in decision-making along with economic and technological considerations.

In order for this to be accomplished the Act requires environmental impact statements to be filed on all major actions which would have significant adverse effects on the environment.

All public actions are presently governed by an Executive Order for the State requiring environmental impact statements. This bill would include the private sector.

The contents of the environmental impact statements would be determined in rules and regulations to be adopted by the Office of Environmental Quality Control. Monies must be appropriated to hire additional staff for the purposes of this bill.

Your Committee on Environmental Protection is in accord with the intent and purpose of **H. B. No. 2067-74** and recommends that it pass Second Reading and be referred jointly to the Committees on Judiciary and Corrections and Finance.

Signed by all members of the Committee.

SCRep. No. 128-74 Environmental Protection on H. B. No. 2234-74

The purpose of this bill is to propose an amendment to Article I, of the Constitution of the State of Hawaii, by adding a new section on environmental quality.

The people of this State are showing increasing concern with the quality of the environment. The Temporary Commission on Environmental Planning established by the Legislature in 1973 held numerous public and private meetings throughout the State, and reported that it found, "a truly amazing amount of agreement on the general goals to be sought."

Your Committee feels that the Constitution of the State should reflect some of the concern of the people of Hawaii. This proposed amendment gives full recognition to the fundamental nature of environmental needs and thus the right to environmental quality.

The intent in reference to "evidence of their cultural heritage" is to include historical traditional aspects of our man-made environment.

The overall intent of the bill is to consider environmental rights as limited in their individual applicability in the same way as other basic rights.

Your Committee on Environmental Protection is in accord with the intent and purpose of **H. B. No. 2234-74**, as amended herein, and recommends that it pass Second Reading in the form attached

hereto as **H. B. 2234-74, H. D. 1**, and be referred to the Committee on Judiciary and Corrections.

Signed by all members of the Committee.

SCRep. No. 129-74 Judiciary and Corrections on H. B. No. 2485-74

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from employment or licensure by the State or its political subdivisions solely by reason of a prior conviction of a crime. Under the bill, employment or occupational licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime when the offense directly relates to the occupation in which the convicted person seeks or holds employment or for which he seeks or holds a license. The bill adds a new section to the Hawaii Revised Statutes to provide for the above, and repeals all contrary provisions.

Your Committee heard or received testimony from numerous witnesses respecting this bill, including the director of Department of Social Services and Housing; the State chairman of the Hawaii Council on Crime and Delinquency; and spokesmen for the Honolulu Police Department, the John Howard Association, and the Hawaii Correctional Association. Each supported the bill.

Your Committee finds that the present restrictions on employment and occupational licensure are unwarranted, unwise, and unproductive. The numerous and varied restrictions placed on the occupational rehabilitation of convicted persons serve neither society's nor the convicted person's interests. To the extent that a rational connection can be shown between the applicant or employee's past conviction and his present performance or reliability, the bill would permit disqualification because of past criminal conviction; otherwise, it would not.

Your Committee has amended the bill to provide that conviction of any penal offense for which a jail sentence may be imposed may be considered if the offense directly relates to the occupation in which the convicted person seeks or holds employment or for which he seeks or holds a license. The bill as originally drafted limited state agencies to a consideration of only felonies and those misdemeanors involving "moral turpitude". In light of the ambiguity inherent in this phrase and the judicial cases interpreting it, and in the light of the requirement that the offense must relate to possible performance in the occupation involved, your Committee has deleted this restriction. We have also made other minor amendments to achieve greater clarity.

Your Committee on Judiciary and Corrections is in accord with the intent and purpose of **H. B. No. 2485-74**, as amended herein, and recommends that it pass Second Reading in the form attached hereto as **H. B. No. 2485-74, H. D. 1**, and be placed

on the calendar
Signed

SCRep. N

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on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 130-74 Finance on H. B. No. 2622-74

The purpose of this bill is to reinsert the "old" subparagraph (4) to subsection 231-32 (a) of the Hawaii Revised Statutes.

In 1972, Section 5 of Act 200 (H. B. 1893-74) amended subsection 231-23 (a), relating to adjustments and refunds of real property taxes due to duplicate assessments and clerical errors. The purpose of the amendment, which involved subparagraph (3) of subsection 231-23 (a), was simply to include limited distribution mortgagors under the provisions of this section of the law.

During the course of this amendment, it appears that somehow subparagraph (4) was inadvertently omitted from the statutes. Under the provisions of subparagraph (4), adjustments of refunds for duplicate assessments or clerical errors could be made by the assessor if an application for adjustment is filed within two years after the tax year in which the amount to be credited or refunded was due and payable. With the omission of subparagraph (4), there is no restriction on the time period for which the assessor can make such adjustments. This could result in a tremendous amount of adjustments and paper work.

Your Committee on Finance is in accord with the intent and purpose of H. B. No. 2622-74 and recommends that it pass second reading and be placed on the calendar for third reading.

Signed by all members of the Committee except Representative Amaral.

SCRep. No. 131-74 Environmental Protection on H. R. No. 62

The purpose of this Resolution is to provide for the State Department of Planning and Economic Development to determine the population carrying capacity of the State.

The growth of population in the last third of this century will be one of the most serious challenges to human destiny. Statistics show us that Oahu's population of 257,696 in 1940 grew to 630,528 in 1970 and is predicted to range between 990,000 and 2,010,000 by the year 2000.

We are approaching and in some cases have exceeded the limits of the environment's ability to support human activities at present levels of technology. We have in these cases exceeded the carrying capacity of the environment. The result is a diminished quality of life and environment.

Your Committee feels that Hawaii must proceed quickly to measure the ability of our natural environment to cope with the impact of population. We must determine which systems are most susceptible to overload, and at what level of human activity the overload occurs.

Your Committee has amended H. R. No. 62 to further clarify the meaning of the concept of "overload."

Your Committee has changed the State Commission on Population and the Hawaii Future to the State Department of Planning and Economic Development, because your Committee feels that this will yield better results.

Your Committee on Environmental Protection concurs with the intent and purpose of H. R. No. 62, as amended herein, and recommends its adoption in the form attached hereto as H. R. No. 62, H. D. 1.

Signed by all members of the Committee.

SCRep. No. 132-74 Judiciary and Corrections on H. R. No. 98

The purpose of the resolution was to have your Committee consider the provision of a program of conjugal visitation and conjugal release for convicted citizens in the state correctional system, and for all citizens held in custody in county jails. In this respect, your Committee recognizes conjugal consortium to be the right of every adult human being, and is cognizant that any form of imprisonment which denies that right to a prisoner simultaneously denies, in most cases, that right to a second citizen who has not been convicted of any offense.

Your Committee found that, as pointed out in testimony by the Hawaii Correctional Association, H. R. S. 353-22 (d) authorizes the Director of the Department of Social Services & Housing to grant convicted citizens in his custody furloughs for "social reorientation," and recommends that the Director begin such a program where such release is consistent with public safety. The testimony of the Corrections Division Administrator agreed that conjugal visiting "is a vital part of the redirection or habilitation of the offender."

The testimony of others, including the Hawaii Council of Churches and the John Howard Association, brought to your Committee's attention the fact that the Correctional Master Plan and the recently approved Hawaii Pre Design Plan thereof, do not mention any intention to permit conjugal visiting in the proposed new facilities. Your Committee is in accord with the testimony which requested that the State Law Enforcement and Juvenile Delinquency Planning Agency amend the Hawaii Pre Design Plan to the extent necessary to include provisions for conjugal visiting for individuals subjected to lengthy pre-conviction incarceration and for convicted citizens who are precluded from participating in family visiting furloughs. Your Committee feels, however, that mere conjugal provisions address only a portion of the problem, and that the concept should be one of family visitation designed to not only deal with conjugal consortium but also to preserve and strengthen the bonds among

assistance. Your Committee finds that the curbing of abuses in general assistance should be handled through a process of elimination of persons from general assistance on the basis of their seeking employment or accepting employment from the State. Act 177, Session Laws of Hawaii 1973, provided a means by which the department of social services and housing could require a person receiving assistance to gain employment. Under the public service employment program, the department is responsible for providing employment on public works projects for persons who: (1) receive full or partial public assistance from the State or (2) receive unemployment compensation benefits from the State, and are in the last two weeks of such unemployment compensation benefits after which they would be eligible for full or partial public assistance. However, persons qualifying under (1) and (2) must also reside on an island where the primary economic base providing employment for such persons is lost or in danger of being lost.

Your Committee feels that Act 177, if extended on a statewide basis, would provide the department of social services and housing with an avenue by which they may eliminate persons receiving general assistance who do not accept employment. The intent here is to offer able-bodied persons jobs through public works projects. Any refusal of such a public works job would mean immediate disqualification from assistance benefits.

In pursuing the approach to provide general assistance payments to eligible able-bodied persons and to insure safeguards from abuses, your Committee has amended H. B. 2428-74 by deleting the provision which disqualifies able-bodied persons from general assistance. In addition, your Committee has included a new section to the bill which would amend section 346-102(a) to extend public service employment to all persons on partial or full public assistance regardless of their area of residence. This amendment to section 346-102(a) in no way interferes with the original intent of Act 177, Session Laws of Hawaii 1973.

Your Committee found through testimony that the funds appropriated for Act 177, Session Laws of Hawaii 1973, have never been allotted for expenditure. Such unilateral decisions by the administration to withhold funds is in direct conflict with the intent of the Act and presumes the executive branch to be the policy-making body when in effect the legislature is the policy-making body in the State and the executive is the implementing arm.

Under the amendments made to H. B. 2428-74, your Committee finds it imperative that funds under Act 177, relating to public service employment be released for use by the department of social services and housing. Non-release of such funds for the program could result in greater costs in payment of general assistance benefits without any benefit to the State. Establishing public works projects for employment of able-bodied persons on general assistance would allow the State to be

repaid for general assistance payments through services rendered by persons on such assistance.

Your Committee on Public Health and Welfare is in accord with the intent and purpose of H. B. No. 2428-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2428-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 176-74 Consumer Protection on H. B. No. 2591-74

The purpose of this bill is to delete unnecessary provisions relating to credit life and disability policies.

When Chapter 435, Hawaii Revised Statutes, was enacted in 1969 it permitted, for a one-year period, or for such longer period as the insurance commissioner feels is required to produce credible mortality and morbidity data, the creditors to charge debtors maximum premiums set by the statutes. Inasmuch as the data are presently available, the maximum interim rates are no longer necessary according to the insurance commissioner.

Your Committee upon further consideration of the bill has made two additional changes. These are technical amendments which are necessary to make the affected sections consistent.

Your Committee on Consumer Protection is in accord with the intent and purpose of H. B. No. 2591-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2591-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 177-74 Judiciary and Corrections on H. B. No. 2485-74

The purpose of this bill is to encourage the rehabilitation of convicted persons by eliminating disqualification from employment or licensure by the State or its political subdivisions solely by reason of a prior conviction of a crime. Under the bill, employment or occupational licensure may still be refused or terminated, however, if the applicant or employee is convicted of a crime when the offense directly relates to the occupation in which the convicted person seeks or holds employment or for which he seeks or holds a license. The bill adds a new section to the Hawaii Revised Statutes to provide for the above, and repeals all contrary provisions.

Your Committee, upon further consideration, has amended the bill by deleting a provision calling for the repeal of Section 28-55, H. R. S.

Section 28-55 deals with reports by the department of the attorney general to county clerks of

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convictions of citizens of this State in the United States District Court for the District of Hawaii. The reports are for the purpose of enabling county clerks to determine voting eligibility. Accordingly, the repeal or modification of Section 28-55 is not properly within the scope of this bill which relates to employment and occupational licensing.

We have also amended the bill to provide for the repeal of H. R. S. Section 437-28(b) (23), as being unnecessary in light of the general provisions of this Act. Section 437-28(b) (23) provides that the license of an automobile dealer may be revoked or suspended upon conviction of violating Section 291-38, making it an offense to tamper with odometers. The board still has this power under this bill.

We have also made minor amendments to correct clerical mistakes.

Your Committee on Judiciary and Corrections is in accord with the intent and purpose of H. B. No. 2485-74, H. D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H. B. No. 2485-74, H. D. 2.

Signed by all members of the Committee.

SCRep. No. 178-74 Water, Land Use and Development on H. B. No. 2188-74

The purpose of this bill is to correct the terminology contained in section 213(h) of the Hawaiian Homes Commission Act. The term lease is deleted and replaced by the term license in order to conform with the provisions of Section 207(c) (1) (B), which provides for granting of licenses, and not leases, to theaters, garages, service stations, markets, stores and other mercantile establishments.

Your Committee on Water, Land Use and Development is in accord with the intent and purpose of H. B. No. 2188-74 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 179-74 Federal-State-County on H. B. No. 2466-74

The purpose of this bill is to change the procedure for notifying the owner failing to maintain or repair his sidewalk by requiring a publication of the notice in a newspaper or by mailing a copy of such notice to the abutting owner. Existing law provides for notice by publication or by posting the notice on the premises.

Your Committee has made a technical amendment to this bill to bracket certain words which were meant to be bracketed but which were

inadvertently not bracketed.

Your Committee on Federal, State and County Relations is in accord with the intent and purpose of H. B. No. 2466-74, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H. B. No. 2466-74, H. D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. No. 180-74 Legislative Management

Informing the House that House Resolution Nos. 323 to 329, House Concurrent Resolution No. 51, and Standing Committee Report Nos. 181-74 to 190-74, have been printed and distributed.

Signed by all members of the Committee.

SCRep. No. 181-74 Judiciary and Corrections on H. B. No. 1273

The purpose of this bill is to require implementation of the State's correctional master plan by amending the Hawaii Revised Statutes relating to an operational portion of the overall Correctional Master Plan. The bill, if enacted, would place the administrative responsibility for the operation of the intake service centers under the director of social services and housing instead of under the office of the governor.

Your Committee found that from a management standpoint the intent of the bill indicates a proper course of action. The 1969 study entitled "Corrections in Hawaii" which was undertaken by the survey services section of the National Council on Crime and Delinquency recommended that all correctional services be combined administratively under one department. The very comprehensive Correctional Master Plan promulgated by the State Law Enforcement and Juvenile Delinquency Planning Agency, which the legislature endorsed by passage of Act 179 of the 1973 session, stated that "Operation of the Intake Service Center under the auspices of the Department of Social Services would appear to be the best possible choice since this permits the center to function within the framework of neutrality necessary to assure its maximum effectiveness." And finally, the Report on Corrections which was just issued by the National Advisory Commission on Criminal Justice Standards and Goals strongly recommends the unification of all correctional programs, specifically including those offered by the intake service center, under one statewide correctional services agency — in Hawaii's case, the Department of Social Services and Housing.

Your Committee has therefore amended H. B. No. 1273 by making the intake service center advisory board advisory to the Director of Social Services and Housing rather than to the Governor, and retained the provisions whereby the advisory board nominates three candidates to the director

FILE



FAX TRANSMITTAL

DATE: January 15, 1998 TIME: 1145 Hrs

TO: Department of Labor and Industrial Relations

DIVISION/SECTION: Civil Rights Commission

PHONE: (808) 586-8636 FAX: (808) 586-8655

FROM: Lt. Harry S. KUBOJIRI

ADMINISTRATIVE SERVICES DIVISION
349 KAPIOLANI STREET
HILO, HAWAII 96720

PHONE: (808) 961-2262 FAX: (808) 961-8865

MESSAGE: The following is written testimony offered for the Public Hearing on the proposed rules regarding Arrest and Court Record Discrimination.

Thank you,

REPLY NEEDED BY: _____

If you do not receive 3 pages (including this cover sheet), please telephone or fax immediately.

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO BE ATTORNEY PRIVILEGED. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE NOTIFY US BY TELEPHONE.

Stephen K. Yamashiro
Mayor



Wayne G. Carvalho
Police Chief

James S. Correa
Deputy Police Chief

County of Hawaii
POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawaii 96720-3998
(808) 935-3311 • Fax (808) 961-2702

January 13, 1998

Ms. Lorraine Akiba
Director of Labor &
Industrial Relations
830 Punchbowl St. Rm. 411
Honolulu, Hawaii 96813

Attn: John Ishihara
Chief Counsel

Dear Ms. Akiba:

Re: Notice of Public Hearing Regarding Proposed Rules to Arrest and Court Record
Discrimination

The Hawaii County Police Department opposes the Department of Labor and Industrial Relations, Civil Rights Commission's proposed Rules On Arrest and Court Record Discrimination.

Presently, both State (Section 134-7 Hawaii Revised Statutes) and Federal statutes (Title 18, Section 922(g)(9) of the United States Code) prohibit persons convicted of certain crimes from owning, possessing or controlling any firearm or ammunition.

These statutes not only exclude persons with felony convictions, but include persons convicted of an illegal sale of drugs or any crime of violence, including but not limited to, domestic violence.

In determining suitability for law enforcement employment, these convictions by statute render the applicant ineligible.

Ms. Lorraine Akiba
January 13, 1998
Page 2

It is essential that a thorough evaluation be made in the pre-employment screening stage of someone applying for employment with a law enforcement agency. This is done not only to ensure the proper caliber of an employee, but to preserve integrity and foster public confidence by meeting the high standards of conduct and behavior that the public has come to expect and demand of police officers.

Law enforcement employers can show that arrest inquiries in the pre-employment screening stage to determine employment suitability is not only job-related, but consistent with business necessity.

The review of arrest records (no conviction) in the pre-employment screening stage is just one part of the background investigation, and the arrests themselves are not used as an absolute bar in discriminating against the applicant. It is used only as the starting point to investigate the likelihood of whether or not illegal activity occurred.

Your proposal places unnecessary restrictions, requiring an employer to forego and ignore provisions in present statutes that permit the use of information that may be relevant to the qualifications of an applicant (Section 92F Hawaii Revised Statutes).


In conclusion, the review of arrest and court records by law enforcement employers in the pre-employment screening stage is not one with discriminatory intent, rather to determine if the applicant's background precludes them from employment, as defined by statute.

We therefore, oppose the Department of Labor and Industrial Relations, Civil Rights Commission's proposed Rules On Arrest and Court Record Discrimination in its present form.

Thank you for this opportunity to provide testimony.

Sincerely,

WAYNE G. CARVALHO
POLICE CHIEF



JAMES S. CORREA
DEPUTY POLICE CHIEF
ACTING POLICE CHIEF



January 12, 1998

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

Dear Executive Director:

I am the Benefits Administrator of Crazy Shirts, Inc. We employ over 400 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

The majority of our employees are employed in our 24 retail stores on the Islands of Oahu, Maui, Kauai, and Hawaii and have access to large amounts of cash. Our business is very fast paced and we place a high priority on honesty, integrity, and safety. This law would place an unfair hardship on our Company and our employees to work in an environment of mistrust. We realize that people can be rehabilitated and we take that into consideration when we look at conviction records. However, as the employer, we should have the right to review those records PRIOR to the offer of employment.

First, the rules as drafted are unworkable. WE, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while u under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Sincerely,

A handwritten signature in black ink that reads "Sybil Saito".

Sybil Saito
Benefits Administrator

cc: Governor Ben Cayetano
Lorraine Akiba (Director of Labor and Industrial Relations)
The Attorney General



Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

Dear Executive Director:

I have been working in the field of Human Resources for 8 years and am currently the Human Resources Specialist at Crazy Shirts, Inc. I am writing to express my concern with the arrest and court record rules proposed by the Hawaii Civil Rights Commission.

As a recruiter for Crazy Shirts, I need to feel assured that the individual we are hiring will provide a safe and sound environment for our employees and customers. At Crazy Shirts, we place a lot of trust in our employees. They handle large sums of money, customers credit cards, merchandise, store keys and alarm codes. A person's past whether it be employment experience or history of criminal activity is necessary and relevant to making a sound hiring decision.

First, the rules as drafted are unworkable and unreasonable. The rules are overly complex and foster disrespect for the law and the Commission. If these rules are passed, it will be an embarrassment to the State of Hawaii.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. I strongly urge the Commission to withdraw, in their entirety, these rules.

Thank you,

Susan Tagawa
Human Resources Specialist

Please cc: Governor Ben Cayetano
Lorraine Akiba (Director of Labor and Industrial Relations)
Marjory Bronster

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FILE



Give Ability A Chance
Serving Hawaii since 1946

John F. Howell
President & CEO

January 13, 1998

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: *Arrest and Court Record Bias*

Dear Sir/Madam:

The propose rules relative to a potential employee's arrest and court record present an untenable position for organization's like Easter Seals that provide services for young children, teens, and adults with developmental disabilities.

While I understand what the Commission is attempting to accomplish, there are work areas that by the very nature of the clients they serve should be exempt. The defined category of Healthcare is not clear as to who or what organizations are included. I trust that any non profit providing human service programs will be exempt. In reading the comments in The Hawaii Labor Letter, it is also not clear whether the propose rules are legal, or enforceable. There are also several areas of contradiction.

Please accept this letter as a vote of serious concern about the proposed rules. In the interest of the safety and protection of our clients, we believe that we must have the latitude to check a prospective employee's background.

Thank you for the opportunity to voice our concerns. Please call me at 536-1015 with any questions,

Sincerely,

John F. Howell
President & CEO

JFH:sl

50th Anniversary • 1946 - 1996

FILE



January 14, 1998

'98 JAN 20 P3:14

To the Hawaii Civil Right Commission:

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

I am writing on behalf of my company, EVA Airways Corporation, Hawaii branch, to urge your rejection of the drafted proposals from the HCRC staff and to ask you to support a repeal of the inclusion of "convictions" in the definition of "arrest and court records."

Our business employs about 10 people, and the major job classifications are airport traffic officers, reservation and ticketing agents, and sales agents. We are having a hard time, as it is, surviving this economy and under the full scope of state and federal regulation and mandates.

As we understand the HCRC proposed regulations, an ex-convict who is rejected by us for a job can file a charge and claim we discriminated because he or she has a conviction record. Whether or not we even considered the fact, this gives us a case to deal with; it takes our time; and it gives the convict a leg up on other applicants. In effect, we see your proposal as requiring, in a practical sense, "affirmative action for convicts." It provides employers with a disincentive to choose the applicants with the clean record who would have no such basis on which to start litigation against us.

These regulations, and the concept of giving convicts the same remedies as racial minorities, women, or others who are discriminated against because of genetic characteristics or religion or having a disability, are an unnecessary and are an unjustified burden on Hawaii private sector business.

We can't take it anymore, we have had enough of this ridiculous sort of regulation, and we have no choice but to say no! Enough is enough and this is too much!

The burdens of proof in your proposal are unrealistic and unattainable. Whatever happened to the nation that the applicant has to prove they are fully qualified, instead of forcing the company to prove that all convicts are not at all qualified? Your proposal puts logic upside down.

In addition, our employees have a right to be free from certain undesirables in the workplace, whether or not they were technically convicted. We as an employer have liability for negligent hiring. Will you, the members and staff of the Civil Rights Commission, indemnify and defend us if, in response to one of your orders, we employ someone who steals, burns, or kills on the job?

EVA AIRWAYS CORPORATION
HAWAII BRANCH
2222 Kalakaua Avenue, Suite 1002
Honolulu, HI 96815 USA
Tel: (808) 923-8299 Fax: (808) 923-8339



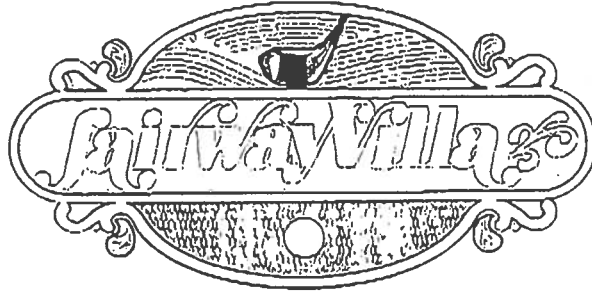
These social problems should be addressed with positive incentives and education, not with penalties against the presently most tortured segment of our Hawaii community -- the private sector businesses. We, not the convicts, are investing in Hawaii's future. If you want us to stick around, get this sort of overregulation off our back.

Sincerely

A handwritten signature in blue ink, appearing to read "Michael Ho", written over a horizontal line.

Michael Ho
General Manager

FILE



January 15, 1998

Hawaii Civil Rights Commission
830 Punchbowl Street - Room 411
Honolulu, Hawaii, 96813

Ph: 586-8636 FAX: 586-8655

Ladies & Gentlemen:

Reference: **TESTIMONY**
Civil Rights Commission Hawaii Administrative Rules - Chapter 46
Subchapter 10 - **"ARREST AND COURT RECORD DISCRIMINATION"**

My name is Mary Ananian, President of the Board of Directors of the Association of Apartment Owners of Fairway Villa.

I am submitting this Testimony **OPPOSING and OBJECTING TO your Proposed Rules "Subchapter 10, Arrest and Court Record Discrimination"**.

Our Board consists of nine (9) Fairway Villa owners that have been elected to volunteer our time and efforts to oversee the Administration of our 364 apartment units for our Owners and/or Tenants to protect the Owners interest and our Residents safety.

We **STRONGLY** object to your proposed Rules because your rules **prohibit** employers access to the right to conduct a criminal background check on their employees thereby exposing our residents to **abuse and physical harm**.

It is necessary for many Employers to send their employees into our building for deliveries, inspections, servicing equipment, repairs, installing new equipment, etc.

With your restrictions on a criminal background check on their employees many Employers, through no fault of their own, will be sending rapists, robbers, etc. on to our property and into our 364 living quarters which is a threat to the safety and well being of our residents.

We trust you will carefully consider our objections to your Proposed Rules and will abandon your Subchapter 10 "Arrest and Court Record Discrimination".

Thank you for the opportunity to provide our **Testimony** on this important issue.

Signed,

Mary Ananian

Mary Ananian, President
Board of Directors
Fairway Villa Association of Apartment Owners

MA/m

cc: CRC Association File



FILE

First American Long & Melone Title Company, Ltd.

333 QUEEN STREET, SUITE 500 • HONOLULU, HAWAII 96813 • TEL (808) 536-3866 • FAX (808) 537-5448

TESTIMONY OF FIRST AMERICAN LONG & MELONE TITLE CO., LTD. REGARDING FINAL ARREST & COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the Human Resource Director of First American Long & Melone Title Co., Ltd. We employ 75 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

Many of our employees in their fiduciary capacity are entrusted in the management of funds that can run in the millions of dollars, on behalf of buyers and sellers, when carrying out the terms on agreements and mortgages on real property. They also come in contact with the general public in the course of carrying out their duties. Their conduct directly impacts clients and our company's reputation and business dealings in the community.

Under these regulations the Hawaii location of our Company may be ineligible for participation in the The Work Opportunity and Welfare-to-Work Credit programs offered under the Federal program because the Pre-Screening Notice and Certification Request requires acknowledgment by applicants of recent felony convictions. In these difficult economic times it would be unfortunate that employers in the State of Hawaii face the potential of not participating in such tax credit programs.

First, the rules as drafted are unworkable. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored or grossly misunderstood rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, and customers. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-workers, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence under indictment or after an arrest. The rules punish employers, by forcing them to hire individuals who have committed crimes. The Hawaii Civil Rights Commission itself is, of course, exempt from these rules, as is the State. Why are private sector employers the only ones targeted by these rules?

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We strongly urge the Commission to withdraw, in their entirety, these rules.

Respectfully,

Lynn E. Ikehara
Human Resources Director

FILE



GOODENOW ASSOCIATES, INC.

Home Office: Suite 608/1000 Bishop Street / Honolulu, Hawaii 96813-4206 / Telephone: (808) 526-2002
Mailing Address: P.O. Box 4247 / Honolulu, Hawaii 96812-4247 / FAX: (808) 523-3826
Maui Office: P.O. Box 739 / Haiku, Maui 96708-0739 / Telephone: (808) 572-4759 / FAX: (808) 572-1683
Email: goodenow@hula.net

Reply to: Honolulu
 Maui

January 12, 1998

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

RE: Testimony of Goodenow Associates, Inc. Regarding
Final Arrest & Court Record Rules of the Hawaii
Civil Rights Commission

Dear Mr. Hoshijo:

I am the Manager, Research Services Division, of Goodenow Associates, Inc. We employ over thirty Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

As the Manager of Research Services Division at Goodenow, we process hundreds of applicants each month for our clients. Our research, which includes pre-employment background screening, helps our clients make educated decisions on their applicants. In our work we have seen situations when, prior to using our services, our clients have suffered losses and injuries to customers and/or guests, because of their employees. Some of these employees had previous criminal convictions and their criminal actions at the work place caused these injuries and/or losses. Safety of co-workers, guests and customers is the responsibility of the employer. To limit an employer from using all pertinent data available to them when making a hiring decision is unfair.

First, the rules ad drafted are unworkable. We agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Mr. William Hoshijo
January 12, 1998

Page 2

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver who is entrusted with driving a vehicle carrying tons of cargo.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules ***punish*** employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management. We strongly urge the Commission to withdraw, in their entirety, its proposed arrest and court record rules.

Yours very truly,

GOODENOW ASSOCIATES, INC.



CHARLENE CORNIEL

Manager, Research Services Division

CC:bms

cc: Governor Ben Cayetano
Ms. Lorraine Akiba
Representative Kenny Goodenow

FILE



GOODENOW ASSOCIATES, INC.

Home Office: Suite 608/1000 Bishop Street / Honolulu, Hawaii 96813-4206 / Telephone: (808) 526-3002
Mailing Address: P.O. Box 4247 / Honolulu, Hawaii 96812-4247 / FAX: (808) 523-3826
Maui Office: P.O. Box 739 / Haiku, Maui 96708-0739 / Telephone: (808) 572-4759 / FAX: (808) 572-1683
Email: goodenow@hula.net

JAN 15 P4:18

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Reply to: Honolulu
 Maui

January 14, 1998

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 430
Honolulu, HI 96813

Re: Testimony of Goodenow Associates, Inc. Regarding Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission

Dear Mr. Hoshijo:

I am the President of Goodenow Associates Inc., a Hawaii small business which has given thirty years of service to Hawaii's business, legal and insurance communities. We also employ over thirty Hawaii residents. As such, I am concerned that the proposed arrest and court record rules are ill conceived and place Hawaii's employers in a position where they will not be able to review and consider what is otherwise a valid public record. Experience and common sense have shown us time and time again, that knowing an applicant's criminal conviction record assists the employer in evaluating the prospective employees propensity for theft or violence, as well as assists in determining their veracity and dependence on drugs or alcohol. All of these are essential to a efficient, productive and safe workplace. The proposed rules also further expose employers to undue claims and litigation in a business environment already strangled with governmental rules and intervention. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster

disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employer to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

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Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

The compelling need and duty of employers to assure a secure working environment for their employees and the protection of assets, personal security of customers or the public at large creates the need for effective tools to properly screen and evaluate the qualifications of applicants. In an era when the statistical probability of recidivism is well recognized, these factors simply have to be weighed in the balance by any potential employer.

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Yours very truly,

GOODENOW ASSOCIATES, INC.



TERRY B. PENNINGTON
President

TBP:jk

cc: Govenor Benjamin Cayetano
State Capital, Office of the Govenor
Honolulu, Hawaii 96813

Ms. Lorraine Akiba
Director of Labor and Industrial Relations
830 Punchbowl Street
Honolulu, Hawaii 96813

Senator Mike McCartney
State Capital, Room 230
Honolulu, Hawaii 96813

Representative Kenny Goodenow
State Capital, Room 425
Honolulu, Hawaii 96813

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1935-1994

'98 JAN 16 P4 07

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

TRANSMITTAL LETTER

DATE: January 16, 1998
TO: William Hoshijo, Esq.
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813
FROM: Barbara A. Petrus, Esq.
Chris Yeh, Esq.
RE: Testimony Regarding Arrest and Court Record
Discrimination

Copies	Date	Description
7	1/16/98	Testimony before the Hawaii Civil Rights Commission Regarding the Proposed Rules on Arrest and Court Record Discrimination Submitted on Behalf of the Hawaii Employers Council

TRANSMITTED FOR:

- | | |
|---|--|
| <input type="checkbox"/> Your Information | <input type="checkbox"/> Your Further Necessary Action |
| <input type="checkbox"/> Your Signature and Return | <input type="checkbox"/> Your Approval |
| <input type="checkbox"/> Your Signature and Forwarding as Noted Below | <input type="checkbox"/> Your Review and Comment |
| <input type="checkbox"/> Per Our Conversation | <input checked="" type="checkbox"/> Per Your Request |
| | <input type="checkbox"/> SEE REMARKS BELOW |

IF YOU HAVE ANY QUESTIONS PLEASE DO NOT HESITATE TO CALL.

Remarks:

cc: Connie Hastert

MARTIN ANDERSON
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CONRAD M. WEISER
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TESTIMONY BEFORE THE HAWAII CIVIL RIGHTS COMMISSION

REGARDING THE PROPOSED RULES ON

ARREST AND COURT RECORD DISCRIMINATION

SUBMITTED ON BEHALF OF THE HAWAII EMPLOYERS COUNCIL

JANUARY 16, 1998

By Barbara A. Petrus

TESTIMONY BEFORE THE HAWAII CIVIL RIGHTS COMMISSION
REGARDING THE PROPOSED RULES ON
ARREST AND COURT RECORD DISCRIMINATION
SUBMITTED ON BEHALF OF THE HAWAII EMPLOYERS COUNCIL
JANUARY 16, 1998

I. GENERAL COMMENTS

The Hawaii Employers Council which was founded in 1943 is an employer association providing consultation services to its 700 member companies in Hawaii. It believes the proposed Administrative Rules regarding arrest and court record discrimination must be substantially revised to reflect their actual statutory basis. The proposed Rules ignore the language of H.R.S. §§378-3(2) which, in providing for an exception to the prohibitions against arrest and court record discrimination, expressly defines a bona fide occupational qualification (BFOQ) as reasonably necessary to the normal operations of the business and which has a substantial relationship to the functions and responsibilities of the employment.

By ignoring this provision, the Commission forgets that the statutory scheme strikes a balance of the interests of individuals with arrest and court records with the interests of businesses. The proposed Rules make it virtually impossible for an employer to preclude from employment any individual with an arrest or court record even where that arrest or court record has a substantial relationship to the functions and responsibilities of the employment. Without doubt, the proposed Rules, if

implemented, will result in needless litigation challenging the Rules which will waste valuable State resources.

Additionally, the proposed Rules, as currently drafted, are overly legalistic, ignore the practical realities, are extremely cumbersome and difficult to understand. The Commission must rewrite the proposed Rules in a manner where the average business person can easily understand and implement its requirements.

II. "SUBSTANTIAL RELATIONSHIP TO EMPLOYMENT"

H.R.S. §378-3(2) provides an express exception to the prohibition against discrimination based on arrest and court record. It states that nothing in Chapter 378 shall be deemed to "prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business and which have a substantial relationship to the functions and responsibilities of the prospective or continued employment." There is no doubt that the Legislature, in enacting the arrest and court record provision, intended that the "substantial relationship" exception be given full effect. It made it clear that the arrest and court record provision "does not preclude any employer from refusing employment or discharge if the arrest or court record has a substantial relationship to the functions and responsibilities of employment."

A review of the proposed Rules reveals **no reference** to the "substantial relationship" exception. Instead, it appears

that the Commission has created, and is substituting, an extremely restrictive BFOQ provision for the "substantial relationship" definition.¹ The Commission simply does not have the authority to ignore the clear statutory mandate in this regard. This is not interpretation of the statutory language but instead is an attempt to amend the statute by administrative rule.

III. PAYMENT OF SUSPENDED/DISCHARGED EMPLOYEES

Section 12-46-205 (e) of the proposed Rules requires an employer to pay an employee barred from premises who has been arrested or charged with an offense against the person and the type of offense indicates that the individual may be a threat to the safety of employees or customers. Similarly, section 12-46-205 (f) requires such payment where the employee has been arrested and charged with an offense which may fall within an exemption or is a potential BFOQ. The employer must then engage in a dialogue with the employee, as well as possibly with law enforcement, prosecutorial or other court personnel and the individual's attorney. If discharge then occurs, and the arrest or charge is resolved, the employer must reinstate the individual.

This Section of the proposed Rule makes no sense. Assume an employee embezzles from his employer. The employer discovers the embezzlement, hires investigators/auditors and is

¹ It should be noted that the BFOQ definition itself is unacceptable. Moreover, the definition of BFOQ set forth in the proposed Rules simply is not a generally accepted legal definition of BFOQ.

told by these experts that this employee alone can be the person stealing from the employer. If no criminal arrest or charges occur, the employer can suspend the employee pending the investigation without pay and can discharge the employee without a specified process and without the risk of being required to reinstate the employee and pay him backpay.

Yet, if the employer reports this conduct to the police and the individual is arrested for theft and released, the employer must pay the employee during the suspension period, meet with the individual within a reasonable period of time and then if discharge occurs but for some reason the criminal charge is dismissed, the employer must reinstate the employee and pay him back pay.

Consider a further example. A female employee alleges that a male co-worker grabbed her breasts at the workplace. Where no criminal charge is filed, the employer can suspend without pay the alleged harasser during its internal investigation, proceed with termination of the harasser without following a specific process and not face the risk of having to reinstate the harasser with backpay.

Yet what if the female victim of the harassment files a criminal complaint against the harasser? By her doing so, the employer must then suspend the harasser with pay, follow the specific process set forth in the Rules and face significant risk if it terminates the harasser. The criminal complaint filed by the female victim will likely not be pursued even though it has a factual basis.

Given these results and the increased risk present in the latter example, why would an employer file a criminal complaint under those circumstances? Doesn't the proposed Rule provide an incentive to employers to discourage others from filing criminal complaints against the employers' employees where the employer plans to take disciplinary action? This proposed Rule actually encourages employers not to report criminal activity.² Is this really the result sought by the Commission?

IV. MISCONDUCT AT WORK

Section 12-46-209 (d) of the proposed Rules while purporting to address post-offer employment practices related to arrest and court record actually goes far beyond the purview of arrest and court record and addresses issues of misconduct at work where there is no relationship to inquiries or information related to arrest and court record. Without question, this proposed Rule goes far beyond the authority of the Commission.

This Section specifically provides that the employer is not to seek, and must affirmatively state that it does not seek, information related to arrest and court record. But the proposed Rule continues and prohibits employers from inquiring regarding misconduct at work during the interview and selection process. This proposed Rule is simply unworkable, is devoid of any

² It is notable that an employee who commits misconduct which happens to be a crime is actually guaranteed preferential treatment over an employee who commits non-criminal workplace misconduct.

understanding of the employment process and goes far beyond the authority of the Commission to promulgate regulations related to arrest and court record. The fallacy in this proposal is the belief that all workplace misconduct is unlawful activity -- that is not the case. Is insubordination a crime? No. Is disclosure of confidential business information a crime? No. Is a refusal to work a crime? No. Is sleeping on the job a crime? No. These are only a few of the myriad of examples of workplace misconduct which do not even approach criminal activity.

Under this proposed Rule, as we understand it, if you have an applicant who indicates that he or she were terminated by a prior employer, the prospective employer may not ask, pre-offer, whether that termination was for misconduct. Can the prospective employer even inquire as to whether the termination was for some reason other than misconduct since a negative response gives the prospective employer information related to misconduct? Does this mean that an applicant will be interviewed by the human resource personnel and applicable managers and supervisors and none of those individuals can inquire as to why the individual was terminated? It is both unworkable from a practical standpoint but also assumes that all persons interviewing applicants in this State must be given the knowledge and training not to inquire about misconduct at prior employment.

V. RECOMMENDATION

For many years, the State of Hawaii, first through the Enforcement Division of the Department of Labor and Industrial

Relations and then the Commission, enforced the arrest and court record discrimination provision consistent with the legislative intent by giving full force to the "substantial relationship" statutory exception. Materials published by these agencies specifically permitted employers to inquire pre-offer as to whether an applicant was convicted of a felony which had a substantial relationship to the functions and responsibilities of the job for which the applicant was applying.

We question why the Commission feels such a significant need to depart from the past practice. We know of no widespread abuse occurring under this practice. The number of complaints filed with the Commission regarding arrest and court record are minimal. If the Commission has factual support which supports a need to change the prior practice and implementation of these onerous regulations, that factual support should be shared with this community. Otherwise, these proposed Rules appear to be needless regulation embodying a philosophical exercise with a strong anti-employer bent. Given the state of our economy and the urgent need for business and government to work together to go forward, this is a large step in the wrong direction.

The Hawaii Employers Council submits that the proposed Rules be shelved and that new proposed Rules be drafted with the prior practice of allowing inquiries into felony convictions with a substantial relationship to the functions and responsibilities of the job be their cornerstone.

From the Governor

To:



- Accounting & General Services
- Agriculture
- Attorney General
- Budget & Finance
- Business, Economic Development & Tourism
- Commerce & Consumer Affairs
- Defense
- Education
- Hawaiian Home Lands
- Health
- Human Services
- Labor & Industrial Relations
- Land & Natural Resources
- Lt. Governor
- Human Resource Development
- Public Safety
- Taxation
- Transportation
- University of Hawaii

JAN 16 1998

Date



GOODWILL INDUSTRIES OF HONOLULU, HI

2610 Kilihau Street, Honolulu, HI 96819-2020 (808) 836-0313 FAX: (808) 833-4943

DEPT. OF LABOR AND
INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

'98 JAN 20 P12:20
Laura Robertson, President/CEO

pre

'98 JAN 20 P3:29

TESTIMONY OF GOODWILL INDUSTRIES OF HAWAII INC. REGARDING FINAL ARREST AND COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

OFFICERS

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Chairman of the Board

MICHAEL B. CUTLER
First Vice Chair

JAY CONLEY
2nd Vice Chair

JIM WOOD
Secretary

BEVERLY GARCIA
Treasurer

LAURA D. ROBERTSON
President/CEO

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- Suanne Morikuni
- Jody Schucart
- *Douglas Smith
- *George Sumner, III
- Jack Takeda
- Jerry Tokars
- *Peter Zarimba

*EXECUTIVE COMMITTEE

I am the Human Resources Manager for Goodwill Industries of Hawaii Inc. We employ 302 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for the following reasons:

1. Because we receive pass-through federal Medicaid dollars, we are required by federal law to conduct a criminal background check on each of our employees who provide direct services to clients.
2. In addition, all our employees who transport our clients, whether it be to job interviews or medical appointments or on excursions, are required to demonstrate a clean traffic abstract on an annual basis.

We agree with the Society of Human Resource Management's comments because the rules are unworkable and overly complex. HCRC's proposed guidelines expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-workers, customers, clients or the public.

The economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from

these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. As an employer and Human Services provider, our employees and clients have the right to trust Goodwill Industries to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw these rules in their entirety.

Thank you for your consideration of our concerns on this matter.

Sincerely,



Ruby Menon

Goodwill Industries - Human Resources Manager



STATE OF HAWAII
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS

Date: JAN 15 1998

FROM: Lorraine H. Akiba, Director
To:

UM 1/15
C: TOM J

Initial Date

- Deputy Director
- Assistant to the Director
- EEO Officer
- Information Officer
- Planner
- Administrative Services Office/EDP
- Deputy Attorney General
- Disability Compensation Office
- Employment Security Appeals Office
- Employment Training Fund
- Enforcement Division
- Hawaii Civil Rights Commission
- Hawaii Labor Relations Board
- Hawaii Occupational Safety and Health Division
- HSOICC
- Labor and Industrial Relations Appeals Board
- Office of Community Services
- Personnel Office
- Research & Statistics Office
- State Fire Council
- Unemployment Insurance Division
- Workforce Development Council (COEHR)
- Workforce Development Division

For:

- Appropriate action
- Circulate
- Comment and recommendation
- Investigation and report
- Prepare reply for my signature
- Direct reply -- copy to me
- Approval/Signature
- Note and return to Director's Office
- Information
- File

In reply, refer to: _____

FILE



GOODWILL INDUSTRIES OF HONOLULU, INC.

2610 Kilihau Street, Honolulu, HI 96819-2020 (808) 836-0313 FAX: (808) 833-4943

Laura Robertson, President/CEO

TESTIMONY OF GOODWILL INDUSTRIES OF HAWAII INC. REGARDING FINAL ARREST AND COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

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- Rene Mansho
- Mel Morikami
- Suanne Morikuni
- Jody Schucart
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1. Because we receive pass-through federal Medicaid dollars, we are required by federal law to conduct a criminal background check on each of our employees who provide direct services to clients.
2. In addition, all our employees who transport our clients, whether it be to job interviews or medical appointments or on excursions, are required to demonstrate a clean traffic abstract on an annual basis.

We agree with the Society of Human Resource Management's comments because the rules are unworkable and overly complex. HCRC's proposed guidelines expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver.

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The economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from

DEPT. OF LABOR AND
INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

JAN 15 AM 11:37

these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. As an employer and Human Services provider, our employees and clients have the right to trust Goodwill Industries to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw these rules in their entirety.

Thank you for your consideration of our concerns on this matter.

Sincerely,



Ruby Menon

Goodwill Industries - Human Resources Manager



**TESTIMONY OF HTH CORPORATION dba PACIFIC BEACH HOTEL; PAGODA HOTEL; KING
KAMEHAMEHA KONA BEACH HOTEL REGARDING FINAL ARREST & COURT
RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am the Human Resources Manager of HTH Corporation. We employ 1,471 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for the following reasons.

In the hospitality and tourism industry it is crucial that we are able to protect our guests and employees from potentially violent and dishonest people. We are trying to make the best impression possible on our visitors and to make wonderful memories of Hawaii - not expose them to potentially dangerous people. Our visitors are particularly vulnerable being in an unfamiliar setting and they are counting on us to provide for their safety and security. We cannot afford to let them down! Why would anyone want to visit somewhere where they are worried about their safety?

The rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe work place and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finance or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Marianne Haun

FILE

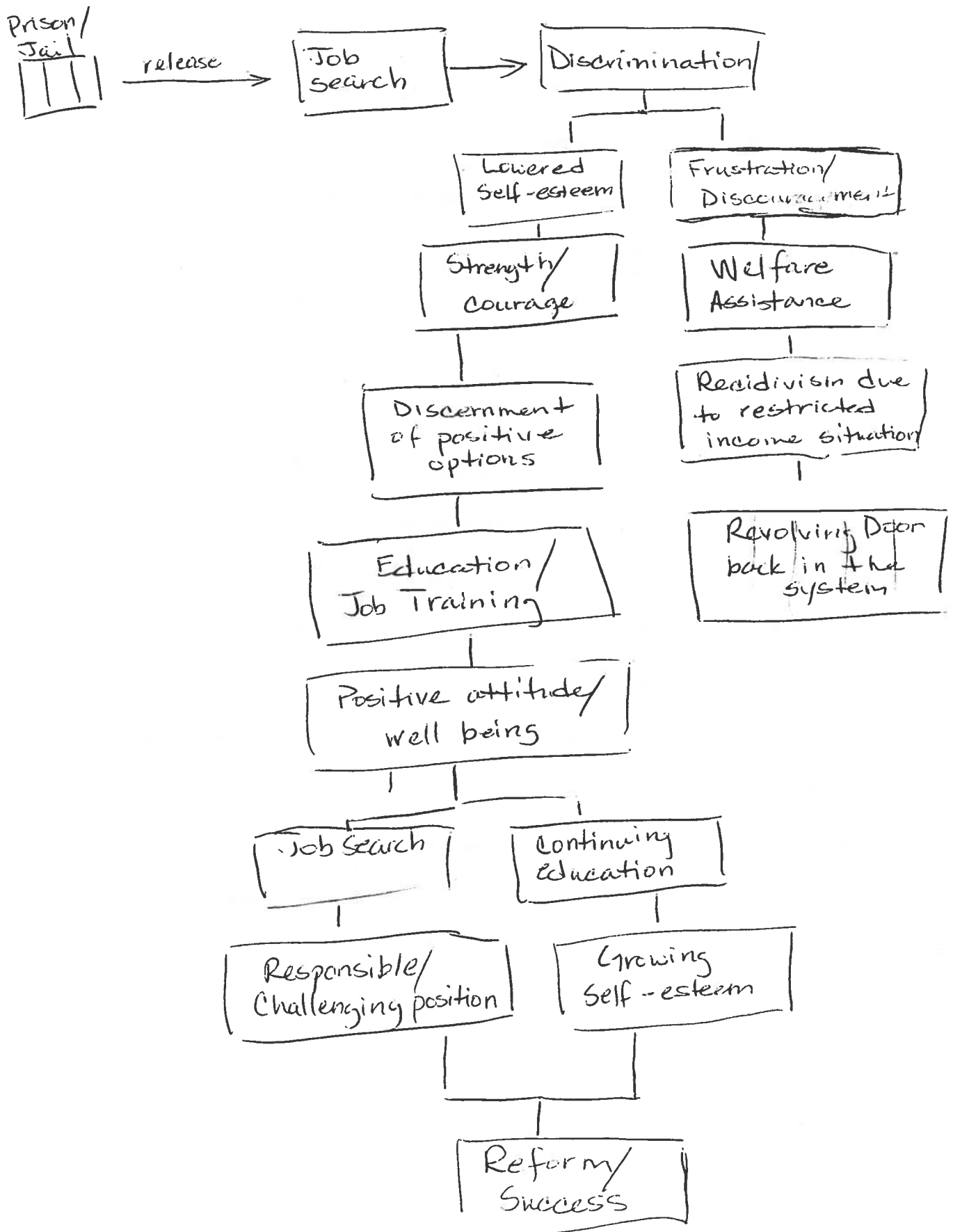
REFORM or RECIDIVISM

Initially, I would like to begin by stating that 20 years of involvement with the Hawaii prison system is unforgivable, and in my case unforgettable. The burden of guilt I carry for the things I have done, while maintaining a frivolous existence, produces an unharnessed and overwhelming sense of grief on a routine basis. I cannot begin to understand nor forgive my unthinkable past until others are able to understand and forgive me for my regrettable and remorseful past behavior.

This is where the affect of acquiring a respectable and honorable living would inspire the esteem that I have longed for. My past desperate and reckless search for acceptance has moved me in a way that has caused much pain and disappointment to everyone around me. Today I would like to make amends for all of my past wrongdoings. My intentions are sincere, and I believe that decent and responsible employment paves the beginning for my future.

Although I can understand the controversy to the issue at hand, discriminating against myself and others like myself will inevitably allow recidivism to prevail. Understandably so, the process of filtering through those possessing serious and sincere intent will prove to be the most challenging aspect in acquiring the rewarding end result - allowing individuals like myself to be productive and upstanding citizens. Food for thought: Wouldn't it be ideal if there were a "Sincerity Detector." If there were such a device, my sincerity in this matter would blow up the machine.

Employment Discrimination Reform vs. Recidivism





HAWAII ASSOCIATION OF INDEPENDENT SCHOOLS

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January 16, 1998

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CIVIL RIGHTS COMMISSION
HONOLULU, HI

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Mr. William Hoshijo, Director
Hawaii Civil Rights Commission
Department of Labor and Industrial Relations
State of Hawaii
830 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Hoshijo:

On behalf of the member schools of the Hawaii Association of Independent Schools, I am submitting the attached testimony which responds to the proposed rule changes regarding "arrest and court record discrimination."

The purpose of our testimony is to state for the record our strong conviction that private schools are exempt by statute, and that no private school is covered by H.R.S. 378 as it pertains to arrest and court record discrimination.

We respectfully urge the Hawaii Civil Rights Commission to revise the regulations to make absolutely clear that the HCRC has no jurisdiction over charges of arrest and court record discrimination by private schools, and that no charge of discrimination based on arrest or court record may be filed against a private school.

In our testimony we have also addressed proposed revisions to regulations should HCRC determine that it has jurisdiction over arrest and court record discrimination charges filed against private schools.

We thank the Commission for consideration of our testimony and would be pleased to discuss these matters further with the Commissioners at the appropriate time, and prior to any final determinations being made which are inconsistent with the principles of autonomy and self-governance for private education which are carefully articulated in our testimony.

Sincerely,

Robert M. Witt
Executive Director

Testimony of Robert M. Witt, Executive Director of the Hawaii Association of Independent Schools, Opposing Proposed Administrative Rules of the Hawaii Civil Rights Commission for "Arrest and Court Record Discrimination"

I, Robert M. Witt, am the Executive Director of the Hawaii Association of Independent Schools ("HAIS"). HAIS is an organization of member schools which advocates on behalf of independent education in Hawaii and participates actively in the educational dialogue in our community. I write to oppose the currently proposed administrative rules of the Hawaii Civil Rights Commission ("HCRC") for "Arrest and Court Record Discrimination" as currently drafted, and to propose revisions.

I. Private Schools Are Exempt and Should Be Treated as Such

H.R.S. § 378-3(8) expressly provides that: "Nothing in this part [H.R.S. § 378] shall be deemed to" "[p]rohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children."

HAIS believes that because private schools are exempt by statute, no private school is covered by H.R.S. 378 as it pertains to arrest and court record discrimination. Therefore, the statute does not authorize any charge of discrimination to be filed or accepted by the HCRC.

II. Private Schools Cannot Afford the Transaction Costs

The HAIS also wants the HCRC to know that private schools simply do not have the financial resources to afford the transaction costs if they are not treated by the HCRC as exempt from H.R.S. § 378-2. There are approximately 126 private schools in the State of Hawaii, and with the exception of two schools, all are non-profit. Schools who are supposedly "exempt" from H.R.S. § 378 are left by the regulations in the position of incurring attorneys' fees and costs in the thousands of dollars for each charge of arrest and court record discrimination it receives, having to pay lawyers to obtain dismissal and/or negotiate a settlement, and having to pay off the claimants themselves to avoid what could be more costly legal fees to end the litigation. This diverts the limited financial resources that schools have away from buying things that the children need or could use for the children's education! Every thousand dollars spent on just one of these charges is a thousand dollars that a school did not have to buy books

for the library, or computers for the classroom, or in cases of really struggling schools, to pay for pencils and paper.

Private schools do not have this kind of money to pay lawyers or to pay plaintiffs, and even if they did, as a matter of public policy, the money should be spent on the children, not on transaction or settlement costs arising from a law from which private schools are exempt! If the HCRC believes that the costs should be borne by the schools, the schools must in turn pass on these costs to the consumer in the form of higher tuition. Is this what the Legislature intended when it enacted the "arrest and court record discrimination law, and exempted private schools in H.R.S. § 378-3(8)?

The HAIS respectfully urges the HCRC to revise the regulations to make absolutely clear that the HCRC has no jurisdiction over charges of arrest and court record discrimination by private schools, and that "no charge of discrimination based on arrest or court record may be filed against a private school."

III. HAIS's Proposed Revisions

If the HCRC determines that it has jurisdiction over arrest and court record discrimination charges filed against private schools, (such that the exemption in H.R.S. § 378-3(8) is rendered meaningless), then HAIS urges the HCRC to revise the proposed regulations to reflect the following points:

A. Define "in close proximity with children" in the proposed regulations

Currently, there is no definition for "in close proximity with children" in the regulations. HAIS believes that every position in a school works in "close proximity" with children, whether it be the teacher who is with children every minute in the day, the secretary in the office who assists children on occasion, or the janitor or grounds keeper who are never scheduled to supervise children. Given that children are often defenseless against an adult, schools should not have to "take a chance" that someone who does not directly supervise children, but who works at the school, will not harm a child he or she comes in contact with at the school.

In the interest of protecting children, HAIS urges the HCRC that the definition of "in close proximity with children" be "any and all positions within a school." Neither the school nor the HCRC should have to deal with a convicted child molester who claims the right to access and prey upon school children because the particular job he is applying for does not entail direct

supervision or instruction, and thus is not "in close proximity with children." Mere presence on a school campus entails working "in close proximity with children" so long as children are present on the campus.

B. Define "Unsuited to Working in Close Proximity with Children"

The regulations leave ambiguous what "unsuited to working in close proximity with children" means for purpose of the regulations. HAIS believes that school administrators know, arguably best, what "unsuited to working in close proximity with children" means. Absent clear regulations, there is no way of knowing how the HCRC or courts will interpret what "unsuited to working in close proximity with children" means.

We assume that the HCRC does not dispute that a person with convictions for any crime against a person, including murder, rape, sexual assault, child molestation, child abuse, domestic violence, stalking, and the like is "unsuited to working in close proximity with children."

However, because schools are concerned not only for the physical safety of the child when at school, but also the mental, moral, and social development of the child, a person who is not dangerous in the sense that he has convictions for crimes involving violence or which directly involve children, may nevertheless be "unsuited to work in close proximity with children" because he lacks the character to be a positive, nurturing role model for children. Educators, child psychologists, and parents know that children look to adults as role models. Children learn by the example adults set, and often imitate adult behaviors. Although schools do not contend that conviction status is necessarily an absolute bar to working for a school, schools must be able to consider any conviction and make the determination of whether the person poses a threat to the safety of children, or to their proper academic, moral, or social development, which renders the person unsuited to work in close proximity with children.

And when school administrators make these determinations, these determinations by professional educators and school administrators should not lightly be second-guessed and set-aside by the HCRC. In In the Interest of Jane Doe, 77 Haw. 435, 887 P.2d 645 (1994), a case concerning the privacy interests of public school children, the Hawaii Supreme Court recognized the importance of creating and maintaining a proper educational environment, and the danger of courts "unduly interfer[ing]" with the maintenance of the internal operations of the schools. Id. at 440-441. The Hawaii Supreme Court explicitly recognized public schools as a "unique social environment," and the "legitimate and substantial interest" that teachers and administrators in public schools have "in maintaining discipline in the classroom and on school grounds to create an environment where learning can take place." Id. at 441, 887 P.2d at 651. See also New

Jersey v. T.L.O., 469 U.S. 325 (1985) (recognizing that "the primary duty of school officials and teachers . . . is the education and training of young people," the state's "compelling interest in assuring that the schools meet this responsibility," and that "[w]ithout first establishing discipline and maintaining order, teachers cannot begin to educate their students." In Napolitano v. Princeton University, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982), the Superior Court of New Jersey affirmed summary judgment and dismissal of a complaint brought by a student challenging disciplinary action by a private university. Relevant here, the court stated:

. . . [W]e must give substantial deference to the importance of institutional integrity and independence. Private educational institutions perform an essential social function and have a fundamental responsibility to assure the academic and general well being of their communities of students, teachers and related personnel. At a minimum, these needs, implicating academic freedom and development, justify an educational institution in controlling those who seek to enter its domain. The singular need to achieve essential educational goals and regulate activities that impact upon these efforts has been acknowledged even with respect to public educational institutions Hence, private colleges and universities must be accorded a generous measure of autonomy and self governance if they are to fulfill their paramount role as vehicles of education and enlightenment. . . .

Id. at 272-73 (emphasis added).

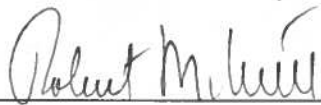
If courts recognize the doctrine of judicial deference to schools, in light of the unique mission of schools, we hope and trust that the HCRC does not take the position that "it knows better" than professional educators and school administrators when a person is "unsuited to work in close proximity with children."

IV. Independent Contractor Situation

Currently there are no rules relating to situations in which a school may contract out maintenance or other work to an independent contractor, who hires employees to perform the work. The school does not want persons who are "unsuited to work in close proximity with children" to come on campus and harm any child. Schools need to be able to require independent contractors to obtain criminal background checks of employees working on the contract with the school, and to bar persons unsuited to working in close proximity with children

from working on the contract. Additionally, the independent contractors need to have authorization and a defense to charges of arrest and court record discrimination if they comply with the school's request for background checks and bar the employees from working on the contract. This will involve revising the regulations dealing with other employers, not within the school exemption, as well as adding a section on the ability of schools to require other employers to provide this information. Schools and businesses under contract with schools should have an exemption from the application of the court and arrest record discrimination law and regulations when inquiries and decisions are made for the protection and best interest of children.

For the foregoing reasons, I urge the HCRC to withdraw and revise the proposed regulations as drafted, such that the HAIS's concerns are carefully considered and adequately addressed.



Robert M. Witt, Executive Director

**The
Hawaii
Business
League**



January 14, 1998

**Testimony To: William Hoshijo, Executive Director
Civil Rights Commission**

**Suite 815
677 Ala Moana Blvd.
Honolulu, HI 96813**

**Presented By: Tim Lyons, Executive Vice President
Hawaii Business League**

**Subject: Proposed Administrative Rules, Title 12, Subtitle 7,
Chapter 46, Subchapter 10
Arrest and Court Record Discrimination**

Mr. Hoshijo and Members of the Commission:

My name is Tim Lyons and I am the Executive Vice President of Hawaii Business League, a small business organization encompassing about thirteen hundred small businesses from throughout the state. We are opposed to your adoption of these regulations as they are written.

We understand the mission of the commission is to provide for non-discrimination and to preserve the civil rights of individuals who have chosen to commit a crime.

We also think, however that there must be a balance between those rights and the rights of small businesses that need to hire personnel.

It is quite clear to us that these regulations were written strictly from the standpoint of preserving those rights and not from the standpoint of looking at the problems and the operational considerations which must be viewed in order for small businesses to adopt and to abide by these regulations.

Basically, we believe the two gates that are provided in these rules to allow small business some flexibility i.e., the statutory exemption and the BFOQ are written too tight and they are obviously written in such a manner as to not allow very many exceptions. By using the statutory exemption as one of those "gates" it certainly dawns on other groups of small businesses that they should have gone in and applied for a statutory exemption many years ago.

By placing the burden of proof on the employer that the "essence" of the business would be undermined, it would seem to us that you are saying that only if you are going to go bankrupt, that is, if the very constitution, the very substance of this business is going to be threatened then, and only then, would a BFOQ be granted. In other words, regardless of what harm would come to that business, as long as it is not life threatening it would appear not to be in conformance with these rules and regulations. We object heavily to that. We do not think that there is any reason at all that that small business should be or feel threatened just for the consideration of hiring someone.

Further, we do not see how the employer is going to satisfy item two (2) which would require that they demonstrate that the person is unable to perform the functions and responsibilities. We do not believe that is the question. The question is can they perform the functions and responsibilities in a responsible and honest manner like the employer should expect from any other employee on the payroll.

We further object to the definition of "misconduct" under Section 12-46-202 in that it would appear under this definition that misconduct only occurs if a disciplinary action is taken. We find that to be a very subjective term since it is not defined. Is disciplinary action merely noting the event in the employee's file without suspending the employee or does it require a suspension of some sort in order for it to qualify as a disciplinary action? We think you perform a disservice to employees in this area, forcing the employer to meet your definition of disciplinary action when in fact that much disciplinary action may not be necessary or justified.

Further, in the section above this where the proposed rules talk about the term "inquire" it is noted that a contemporaneous report or unsolicited disclosure cannot be used. Again, we do not think this is the point. The point is does the customer that frequents this business establishment, consider a contemporaneous report or unsolicited report before doing business with that company? If so, we see no reason in making this solely a company decision.

We further take objection to the Commission's examples and we find this to be another classic example of the lack of consideration for small business. The examples cite a government agency (DOE), a condominium project and a bank or saving and loan. There's not one mention of any small business here.

Government agencies have their own attorneys on the taxpayer's payroll, the condominium projects are not generally considered to be a business and financial institutions have their own attorneys to interpret these rules and regulations. Why not cite a clear example of a restaurant which is anticipating hiring an individual that is going to be dealing with accepting cash from a customer, like a waitress, a waiter or a cashier. Or, citing the operations of a pest control company that hires someone to perform fumigation in individuals homes while they are absent from the home or, even an auto parts store which has a large inventory of parts and you want to consider the arrest record of someone convicted of stealing. The Commission should provide examples that exist in the real world and in consideration of the fact that the clear majority of our businesses in our state are small business, it would appear more relevant to provide those.

Lastly, we are also concerned with Section 1246-207, which are the requirements for establishing a BFOQ. We think this is an exceptionally subjective type of test and we do not see how any consideration should be given to the "totality of the circumstances". This means to us that despite all the factors considered, if the person is applying for a job, they should be hired!

In conclusion, we think that these regulations go far away from reality and are not drafted with any sense of fairness or balance towards the small businesses that exist in this state. We think it a shame that the commission would consider a proposal that puts the entire burden on the employer who is trying to provide a person with a job. It is ludicrous to require a small business who has no employees, that considers hiring one part time person, to fall under the guise of these regulations. This is absolute absurdity in the face of our poor, ailing economy. We do not think it justified, whatsoever.

We recommend these regulations be filed and not brought out until there is some sense of reality.

Thank you.

FILE

**HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS
677 Ala Moana Boulevard, #701
Honolulu, Hawaii 96813**

FACSIMILE COVER LETTER

Date:	January 15, 1998	Hawaii Standard Time:	_____
To:	Hi. Civil Rights Commission	From:	JANE SUGIMURA
Company:	State of Hawaii	Re:	Testimony Re Proposed Adm. Rules Relating to Arrest and Court Record Discrimination
Telefax:	586-8655		

.....

DESCRIPTION OF DOCUMENT(S):
Testimony for tomorrow's hearing.
MESSAGE:

Total number of pages (including this page): 3

IF PROBLEMS DEVELOP, PLEASE CALL AS SOON AS POSSIBLE AT (808) 524-0544 OR
566-2112.

HAWAII COUNCIL OF ASSOCIATION
OF APARTMENT OWNERS
677 Ala Moana Boulevard, #701
Honolulu, Hawaii 96813

January 15, 1998

VIA TELEFAX - 586-8655

Hawaii Civil Rights Commission
830 Punchbowl Street - Room 411
Honolulu, Hawaii 96813

Re: Civil Rights Commission Hawaii Administrative
Rules - Chapter 46 subchapter 10
"ARREST AND COURT RECORD DISCRIMINATION"

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO). HCAAO has 103 residential apartment associations members with 18,762 individual apartment owners and 32 associate members.

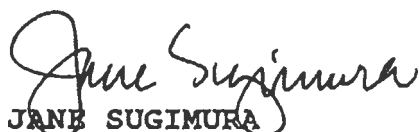
HCAAO is very concerned about the proposed rules "Subchapter 10, Arrest and Court Record Discrimination". Specifically, we are concerned about Section 207(b) that would require condominium associations to establish specific offenses under the statutory exemption it has under HRS 514A-82.1. The proposed rule appears to limit the right given to condominium boards under that statute and further that the rule appears to go beyond the statutory mandate. Accordingly, we ask that this section be deleted.

We are also concerned that the proposed rules would jeopardize the safety and welfare of residents (and their property) in condominium projects. It is necessary for companies and service personnel (e.g., plumbers, electricians, repair persons, telephone and cable service persons, delivery persons, inspectors, etc.) to have access to condominium projects and their residents. Since these employees will come into contact with residents, their families and their property in the course of their employment, the residents have every right to expect that they will not be victimized in their own homes by such persons. The residents would expect the employer to have done a thorough pre-employment background check to ensure that such employees would not commit crimes such as theft, assault, homicide, child abuse, sexual offenses, terroristic threatening, extortion, while on the property.

Hawaii Civil Rights Commission
Re: Testimony on Adm. Rules
Chapter 46, Subchapter 10
January 15, 1998
Page 2

With the restrictions imposed by the proposed rules, an employer is prevented from doing its due diligence to ensure that its employees will not commit crimes that will harm its customers and the general public. This is not acceptable and, accordingly, we request that the Commission revise the proposed rules to allow employers to conduct inquiries into the arrest and court records of prospective employees as part of their hiring process.

Thank you for allowing us to provide testimony on this important issue.


JANE SUGIMURA
President

Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Ltd. ("MECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Hawaiian Tug & Barge Corp. ("HTB") and Young Brothers, Limited ("YB"), respectfully submit the following testimony regarding an employer's right to inquire or use conviction information for employment purposes. HECO, MECO and HELCO are responsible for generating, transmitting, distributing and providing reliable electric power to Oahu, Maui, Molokai, Lanai and the Big Island, respectively. Our companies operate in similar manners and our jobs are similar, with HECO having the greatest number and variety of job positions. HECO has over 1500 employees, MECO has over 300 employees, HELCO has over 350 employees, HTB and YB provide maritime services and inter-island cargo delivery and have over 360 employees.

We support the intent of Hawaii's Employment Practices laws, chapter 378, HRS, to prohibit discrimination in employment decisions on the basis of court or arrest record alone. However, we believe those interests must be balanced against the employer's responsibility to provide a safe working environment, maintain the public's trust, and remain competitive for its employees, customers and the community. The HCRC's proposed Arrest and Court Record rules do not balance these concerns and gravely concern our companies and the people we are responsible to and for because: (1) the proposed rules exceed their statutory authority and intent; (2) deprive employers of the right to make timely, informed decisions directly related to

reasonable business needs; and (3) unfairly impose the burden and risks associated with rehabilitation on private sector employers only.

It is an unlawful discriminatory practice to discriminate on the basis of arrest and court record in employment practices. Yet the law also recognizes the right of the employer to establish and maintain BFOQs **reasonably necessary** to the normal operations of a particular business or enterprise that have a **substantial relationship** to the functions and responsibilities of prospective or continued employment. §378-3 (2), HRS.

The proposed Arrest and Court Record rules unconstitutionally exceed their statutory authority by imposing a higher and more onerous standard upon the employer. Under the proposed rules, employer loses the right to establish and maintain BFOQs reasonably necessary to the business which have a substantial relationship to the position and which directly impact employer's ability to safeguard the public, its customers, employees, and other assets.

The rules prohibit the consideration of arrest, court, or conviction records unless it falls under either of two stringent exceptions: a specific statutory exemption or if employer can meet its burden of establishing a BFOQ. Currently, there are only three narrow statutory exemptions, none of which apply to our industry or which address our needs in acting as a responsible employer.

The second exception, the BFOQ, is an onerous burden for employer. The employer must be able to establish by a preponderance of the evidence that:

(1) The essence of the business would be undermined if all persons with a conviction record for a specific offense are not excluded;

(2) All or substantially all individuals with a conviction record for a specified offense would be unable to perform the functions and responsibilities of prospective or continued employment in the position; and

(3) there is no acceptable alternative with less discriminatory impact.

§12-46-202. Clearly this overreaching and overly broad all or nothing standard ignores employer's statutory right to establish BFOQs that are reasonably necessary to the normal operations of the business that have a substantial relationship to the functions and responsibilities of the job. In addition, under this rule, employers would not be allowed to deal with applicants on a case-by-case basis since the BFOQ requires that all or substantially all individuals with a conviction record for a specified offense to be unable to carry the functions and responsibilities of the job. The requirement narrowly focuses on a specific conviction for a specific offense. It would prohibit the consideration of a pattern of criminal convictions in other areas which may, considered as a whole, have a substantial relationship to the job.

We propose instead that the definition of a BFOQ more closely mirror the intent of the statute by requiring that a BFOQ be either: (1) substantially related to the functions and responsibilities of the job for which the applicant applies; (2) substantially related to the functions and responsibilities of the job which the employee holds; or (3) is directly related to the applicant or employee's possible performance in the job. This definition is the same definition

proposed by the Society for Human Resource Management ("SHRM").

§12-46-202 (b), SHRM Alternative Proposal for HCRC Rules on Arrest & Court Record Discrimination ("SHRM alternative"). Part 3 of this definition reflects the standard for convicted persons under §831.3.1, HRS, which we support for reasons contained later in our testimony.

Even if an employer successfully establishes a BFOQ, the proposed rules allow inquiries about relevant conviction or court and arrest records only at the post-offer stage. §12-26-209. To deny employers such information until post-offer, prevents employers from making timely informed decisions at the time of offer and subjects the employers to costly and unnecessary complaints and lawsuits, the cost of which must be borne by private sector employers alone, small and large. We propose instead that employers be allowed to inquire about any convictions related to a BFOQ, with BFOQ defined under §12-46-202(b), SHRM alternative.

In the case of an unresolved criminal charge relevant to the job or crimes against the person under chapter 707, HRS, employers are not allowed to disqualify applicants post-offer or to discharge employees under the proposed rules. §12-46-205. Instead employer is required to suspend any employment decision, pending resolution of the charges. "Resolution of the charges" is undefined and does not distinguish at which level of the criminal appeals process the charge is considered resolved. During this period, although employers may bar the employee from the work premises, they are required to provide the employee with paid leave. This is an unreasonable economic

burden for employers, particularly when the criminal process is a lengthy one. In order for employer to get the job done, the employer faces the dilemma of having to pay two persons for the same position: the employee with unresolved charges and his or her replacement if one can be found.

If the charge results in a BFOQ related conviction, the rules are silent as to employer's right to reimbursement. If the employee is incarcerated, the employer's chances of recouping any of the wages paid out are almost nil. If employer is not allowed to recoup either under the rules or as a practical matter, this windfall rewards the employee for engaging in criminal conduct. This outcome clearly contravenes the intent to promote rehabilitation and social good.

We propose instead that when an employee has an unresolved charge related to the position or a crime under chapter 707, HRS, the employer has no obligation to provide paid leave or to keep the position available indefinitely. The employer should instead have the option of evaluating its reasonable business needs to determine for what reasonable period the employer can withstand the employee's absence; employer may also allow the employee to use accrued vacation leave during that reasonable period. If the employee's situation has not resolved by the end of this period, employer should have the option of terminating the employee or voluntarily extending the leave without pay. For the applicant who is arrested or charged after the offer is made but before assuming the new position, employer should again determine the reasonable period which the business needs can withstand the position to be

vacant. Once this period lapses, if the charges are not resolved by then, the employer has no obligation to rehire the individual for that position.

Under the proposed rules, if the unresolved charge does not result in a conviction, the employee must be fully reinstated. §12-46-205 (i) The lack of a criminal conviction is not a reliable indicator of whether criminal conduct actually occurred. The lack of a criminal prosecution or conviction may simply indicate a technical problem with the criminal case, e.g., failing to timely issue an indictment, an uncooperative or intimidated witness. However the proposed rules do not allow employers any discretion in this area. They are bound by the outcome of the criminal justice system, which is not designed or intended to be the decision maker in the employment arena.

We propose instead that if the charge does not result in a conviction during the reasonable period determined by the employer, employer has the option of terminating the employee or allowing leave with pay if vacation leave has not been exhausted, or leave without pay.

The Commission's proposed rules also do not specifically address the situation of arrests and unresolved charges not related to a BFOQ. In such a case, the rules imply that it is unlawful to discharge, even if the employee is unavailable for duty because of incarceration. We propose instead that the rules clearly preserve the employer's right to terminate an employee in cases of unavailability.

These are only highlights of the unworkable standards imposed upon private employers in favor of the convicted. A vastly different and more reasonable standard is applied to the public sector.

The State's largest employer, the State and its political subdivisions and agencies, are not subject to the proposed rules but are governed by §831-3.1, HRS. Under this section, the State may consider as a possible justification for the refusal, suspension or revocation of any employment any conviction of a penal offense when such offense directly related to the applicant's possible performance in the job applied for or to the employee's possible performance in the job which the employee holds. This is a reasonable standard designed to allow the State to select and retain the best qualified and suited applicants and employees, without discriminating on the basis of conviction status alone. This standard is captured in the definition of a BFOQ under §12-46-202, SHRM alternative. We believe this standard should be fairly applied to both the private and public sector under the guarantee of the equal protection of the laws, which is recognized under both Hawaii and Federal Constitutions.

While the State is entitled to prescribe regulations to promote the general welfare of the people, it cannot classify groups in an arbitrary manner or unfairly saddle one group with the associated costs. Classification of a particular group as a subject for regulation must be reasonable in relation to the purpose of the legislation.

The intent of the proposed rules is to provide rehabilitation for individuals convicted of crimes by providing employment for the good of society.

§12-46-201. While the rules are intended to promote the general welfare of society, the burden of doing so falls heavily on private sector employers alone. While private employers are governed by the proposed rules, the largest employer, the State, is held to a lesser standard. As a result, the State bears less of the risks, costs and burdens associated with providing rehabilitation through employment. If rehabilitation is a benefit to society in general, than the costs of rehabilitation through employment should not be shouldered by the private sector alone.

The underlying statutory authority is also intended to prohibit discrimination against convicted persons for reasons non-related to the position. It is also intended to allow the employer to select and retain best-qualified persons able to perform the essential functions of a job. The State as well as private employers share both of these interests and objectives.

Many of the jobs at our companies involve dangerous work, access to or handling of confidential information or client records, and more importantly, regular access to the homes and property of all of our customers. In addition, in order for us to provide reliable and effective service, it is essential that our companies develop and maintain a safe and harmonious workplace based upon mutual trust, respect, teamwork and the security of a safe work environment. The essence of our business includes public confidence in the manner in which we do our jobs.

Our companies and employees have earned positions of trust in the community, particularly since so many of our employees must interact with the public and our customers on a daily basis, year-round, both day and night. During storms, bad weather, or natural disasters, our crews are out repairing lines and equipment twenty-four hours a day. Collectively, hundreds of our employees have regular contact with or access to customers and the public and their financial records. Hundreds of our employees, statewide, visit your homes and property on a regular basis. Hundreds of our employees are entrusted with delivery of cargo and providing maritime services. Hundreds of our employees are entrusted with vehicles, heavy equipment, tools and materials which, if used improperly may pose a risk of harm to the public, our customers or to fellow employees. Internally many employees must work together in confined areas, under high stress or work round the clock in emergency situations.

These interests are not uniquely private sector concerns. They are concerns for all employers, public and private. Yet, the proposed rules would unfairly compromise our ability to select and retain the best-qualified and suitable individual for the position. The rules would unfairly place private employers at risk for negligent hiring and retention cases and discrimination complaints and lawsuits. The rules would saddle private employers only with the costs of rehabilitation.

We ask that the Commission recognize the unconstitutionality and imbalance contained in the statute and proposed rules which exceed statutory

authority and fail to address the reasonable and necessary interests of employers, employees, and the public. As the body charged with lawful enforcement of Hawaii's Employment Practices, we urge the Commission to refrain from enforcing that part of §378-2, HRS, relating to discrimination based upon arrest and court record until the equal protection violation is addressed through the legislature or other means. In the alternative, we ask the Commission to apply the same standards applicable to the public sector rather than those contained in the proposed rules. In this regard, we strongly support the proposed rules submitted by SHRM. We believe SHRM's proposed rules balance the rights of the individual against the rights of the employer, its employees, customers and the community.

Thank you for the opportunity to share our companies' concerns on this important issue.

c: The Honorable Benjamin J. Cayetano, Governor of the State of Hawaii
Lorraine H. Akiba, Director, Department of Labor and Industrial Relations
The Honorable Margery S. Bronster, Attorney General
The Honorable Nobu Yonamine, Chair,
Labor & Public Employment Committee
The Honorable Terrance Tom, Chair, House Judiciary Committee
The Honorable Avery Chumbley, Co-Chair, Senate Judiciary Committee
The Honorable Matt Matsunaga, Co-Chair, Senate Judiciary

FILE



HAWAII HOTEL ASSOCIATION
2250 KALAKAUA AVENUE #404-4
HONOLULU, HI 96815-2564
TELEPHONE: (808) 923-0407
FAX: (808) 924-3843

**TESTIMONY OF THE HAWAI'I HOTEL ASSOCIATION
TO THE CIVIL RIGHTS COMMISSION
RE: ARREST AND COURT RECORD DISCRIMINATION**

My name is Murray Towill, President of the Hawai'i Hotel Association. Our association represents 180 hotels statewide which collectively have over 30,000 employees. Our membership also includes over 300 firms doing businesses with hotels.

By allowing businesses the opportunity to determine whether to utilize arrest and court records, they are better able to run their businesses based on common sense. The employers should have the right to obtain and consider arrest and court records along with other relevant job-related information. Asking limited questions about arrest and court records, as long as they are job related, is appropriate and needed. Our employees and guests have a right to trust their employer and host to exercise sound discretion in hiring staff.

In the hotel industry, many hotel employee positions require guest contact or access to guest rooms, therefore, these positions should require the absence of a felony conviction for homicide, assault, kidnapping, sexual offenses, child abuse, extortions, or prostitution. In addition, many hotel employee positions require access to guestrooms or access to large sums of money often without direct supervision, therefore, these positions should require the absence of felony convictions for theft, embezzlement, robbery, forgery, and other related offenses.

Common law has long established the responsibilities and standard of duty of a hotel or innkeeper to its guests. When these responsibilities have not been met, substantial judgements have been made against the hotel. In many respects, hotels are made defenseless when they cannot even inquire about any relevant convictions by a prospective employee. If a guest or fellow employee is assaulted or injured by an employee, the hotel's liability is not reduced because they could not inquire about prior convictions.

We appreciate the Commission's response to our January 1996 testimony regarding allowing bona fide occupational qualifications (BFOQ) for hotel and



American Hotel &
Motel Association

condominium operations. In addition to the jobs identified in these rules, we also believe the definition should be expanded to include employment that requires cash handling. We are extremely concerned since hotels have large amounts of daily cash transactions entrusted to employees 24 hours a day, employees such as the front desk cashiers, reservation agents, restaurant cashiers, accounting clerks, etc., must be included in the BFOQs.

BFOQs also need to be made more reasonable. For example, the definition of BFOQ states that the employer has the burden of proving that "*all or substantially all individuals with a conviction record for a specified offense would be unable to perform the functions and responsibilities of prospective or continued employment in the position.*" The use of the term "unable" is unreasonable. While an individual might be physically "able" to perform the functions of a position, he/she may be unqualified due to a prior felony conviction. This seems to create an environment where the employer needs to prove the discrimination did not occur.

We believe there is great potential for an applicant to make discriminatory charges against the business when the job offer is withdrawn due to the applicant's conviction record. A better process would be to allow the employer to check on an applicant's arrest and court records at the pre-offer stage.

We also believe the need to develop BFOQs establish an unrealistic burden on businesses. The cost of attorney's fees to write a BFOQ for each job description for that particular business is an unreasonable financial expense for smaller businesses. In addition, the burden rests with the employer to prove the essence of the business would be undermined if all persons with a conviction record for a specified offense are not excluded; all or substantially all individuals with a conviction for the specified offense would be unable to perform the functions of the job in question; and there is no acceptable alternative with less discriminatory impact.

Finally, we believe that the private sector and the state government should not be treated differently. If the state government is going to be exempt, then so should private employers.

We urge the Commission to withdraw these proposed rules. While the Hawai'i Hotel Association is not an expert in the impact nor the intricacies of these proposed regulations, we believe common sense needs to be exercised in developing rules that allow a full disclosure of information.

Thank you for the opportunity to provide this input.

FILE

Hawaii Hotel Security Association



Testimony of HHSA on Final Arrest & Court Record Rules Proposed by the Hawaii Civil Rights Commission

I am the President of the Hawaii Hotel Security Association, an organization that has been active for more than 30 years in the professional development and promotion of safety and security in the hospitality industry. We are a state-wide organization whose members include most of the major hotels in Hawaii as well as related businesses, law enforcement agencies, and others engaged in loss prevention and public safety.

We are strongly opposed to the proposed set of arrest and court record rules because it would seriously threaten the safety and well-being of our members, its employees, customers, and the public in general.

First, the proposed rules are unrealistic and impractical. Because of its complexity the rules are likely to cause confusion, discourage legal compliance, and foster disrespect for the law and the Civil Rights Commission. For example, the proposed requirement of suspension with pay after an employee is arrested is ludicrous. We would be rewarding criminals after they commit an act of violence when, to protect innocent bystanders, the suspect should be removed from the workplace immediately and **not** given any compensation for his misconduct.

Second, the rules expose employers and companies to potentially serious negligence lawsuits for failure to take reasonable precautions to screen prospective employees who may cause foreseeable injuries or losses to others. Would a serial rapist commit assaults again? Would a career embezzler steal again? Under the new rules we could not even inquire to find out how dangerous or risky new employees would be in the workplace. We would have to give them a conditional job offer **before** asking about arrest and court record information. In fact the rules seem to prohibit any inquiry into any prior work history involving disciplinary action for attendance problems, safety violations, and misconduct while off duty. Does it make sense to prohibit an employer from requiring a driving abstract before offering a job to a van driver who is responsible for the life safety of his passengers? We think not!

Finally, the proposed rules seem to punish the wrong people. Hotels and other businesses strive to provide reasonably safe premises and excellent customer service. Instead they will be forced to hire individuals who have committed even serious crimes. And, if these criminals are removed from the workplace because of the potential danger that they pose to the public, they could successfully sue their employers under these rules. It hardly seems fair.

We therefore strongly urge you to reconsider the proposed rules and to support a more reasonable alternative. A possibility could be to formulate well-reasoned BFOQs to help protect the visitor industry which, as you may be aware from Florida's prior crime notoriety, is very susceptible and sensitive to crime-related horror stories. No one wins if we go overboard in protecting criminals at the expense of exposing others to unreasonable risk of harm. Thank you for your patience and kind attention as we express our grave concern over these new rules.

Wayne K. Ogino



605 Kapiolani Boulevard Post Office Box 3350, Honolulu, Hawaii 96801 Telephone (808) 525-8000

**TESTIMONY OF HAWAII NEWSPAPER AGENCY LIMITED PARTNERSHIP
REGARDING FINAL ARREST & COURT RECORD RULES OF THE HAWAII CIVIL
RIGHTS COMMISSION**

I am the Human Resources Administration Manager of Hawaii Newspaper Agency Limited Partnership. We employ approximately 935 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a driver who is entrusted with driving a vehicle for carrying tons of cargo.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Miki H. Sugikawa". The signature is written in a cursive style with a large, looping initial "M".

Miki H. Sugikawa
Human Resources Administration Manager

FILE

**TESTIMONY OF HAWAII PACIFIC UNIVERSITY REGARDING
FINAL ARREST AND COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am Linda Kawamura, Human Resources Director of Hawaii Pacific University. We employ 1000 Hawaii residents at our University and our student enrollment exceeds 8600. The proposed arrest and court record rules threaten the safety of our students, employees and public for three main reasons:

As a private educational institution with residential facilities, every employee is in contact with students, other employees and the public. In addition to the classroom time, each of our 600 faculty is required to have "office hours" with our students. A convicted harasser or assaulter puts our clientele at immediate risk for sex offenses. We operate shuttle vans which transport students and employees between our downtown and windward campuses every fifteen minutes from 7:00 a.m. to 9:30 p.m. A driver with a traffic record of DUI or reckless endangering, can drive off the Pali or miss the tunnel, with a busload of passengers and putting the community at risk. The resident advisor or security guard for the dormitories with a record of rape or murder, can do the same to the individuals they are supposed to protect.

First, the rules as drafted are unworkable. We, as a University, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored, rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal back ground check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules, we cannot even require a driving abstract before offering employment to our drivers. Who is entrusted with driving a busload of students and employees?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have purposefully committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Our students have the right to trust HPU to provide quality educational services without an elevated risk of danger to them. Our employees have the right to trust HPU to exercise sound discretion hiring persons who do not posed an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw these rules, in its entirety.



PEOPLE SERVING PEOPLE

FILE

Kathleen H. Masunaga
Executive Director

January 16, 1998

EXECUTIVE COMMITTEE

Paul Mann, President
Butch Howard, President Elect
Gene Gunn, Vice President
Gale Ogawa, Secretary
Tom Jones, Treasurer
Jeff Crimin, Past President

William Hoshijo
Executive Director
Hawai'i Civil Rights Commission
830 Punchbowl St., #411
Honolulu, HI 96813

HONORARY MEMBER

Richard Rodby
President, Kemoo Farm, Inc.

RE: Proposed Subchapter 10 Arrest and Court Record Discrimination

BOARD OF DIRECTORS

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Co-Owner, 3660 On The Rise

Aaron Placourakis
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Instructor, Kapi'olani Community College

Paul Tokuda
*On Premise Manager,
Anheuser Busch Sales Hawai'i*

Gerda Tom
Cold Drink Representative, Coca Cola USA

Alfred Vollenweider
Chef/Owner, Alfred's at Century Center

Robert Yackley
*Market Development Representative,
Pepsi Cola*

Dear Mr. Hoshijo:

On behalf of the Hawai'i Restaurant Association, this testimony is presented in strong opposition to the adoption of the above Subchapter 10 to Title 12.

The current statute prohibits discrimination based on arrest or court record. These proposed rules extend this discrimination to conviction record. And there is no distinction made between civil or criminal records. The intent of Hawai'i's civil rights law was to prohibit discrimination in employment solely based on arrest record. In the criminal justice system, not all who are arrested are necessarily convicted.

To raise the bar is unconscionable. It also penalizes small businesses who need to have honest and productive workers. Why does the Hawai'i Civil Rights Commission want to force employers to hire unfit employees? Those who were convicted of felonious crimes and spent time in prison should not be given the same protection under employment rules and regulations as law abiding citizens.

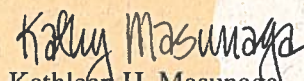
It is clear in reading §12-46-207(f)(3) that the authors of this proposed subchapter have no real experience or knowledge of the positions within an establishment holding a liquor license. On Maui any licensee with four violations within a five year period for overserving a customer or serving a minor will lose its license. Thus, they would be concerned with anyone convicted of such offenses as well as those positions that must be bondable, such as, cashier, accountant, manager, etc.

The procedures outlined for the conditional offer and post offer inquiry are extremely cumbersome. The documentation requirements are unreasonable.

The proposed rules also fail to consider the impact of hiring certain convicted felons on other employees. Would you hire me to work on the Hawai'i Civil Rights Commission staff if out of all the candidates I best met all of the bona fide occupational qualifications, but had been arrested and convicted of murdering a relative of one of your employees? I think not.

Please do not adopt these proposed rules in its present form. Instead, I encourage you to work with us to develop more reasonable rules.

Mahalo and aloha,


Kathleen H. Masunaga
Executive Director

FILE



FAX TRANSMISSION

Date: January 16, 1998

Company: State DLIR

Attn: Civil Rights Commission

Fax Phone: 586-8655

From: Gareth Sakakida

Our fax # (808) 833-8486

No. of pages including this sheet = ³~~X~~ **Please call us if pages are missing.**

MESSAGE: Dear CRC,

Attached is our testimony for the 1:00 p.m. hearing today. Thank you.

If you have any questions please call me at 808-833-6628, or fax to 808-833-8486.



January 15, 1998

**TESTIMONY ON THE PROPOSED ADMINISTRATIVE RULES
IN TITLE 12, SUBTITLE 7, CHAPTER 46, SUBCHAPTER 10
PROPOSED BY THE CIVIL RIGHTS COMMISSION**

The Hawaii Transportation is a private, non-profit trade organization whose members are comprised of motor carriers of property, motor carrier of passengers, and transportation support industries.

The association believes employers have the right and the obligation to do their best to provide a workplace that is free from harassment, violence, alcohol, drugs. Motor carriers have actually been required to address all of these factors for years by federal and state laws.

In the interest of our good intentions and conscience to provide these protections for our employees, the ability to access any job applicant's background is essential. Employers must have the ability to minimize workplace violence, and other unwanted acts be they harassment or non-violent acts like theft (from the employer or other employees).

We feel these proposed rules denies employers one of the best sources to make the best decisions they can to protect the workplace and employees.

Our industry is extremely concerned about access to an applicant's background, especially where drivers are concerned.

- Drivers operate under no direct supervision.
- Drivers are given the keys to assets that can be valued at up to \$500,000 **not including** the value of the passengers (if a value can be placed on passengers) or cargo.
- Persons with backgrounds of violence must be known since a tractor trailer or a bus can be an awesome weapon when one loses one's head -- even for a second.
- Persons with backgrounds of theft must be known since passengers normally consist of visitors who are generally carrying a substantial sum of cash.

- Persons with backgrounds of theft must be known since the cargo they are transporting, without supervision, can have substantial value.

It is absolutely imperative that we have the ability to make well informed decisions when hiring or assigning a person as a driver, and access to all background information is necessary.

Is a traffic abstract a "court record?" Our industry is greatly dependent upon a persons traffic abstract during the selection process. It makes no sense to consider everything else, offer a conditional employment, then ask for the documentation that makes the greatest impact upon the selection of a driver.

In conclusion, we feel the rules disables us from providing good faith protection for our companies, our employees and for the general public.

We believe that, at the very least, motor carriers must be allowed to fully investigate a driver applicants' background during the selection process.

Thank you,



Gareth K. Sakakida
Managing Director

FILE



HAWAII VISITOR INDUSTRY SECURITY ASSOCIATION

Executive Committee

President
Warren Ferreira
Outrigger Hotels & Resorts

Vice President
Mel DeCosta
Kahala Mall

Vice President
Joe Miller
Hawaii Convention Center

Secretary
Rick Caldwell
3-G International

Treasurer
Robert Hunter
Hyatt Regency

Board of Directors

Douglas Gibb
First Hawaiian Bank

Chester Hughes
Coria Ward, Ltd.

Charlian Wright
Royal Hawaiian
Shopping Center

Rudy Yap
Consultant

January 9, 1998

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl St. Rm. 411
Honolulu, HI 96813

Dear Sir:

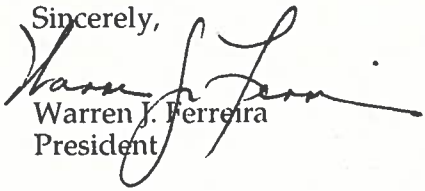
I am the President of the Hawaii Visitor Industry Security Association(HVISA). Our Organization represents security professionals in over fifty(50) companies and organizations in the areas of hotel, retail, convention and other related tourist industry businesses.

Our Association(HVISA) is gravely concerned with your proposed rules that deal with arrest and conviction records. We, who are directly responsible for the safety and welfare of our guests, employees and patrons, believe that mandating the hiring of individuals with conviction records is dangerous, untenable and unworkable.

A whole range of vicarious liability concerns puts employers and businesses between a rock and a hard place for the future actions of these individuals. We as Security Professionals know the ramifications and consequences of dealing with the judicial and legal system concerning employee misconduct. Concerns with workplace violence and theft place an unreasonable burden of deterrence and foreseeability on everyone.

We would urge that BFOQs, if anything, be broadened to include a wider range of organizations, businesses, occupations, and jobs for which specific convictions for crimes of theft and violence are considered as relevant.

We believe that your proposals are a perfect example of decision making in a vacuum and are being contemplated without considering the potential consequences of such actions. We strongly urge reconsideration of these proposed Rules and advocate their deletion.

Sincerely,

Warren J. Ferreira
President

98 JAN 12 P1:13
HAWAII CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII



1997

HAWAII VISITOR INDUSTRY SECURITY ASSOCIATION

EXECUTIVE COMMITTEE

President	Warren Ferreira	Outrigger Hotels
Vice President	Mel DeCosta	Kahala Mall Center
Vice President	Joe Miller	Hawaii Convention Center
Secretary	Rick Caldwell	3-G International
Treasurer	Bob Hunter	Hyatt Regency Waikiki

BOARD OF DIRECTORS

Term Expires:		
2000	Chester Hughes	Victoria Ward Center
2000	Rudy Yap	Consultant
1999	Douglas Gibb	First Hawaiian Bank
1999	Charlian Wright	Royal Hawaiian Shopping Center

COMMITTEE ASSIGNMENTS

Safe Streets & Crime	Rick Caldwell
Awards	Bob Hunter
Disaster Preparedness	Warren Ferreira
Alert System	Bob Hunter
Programs/Social	Clem Enoka
Membership	Rudy Yap
Legislative	Tina Yamaki
Training/Information	Rudy Yap

ORGANIZATION LIAISONS

COPPS	Warren Ferreira
Kapiolani Park Adv	Warren Ferreira
HHSA	Gary Rockwood
Retail Merchants	Bernard Ching
ASIS	Randy Mack
HHA	Tina Yamaki
HSRSA	Gary Rockwood

REGULAR MEMBERS

<u>Organization/Property</u>	<u>Representative</u>	<u>Phone</u>	<u>Fax</u>
Aloha Surf	Romeo Monce	923-0222	924-6543
American Exec Sec Inc.	Randall W. Mack	523-0931	488-7151
Aston Hotels & Resorts	Beverly Kirk	931-1431	931-1444
Consultant	Rudy Yap	536-1162	536-1162
Crazy Shirts	Cheryl Gallagher	487-9919	486-1276
DFS	Alexander Nuesca	931-2711	931-2797
First Hawaiian Bank	Douglas Gibb	844-3831	844-3839
Halekulani	Sidney Kim Han	923-2311	931-5193
Hawaii Convention Center	Joe Miller	943-3505	943-3510
Hawaii Prince	Robert Thomas	944-4436	944-4453

REGULAR MEMBERS**Organization/Property****Representative****Phone****Fax**

Aloha Surf	Romeo Monce	923-0222	924-6543
American Exec Sec Inc.	Randall W. Mack	523-0931	488-7151
Aston Hotels & Resorts	Beverly Kirk	931-1431	931-1444
Consultant	Rudy Yap	536-1162	536-1162
Crazy Shirts	Cheryl Gallagher	487-9919	486-1276
DFS	Alexander Nuesca	931-2711	931-2797
First Hawaiian Bank	Douglas Gibb	844-3831	844-3839
Halekulani	Sidney Kim Han	923-2311	931-5193
Hawaii Convention Center	Joe Miller	943-3505	943-3510
Hawaii Prince	Robert Thomas	944-4436	944-4453
Hawaiian Regent Hotel	Edward Iglesias	922-6611	921-5255
Hawaiian Waikiki Beach	Lucy Kaneshiro	921-6210	923-3656
Hilton Hawaiian Village	Lani Bjork	947-7806	947-7991
Holiday Inn Airport	Randall Mack	836-0661	833-1738
Hyatt Regency Waikiki	Bob Hunter	921-6069	921-6070
Ilima Hotel	Philip Sammer	923-1877	924-8371
Imperial Hawaii Resorts	Bryan Liu	921-7511	923-7848
Inter. Pacific Hawaii Retail Group	Joanne Taufa	971-4251	971-4235
Kahala Mandarin	Wayne Goodwin	739-8868	739-8810
Lanal Resorts	Al Treutler	565-3817	565-3817
Outrigger Hotels & Resorts	Jerald Dolak	926-4330	922-9292
Outrigger Hotels & Resorts	Warren Ferreira	926-4331	922-0076
Outrigger Hotels & Resorts	Robert Kanoa	926-4332	922-0076
Royal Garden	Ralph Iwai	943-0202	945-7407
Royal Guard Security Inc.	C.E. Rags Scanlan	596-0848	596-2586
Royal Hawn Shop Center	Charlian Wright	931-3110	922-0961
Safeguard Services, Inc.	Albert B. Denis	526-2002	523-3826
Sears Roebuck	Bernard Ching	947-0312	947-0279
Sheraton Hotels Hawaii	Gary R. Rockwood	931-8552	924-7304
Victoria Ward, Ltd.	Chester E. Hughes	591-8411	596-4919
Wackenhut Corp.	Boyd Andrade	839-1185	839-1824
Waikiki Trade Center	Clem Enoka Jr.	922-7444	923-4631
WDC Venture/Int'l Mkt	Leolani Kini	923-9871	924-3670
3G International	Rick Caldwell	833-9838	833-9885

1997

HAWAII VISITOR INDUSTRY SECURITY ASSOCIATION

ASSOCIATE MEMBERS

ABC Stores	Newell Hirata	591-2550	591-2039
Alert Alarm of Hawaii	Brian Caldwell	528-6405	528-6444
Budget Rent a Car	Mele Malo	599-2245	599-2220
Central Pacific Bank	Noel Ishihara	532-4999	532-4970
Elsafe Hawaii, Inc.	Ralph Yasuoka	593-9233	593-9230
Engineered Security Specialists	Doug Schleif	528-6437	528-6444
First Alarm Security	Ricky Jones	596-8258	596-7064
First Insurance Co. of Hawaii	Lorna Kaalua	527-7358	543-3291
Hawaii Hotel Association	Tina Yamaki	923-0407	924-3843
H.S.I. Corp.	Frank Lafita	(808) 935-3834	(808) 969-3934
Kahala Mall	Mel DeCosta	732-7736	735-4126
Sensormatic Hawaii	Partick O'Brien	484-4000	487-0810
Simplex	John Ford	949-6679	955-4367
Smarte Carte, Inc.	Harvey K.O. Hee	833-2288	834-0878
Straub Clinic & Hospital/DOC	Monte Elias	522-3781	522-4062
SUN Industries	Sidney Quintal	833-2502	834-5630

NAVATEK I

A ROYAL HAWAIIAN CRUISES COMPANY



FILE

Testimony of HAWAIIAN CRUISES, LTD. Regarding Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission (HCRC)

I am the President of Hawaiian Cruises, Ltd. We employ 120 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

Hawaiian Cruises, Ltd. operates the daily cruise vessel Navatek I. As a business operating within the tourism industry, we service many clients and customers who looking to experience an enjoyable, safe and high-quality cruise. We entertain many local families and visitors and operate yearly whalewatch cruises from January through May where we provide education tours for many youngsters and school groups. Hawaiian Cruises also hosts many public high schools for Project Graduation, which is designed to allow seniors celebrate graduation in a safe, non-alcoholic environment.

The proposed arrest and court rules would not allow our company to conduct background checks on our service staff who have close contact with all of our customers. The success of our business is largely due to customer satisfaction. It is the Company's responsibility to ensure that passengers enjoy a safe and non-threatening environment while on-board the Navatek I.

Furthermore, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

The rules also expose us to potential negligence actions under prevailing Hawaii law which imposed a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a bus driver. Who is entrusted with driving a vehicle carrying many passengers? As part of our service, we transport passengers from their hotels to the pier and back to the hotel after the cruise. How can we ensure passenger safety on our buses if we cannot determine if our drivers have clean driving abstracts? Furthermore, how can Hawaiian Cruises ensure the general public's safety while our drivers are out on the roads and highways.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Testimony of Hawaiian Cruises, Ltd.
Page two

Finally, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules, as is the state. Why are private sector employers the only ones targeted by these rules?

Hawaiian Cruises, Ltd. would like to retain the ability, if we chose to do so, to obtain arrest and court records as it pertains to ensuring passenger safety.

Susan C. Matsuura
Susan C. Matsuura

1/16/98
Date



Healthcare Association
of Hawaii

FILE

'98 JAN 20 P3:30

1997-1998 Board of Directors

January 16, 1998

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Chair

Frances A. Hallonquist
Kapiolani Medical Center at Pali Momi
and
Kapiolani Medical Center
for Women & Children

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Kaiser Permanente Medical Center

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Healthcare Association of Hawaii

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(AONE President)
Castle Medical Center

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Hawaii Health Systems Corporation

John Farias, Jr.
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(AHCA Delegate)
Crawford's Convalescent Home

Rodger McCloskey
(AHA Trustee Delegate)
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William O'Connor
Rehabilitation Hospital of the Pacific

Cynthia Okinaka
St. Francis Medical Center

Arthur A. Ushijima
The Queen's Medical Center

Military Liaison

COL Gordon Cho
Tripler Army Medical Center

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Dear Mr. Hoshijo:

My name is Rich Meiers and I am the President and CEO of the Healthcare Association of Hawaii, representing the State's acute care hospitals and two-thirds of the long term care facilities. Thank you for the opportunity to present our Association's views on the proposed rules that add a new subchapter to implement state law prohibiting employment discrimination based upon arrest and court record.

Hospitals and nursing homes routinely deal with a population that is particularly vulnerable to wrongdoers. This vulnerability may be due to anesthesia, medication, disease, injury, disability, age, or other form of incapacity. It is extremely important that health care facilities be able to appropriately screen applicants for positions that may place them in close proximity to vulnerable patients. This includes not only personnel involved in direct patient care but other categories of workers as well, such as housekeepers who clean patient areas and food service personnel who deliver meals.

With these serious issues in mind, we strongly support the wording in paragraph §12-46-207(f)(4) on page 12 of the Proposed Administrative Rules.

It is the mission of our members to provide Hawaii's citizens and visitors with high quality health care services. Quality health care ultimately depends on the skilled workers who provide it. This

Mr. William Hoshijo

January 16, 1998

Page 2

Rule will help us ensure that vulnerable patients and residents are protected from wrongdoers while they are in our care.

Thank you for the opportunity to present our views on behalf of our patients and residents.

Respectfully submitted,



RICHARD E. MEIERS
President and CEO

REM/lth



Healthcare Association
of Hawaii

FILE

FAX TRANSMITTAL

TO: John Ishihara
ATTN:
FAX: 586-863⁵⁵~~6~~
FROM: Richard E. Meiers, President/CEO *REM*
SUBJ: *Public Hearing Comments*
DATE: January 16, 1998

Number of pages (including cover page) 3

Please telephone immediately if you do not receive all pages.

Phone: (808) 521-8961

FAX: (808) 599-2879

John,

Here is a copy of our comments for this afternoon's hearing. Per our conversation yesterday, I will not be present.

I am also mailing seven copies to your office today.

Thanks for your support. I enjoyed speaking with you yesterday.

Take care,

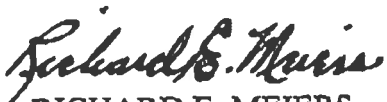
Rich

Mr. William Hoshijo
January 16, 1998
Page 2

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Thank you for the opportunity to present our views on behalf of our patients and residents.

Respectfully submitted,


RICHARD E. MEIERS
President and CEO

REM/lth

A Division of Pomare, Ltd.
700 North Nimitz Highway
Honolulu, Hawaii 96817 • Phone: (808) 524-3966
Toll-free U.S./Canada: (800) 272-5282 • Fax: (808) 533-6809



The Store of Hawaii

To the Hawaii Civil Rights Commission:

I am the Vice President of Human Resources of Pomare Ltd. dba Hilo Hattie. Our business employs about 450 people, and the major job classifications are sales associate, cashier, sewing production associate, and stock handler. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

The criminal background (both past and present) of an applicant is critical to our line of business due to the nature of key positions such as cashier and driver. Our cashiers handle thousands of dollars of cash each day, as well as credit cards and travelers checks. To have an employee be responsible for the proper handling of cash and credit cards requires a high level of trust and confidence in the employee by our company. To employ someone with a record of theft or embezzlement into that position would surely compromise this relationship and put company as well as customer assets at risk. In the case of our drivers, our company vehicle insurance carrier requires that employees who drive company vehicles have clean driving abstracts. If we ignore this requirement and have an employee with traffic violations drive our vehicle we are in effect taking the entire risk of endangering and possibly killing innocent bystanders due to our negligence.

First, the rules as drafted are unworkable. Pomare Ltd. dba Hilo Hattie, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons or cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during and employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Respectfully submitted,

Lena Young
Vice President of Human Resources
Pomare Ltd. dba Hilo Hattie

HONOLULU

700 North Nimitz Highway
Honolulu, Hawaii 96817
Phone: 544-3500
Fax: 533-6809

MAUI

Lahaina Center, Building D
900 Front Street
Lahaina, Hawaii 96761
Phone: 667-7911
Fax: 661-5189

HILO

Prince Kuhio Plaza
111 East Puainako Street, Bldg. G
Hilo, Hawaii 96720
Phone: 961-3077
Fax: 969-2056

KONA

75-5597-A Palani Road
Kailua-Kona, Hawaii 96740
Phone: 329-7200
Fax: 329-2930

KAUAI

3252 Kuhio Highway
Lihue, Hawaii 96766
Phone: 245-4724
Fax: 245-4608



PETER H. SCHALL
Area General Manager

STATEMENT REGARDING PROPOSED ARREST AND COURT RECORD REGULATIONS

The Hilton Resorts in Hawaii, which includes the Hilton Hawaiian Village, Turtle Bay Hilton Golf and Tennis Resort, and the Hilton Waikoloa Village, is and always has been a responsible community leader and employer through its high standards of integrity in its business operations and also through its dedicated commitment to Hawaii's community. We have earned our reputation through maintaining extremely high standards in the quality of the products and service that we offer to our visitors and local guests.

Hilton Resorts in Hawaii employs 3,600+ employees who are carefully selected in accordance with our high standards of service. Guest confidence and security are crucial to a quality visitor experience at our hotels. More importantly, Hilton Resorts in Hawaii, as innkeepers, have a higher standard of duty to provide our guests and employees with a safe and secure environment. Increased liability for negligent hiring and retention as well as sexual harassment requires a thorough review of a potential employee's past history.

Convictions for certain offenses are substantially related to the ability of applicants to perform certain job-related duties. Clearly, a conviction for embezzlement should disqualify an applicant for employment as a cashier. Larceny convictions should likewise disqualify an applicant for the positions of bellhelp or housekeeper with unsupervised access to guestrooms. The critical areas of concern to the hospitality industry involve guest contact and guestroom access. A criminal record of assault and battery, sexual assault or rape should disqualify any applicant for positions which expose our guests, employees, or other members of the public to the potential for such crimes to be repeated against them.

Hilton notes that the proposed regulations to a certain extent recognize the special needs of the hotel industry by providing that "Hotels or hotel-condos may consider the conviction of any offense which indicates that an individual may be unsuited for employment as security guard, manager, or other positions allowing the employee to have access to the keys of or entry into the units." [(Section 12-46-207)] While this language is helpful, more can be done to provide greater predictability in the law as to what constitutes lawful and unlawful inquiries.

Not only do the proposed rules threaten the safety of our guests and employees, the rules place an unreasonable economic burden on business and are unworkable and complex. The rules expose businesses to increased civil liability, require burdensome accommodation of convicted criminals to include transfer to less sensitive positions, require paid leave during an employee's absence while under indictment or after an arrest and require employers to keep separate files for arrest and court record information.

We should not have to be subjected to these additional economic burdens. And we must be allowed to have the ability to ensure that our guests and employees are provided with a safe and secure environment. That is our duty and responsibility and we urge the Commission to consider rules which parallel the authority of the State of Hawaii to consider an applicant's past criminal conviction record and base employment considerations on such history.



HONOLULU SHIPYARD INC.

Pier 41 Box 30989 • Honolulu, Hawaii 96820 • Telephone 808-848-6211 • Facsimile 808-848-6279

Testimony of HONOLULU SHIPYARD, INC. - SHIP REPAIR DIVISION Regarding Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission (HCRC)

I am the Controller of Honolulu Shipyard, Inc. - Ship Repair Division. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

Honolulu Shipyard - Ship Repair Division performs fabrication, welding, structural and pipefitting and other marine services. Many of the projects that we are contracted to perform are government jobs.

The rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

The changes in the arrest and court record rules would have a negative impact on Honolulu Shipyard's ability to comply with federal government contract requirements. Many federal government contracts require that background checks be performed on all employees before clearance to work on the job may be obtained. The proposed arrest and court record rules would not allow the Company to meet this common contract requirement. Are we to break the proposed law to meet our contractual obligations or are we to follow the new proposed rules and put the Company at risk of being debarred from bidding on government contracts for non-compliance? If the proposed rules are approved we will be unable to perform government work, which represents more than 60 percent of our business.

The rules also expose us to potential negligence actions under prevailing Hawaii law which imposed a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Finally, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules, as is the state. Why are private sector employers the only ones targeted by these rules?



HONOLULU SHIPYARD

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. Honolulu Shipyard, Inc. - Ship Repair Division would like to retain the ability, if we choose to do so, to perform background checks to comply with federal government contract requirements and to obtain security clearances for employees. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Ken Fukuji
Ken Fukuji

1/14/98
Date



Pier 41 Box 30989 • Honolulu, Hawaii 96820 • Telephone 808-848-6211 • Facsimile 808-848-6279

**Testimony of HONOLULU SHIPYARD, INC. - MECHANICAL DIVISION Regarding
Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission (HCRC)**

I am the General Manager of Honolulu Shipyard, Inc. - Mechanical Division. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

Honolulu Shipyard - Mechanical Division is a licensed specialty contractor performing sheetmetal and air conditioning work. Many of the projects that we are contracted to perform are government jobs.

The rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

The changes in the arrest and court record rules would have a negative impact on Honolulu Shipyard's ability to comply with government contract requirements. Many federal government contracts require that background checks be performed on all employees or prospective employees before clearance to work on the project is authorized. The proposed arrest and court record rules would not allow the Company to meet this contract requirement. Are we to break the proposed law to meet our contractual obligations or are we to follow the new proposed rules and put the Company at risk of being debarred from bidding on government contracts for non-compliance? If the proposed rules are approved we will be unable to perform such government work.

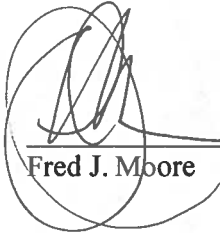
Secondly, our sheetmetal department performs work on submarines, which represents more than 25 percent of the Company's business. For these submarine projects, top secret clearance is required for anyone who will step foot on the vessel. In order to obtain clearance, background checks must be performed.

The rules also expose us to potential negligence actions under prevailing Hawaii law which imposed a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

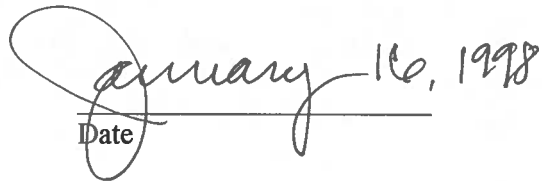
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Finally, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules, as is the state. Why are private sector employers the only ones targeted by these rules?

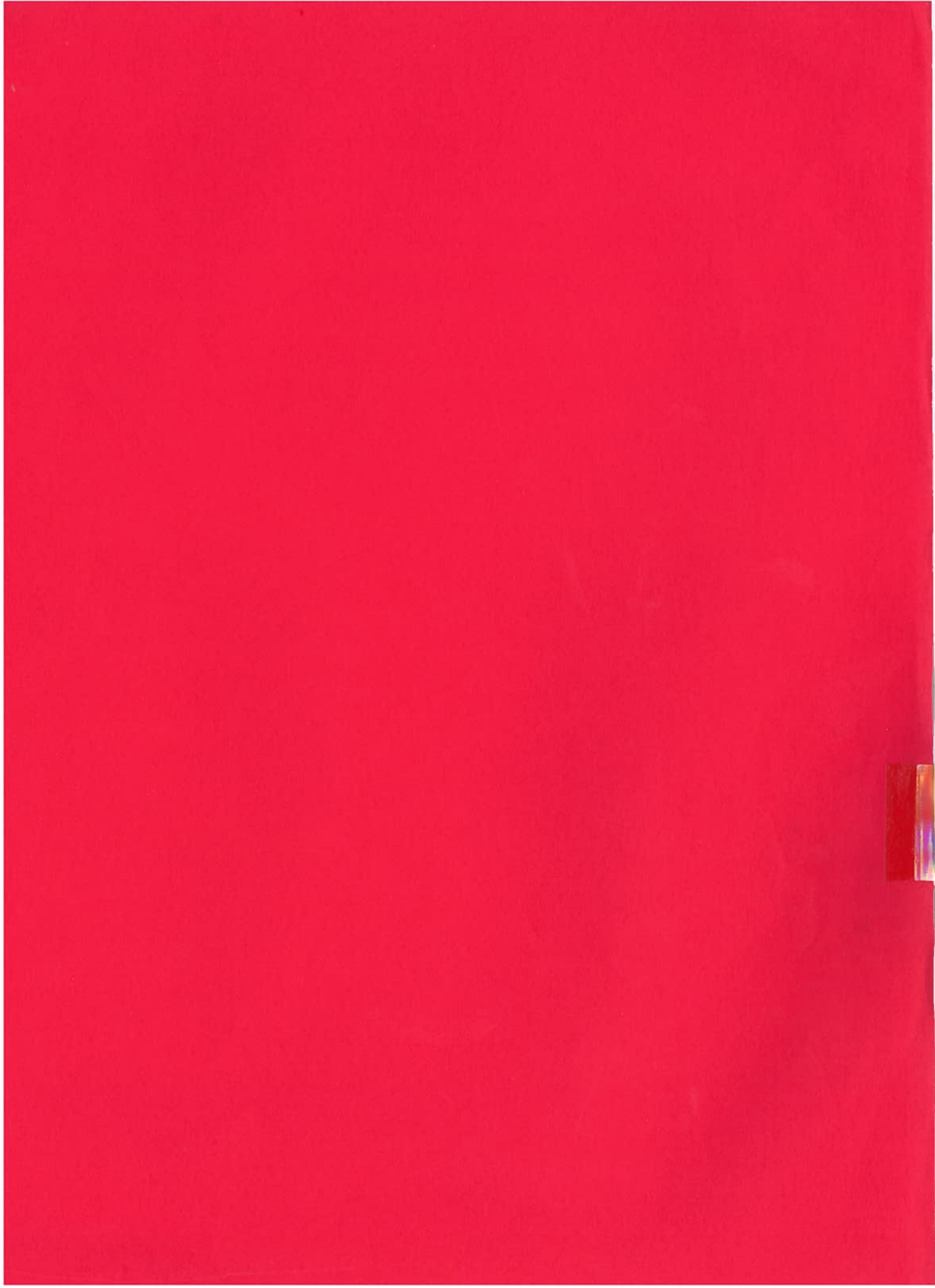
Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We would like to retain the ability, if we choose to do so, to perform background checks to comply with federal government contract requirements and to obtain security clearances for employees. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.



Fred J. Moore



Date



FILE

TESTIMONY OF ILWU LOCAL 142

William Hoshijo
Executive Director
Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: Proposed Arrest and Court Record Discrimination
Regulations, Subtitle 7, Chapter 46, Subchapter 10
HAR 12-46-201 et. seq.

Thank you for allowing us the opportunity to present testimony regarding the Hawaii Civil Rights Commission's proposed rules on Arrest and Court Record Discrimination.

We support the rules the Commission has proposed. We recognize that a vocal minority of the business community has expressed chagrin over the substance of the proposed rules. Some dissenters have even explicitly questioned the underlying premise that those with court and arrest records should be afforded any protection from discrimination in employment.

By contrast, we applaud the Commission for finally submitting proposed regulations that have long been held in abeyance. As you are surely aware, one of the primary criticisms directed at your agency has been the delay in processing charges and promulgating regulations, conditions which the Commission's current leadership inherited from its predecessor. Though reasonable minds may differ on the question of whether those with court and arrest records are deserving of protection from discrimination in employment, the legislature has enacted such protections for over two decades and it is incumbent upon the Commission to enforce the law as written.

In general, we believe the Commission has struck an appropriate balance between the legitimate needs of employers to conduct inquiries into potential employees and the legislative intention to promote the rehabilitation of criminal offenders. Criticism of the proposed rules has failed to recognize the fact that inquiries about court and arrest record are fully allowable under the regulations where there is either a statutory exception or bonafide occupational qualification. Section 386-3 HRS specifically permits the Dept. of Education and private schools to consider criminal convictions in judging the suitability of employees to work in close proximity with children, and allows federally insured financial institutions to consider convictions in hiring or discharging employees.

Through the definitions proposed in Rule 12-46-202, the Commission also has added cooperative housing associations, associations of apartment owners, cooperative housing projects, and condominium projects to these other existing statutory exceptions.

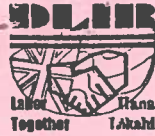
Rule 12-46-207 also specifies that potential bona fide occupational qualifications exist where employees work in close proximity of children, work as security guards or managers in hotels or hotel-condos, as security in establishments serving liquor, and in health care facilities.

Interestingly, Rule 12-46-205(e) even allows employers to bar employees from employment with pay where there has been only an arrest or charge without conviction but there is a substantial threat to the safety of fellow employees or customers. Rule 12-46-205(f) allows a similar bar where only an arrest or charge has been made but a statutory exemption or potential BFOQ is implicated. Thus, the Commission has even taken pains to protect employers in situations where no conviction has been obtained and where arguments could be raised that such actions contravene the normal presumption of innocence accorded by criminal law.

As a practical matter, employers will easily evade responsibility for discriminatory conduct simply by articulating a legitimate reason for failing to hire or taking some other adverse personnel action against an employee. The employer's true motives in making its decisions are uniquely within the employer's possession and control, and it is difficult if not impossible for employees or job applicants to even discover that they have been discriminated against based on court or arrest record. Nonetheless, the causation standard proposed in Rule 12-46-203 requires the complainant to prove a causal nexus between his court, arrest, or conviction record and discrimination by preponderance of the evidence.

Although it is difficult to devise any other standard of proof, this burden alone will inevitably shield employers from liability for discrimination in all but the most egregious cases since employees will rarely have access to tangible evidence that conclusively demonstrates illegal discrimination. The real value in articulating prohibited conduct is that the regulations should deter the vast majority of law abiding employers from illegal conduct so that those convicted of crimes will have a fair opportunity to rehabilitate themselves through employment.

This effort to create equal opportunity in all segments of society is clearly within the appropriate statutory domain of the Hawaii Civil Rights Commission, and it actually involves only incidental impingement on the legitimate operation of our business community. In fact, in times of financial austerity, it is even more vital that the Commission pursue its mandate as a guarantor of the civil rights and liberties that define us as a democratic society. The proposed arrest and court record discrimination regulations are entirely consistent with this mission and therefore worthy of support.



STATE OF HAWAII
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS

Date: JAN 13 1998

FROM: Lorraine H. Akiba, Director

Initial Date

To:

- Deputy Director
Assistant to the Director
EEO Officer
Information Officer
Planner
Administrative Services Office/EDP
Deputy Attorney General
Disability Compensation Office
Employment Security Appeals Office
Employment Training Fund
Enforcement Division
Hawaii Civil Rights Commission
Hawaii Labor Relations Board
Hawaii Occupational Safety and Health Division
HSOICC
Labor and Industrial Relations Appeals Board
Office of Community Services
Personnel Office
Research & Statistics Office
State Fire Council
Unemployment Insurance Division
Workforce Development Council (COEHR)
Workforce Development Division

Handwritten initials and date stamp: '98 JAN 13 P 3:02 CIVIL RIGHTS COMMISSION HONOLULU, HAWAII

For:

- Appropriate action
Circulate
Comment and recommendation
Investigation and report
Prepare reply for my signature
Direct reply -- copy to me
Approval/Signature
Note and return to Director's Office
Information
File

In reply, refer to: _____



DEPT. OF LABOR AND
INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR



'98 JAN 13 A11 :20

TESTIMONY OF ITT SHERATON HOTELS IN WAIKIKI
REGARDING FINAL ARREST & COURT RECORD
RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

My name is Mary Lee Sharp, Area Director of Human Resources for Sheraton Hotels in Waikikii.

Our hotels employ approximately 3,200 Hawaii residents. These employees provide public service to our visitors approximately 75-100% of their shifts. Our employees have access to guest rooms, hotel property, safety deposit boxes in which the guests are encouraged to store their valuables and cash, and in many instances, deal directly with our guests. In addition, employees work along side other employees.

As an employer in the hotel industry, we are responsible for the safety and well being of our guests as well as our employees for the following reasons:

- 1) We have great concerns should we be compelled to hire applicants who have been arrested and/or convicted of violent crimes or property crimes to fill unsupervised public contact positions, i.e. housekeepers, bellhelp, security officers, etc.
- 2) Applicants with convictions for crimes involving dishonesty or a breach of trust would be of concern should we be compelled to fill positions requiring cash handling.

The Commission's desire to protect the rights of rehabilitated persons with an arrest or court record to obtain employment and blanket prohibition for our use of arrest and/or conviction information will place us at risk and prohibit us in providing a safe working environment for our guests and employees.

We believe the proposed arrest and court record rules threaten the safety of our employees, customers, guests, and the public for three main reasons:

FIRST, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Testimony Regarding Final Arrest
& Court Record Rules of the
Hawaii Civil Rights Commission
Page 2

SECOND, the rules expose us to potential negligent actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

THIRD, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resources Management and strongly urge the Commission to withdraw, in their entirety, these rules.

cc: Honorable Governor Benjamin Cayetano
Linda Akiba, Department of Labor
Marjorie Bronster, Attorney General
Murray Towill, Hawaii Hotel Association

FILE



ITT Sheraton
HOTELS & RESORTS
HAWAII

98 JAN 13 P2:05

TESTIMONY OF ITT SHERATON HOTELS IN WAIKIKI
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cc: Honorable Governor Benjamin Cayetano
Linda Akiba, Department of Labor
Marjorie Bronster, Attorney General
Murray Towill, Hawaii Hotel Association



John Howard Association of Hawaii

200 N. Vineyard Blvd., #330 • Honolulu, HI 96817-3992 • Phone: 537-2917 • Fax: 524-3450

FILE

January 16, 1998

TESTIMONY
before the
HAWAII CIVIL RIGHTS COMMISSION
concerning proposed rules to add a new subchapter to implement state law
prohibiting employment discrimination based upon arrest and court record
to the existing administrative rules.

By
Gerald J. Reardon,
Executive Director

The John Howard Association of Hawaii has been providing re-entry and rehabilitation services to offenders and ex-offenders for forty years. The first service that our agency provided, the Community Assistance Program, was designed to provide re-entry services to parolees who were entering the community after serving time in prison. The Community Assistance Program addresses an array of needs that a returning offender must attend to; food, clothing, housing and especially employment. This program has been operating continuously since 1958, primarily because the need for its services has continued to exist.

Employment continues to be the most pressing need that a returning offender must address. Without employment the individual is at risk of re-offending, and our community is less safe. Our experience over the years supports the language of Rule 12-46-201. Employment is essential to rehabilitation, and this issue is important not only to the individual, but to society. For our system of criminal justice to function appropriately, those convicted must ultimately return to society as productive members.



This need is recognized by the Hawaii Paroling Authority and Adult Probation, agencies that supervise offenders in the community. Each of these agencies require that an individual maintain employment as a condition of either probation or parole. Most parole officers require that their clients reveal their status to prospective employers.

The majority of our clients seek entry level jobs. We encourage them to disclose their criminal history to their prospective employers in the interest of truth and to avoid future surprises. Most of them do explain their status to an employer, and many employers are willing to give the individual an opportunity to work.

As advocates for offenders and ex-offenders, we support the Commission's effort to clarify this law. We believe that the end result will serve the entire community. As an employer, we are concerned about the limitations and pitfalls which we may face in the hiring process, and urge you to take these concerns into consideration.

FILE

Kahala Mall



4211 Waiālae Avenue, Honolulu, Hawaii 96816 / Telephone 732-7736
Fax No. (808) 735-4126

98 JAN 13 P2:06
CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

January 12, 1998

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street Room #411
Honolulu, Hawaii, 96813

Dear Sir:

I am the Chief of Security at Kahala Shopping Mall which represents ninety stores. Our security is not only responsible for the safety and well being of our business establishments, but also for its customers.

We have great concern with your proposed rules that deal with arrest and conviction records which mandate the hiring of these individuals. It puts employees and business at a disadvantage in our efforts to protect the general public. We urge that BFOQ's be a consideration for certain types of work, especially in the security field.

The responsibility of criminal activity lies with the individual who commits the crime, not with the individual businesses and the general public. Under your proposal a convicted individual, even a robber or convicted murderer on probation who has not served his full time, must be considered for a responsible employment position.

Melvin DeCosta
Security Chief
Kahala Mall Security

'98 JAN 13 P2:06

HAWAII CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII



EXECUTIVE DIRECTOR
HAWAII CIVIL RIGHTS COMMISSION
830 PUNCHBOWL STREET Room #411
HONOLULU, HAWAII, 96813

FILE

KAPI'OLANI HEALTH



January 16, 1998

William Hoshijo, Executive Director
Civil Rights Commission
Department of Labor and Industrial Relations
830 Punchbowl Street
Honolulu HI 96813

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII
JAN 15 3 10 PM '98

RE: FINAL ARREST & COURT RECORD RULES
Public Hearing
Room 310
1/16/98 at 1 p.m.

Dear Executive Director Hoshijo and Commissioners:

Kapi'olani Health welcomes the opportunity to testify in opposition to several provisions of the proposed rules.

As a health care provider, we have a responsibility to ensure that our environment is safe for our patients, their families, and employees. Certain organizations serve people who are particularly vulnerable to wrongdoers, i.e. children, or people who are incapacitated due to illness. Hospitals, schools, child care centers, and other such organizations, have a higher duty to protect the safety and well-being of these patients, and are held by the public to very high standards by which we ensure their safety.

The proposed arrest and court record rules are too complex; ignore the reality of criminal conduct; and exceed statutory authority. It directly threatens the safety of our employees, customers and general public. We strongly urge that the following provisions be withdrawn.

209(e):

With regards to employment or offer of employment as stated in Section 209(e), the provision stating:

“An employer or other covered entity may not inquire about misconduct not occurring at work where such inquiry could be an indirect inquiry into an arrest record, court record, or conviction record.”

is unacceptably vague. For example, our applicants are asked to list all employment for the past 10 years. Applicants often have gaps of employment due to incarceration. Under 12-46-209, we as an employer would be prevented from inquiring about these gaps in employment history since such a question could be construed as “an indirect inquiry into conviction record”.

Human Resources
55 Merchant Street, 23rd Floor
Honolulu, Hawaii 96813
Telephone (808) 535-7555
FAX (808) 535-7550

206(b) and 208(b):

Sections 206(b) and 207(b) require employers or other covered entities with the **burden** of establishing the specific offenses within the statutory exemption or potential BFOQ before conducting any post-offer of employment inquiry. Problems created by this language :

Example:

An applicant is offered a position as a cashier in the cafeteria. Due to their specific job duties in dealing with cash an inquiry is conducted. The listed offenses that are substantiated under a BFOQ are robbery, theft, embezzlement. The investigation shows that the applicant has no prior offenses in the defined areas, but has been convicted for child molestation. In an organization, such as Kapi`olani Medical Center for Women & Children, the effect of a convicted child molester working in close proximity to our pediatric patients would be devastating. However, under sections 206(b) & 207(b) the employer is bound to the offer of employment.

- This section intends that an employer define the specific offenses which would disqualify a candidate **prior** to making an inquiry. This is objectionable because it would be in each employer's best interest to list as many specific offenses as could be justified, in order to avoid a situation where the employer is **prevented** from disqualifying an applicant because it has neglected to list an offense.
- The term "establishing" is inappropriate, because it implies that the employer must prove the existence of an offense before conducting an inquiry.

205(e):

Sections 205(e) & (f), which require an employer to **pay** an employee who is barred from the premises or suspended because the employee has been arrested or charged with an offense against the person, and the type of offense indicates that the individual may be a threat to the safety of patients, their families and our employees, is unacceptable.

Example:

If an employee rapes a co-worker at work, but is not arrested or charged with the offense, the employee may be suspended without pay. However, if an employee rapes a co-worker at work and is arrested for the crime, the employer **must**, pursuant to 12-46-205(e), suspend the employee **with pay**.

Employers are therefore under no incentive to bring criminal charges against employees, and it wrongfully encourages silence by employers, or the victim themselves.

Kapi`olani Health finds the proposed rules poses risks to the safety and well-being of our patients and employees. We strongly urge the Commission to withdraw, in their entirety, these rules.

Sincerely,



Gail Lerch, Director
Human Resources

**KAPI'OLANI
HEALTH**

Fax Transmittal

Date: January 15, 1998
To: William Hoshijo, Executive Director, Civil Rights Commission
Company: Department of Labor and Industrial Relations
Fax number: 586-8655
From: Leann Takara
Sender's phone: 535-7570
No. of pages sent including this page: 3

Message: Hard Copy to follow

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Human Resources
55 Merchant Street, 23rd Floor
Honolulu, Hawaii 96813
Telephone (808) 535-7555
FAX (808) 535-7550

JOHN

KAPI'OLANI
HEALTH

January 16, 1998

William Hoshijo, Executive Director
Civil Rights Commission
Department of Labor and Industrial Relations
830 Punchbowl Street
Honolulu HI 96813

RE: FINAL ARREST & COURT RECORD RULES
Public Hearing
Room 310
1/16/98 at 1 p.m.

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Kapi'olani Health welcomes the opportunity to testify in opposition to several provisions of the proposed rules.

As a health care provider, we have a responsibility to ensure that our environment is safe for our patients, their families, and employees. Certain organizations serve people who are particularly vulnerable to wrongdoers, i.e. children, or people who are incapacitated due to illness. Hospitals, schools, child care centers, and other such organizations, have a higher duty to protect the safety and well-being of these patients, and are held by the public to very high standards by which we ensure their safety.

The proposed arrest and court record rules are too complex; ignore the reality of criminal conduct; and exceed statutory authority. It directly threatens the safety of our employees, customers and general public. We strongly urge that the following provisions be withdrawn.

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Page 2; Testimony 1/16/98

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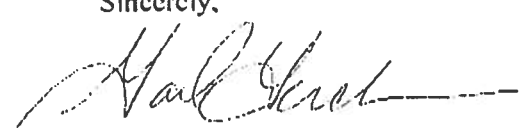
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If an employee rapes a co-worker at work, but is not arrested or charged with the offense, the employee may be suspended without pay. However, if an employee rapes a co-worker at work and is arrested for the crime, the employer **must**, pursuant to 12-46-205(c), suspend the employee **with pay**.

Employers are therefore under no incentive to bring criminal charges against employees, and it wrongfully encourages silence by employers, or the victim themselves.

Kapi'olani Health finds the proposed rules poses risks to the safety and well-being of our patients and employees. We strongly urge the Commission to withdraw, in their entirety, these rules.

Sincerely,


Gail Lerch, Director
Human Resources

FILE



LEGISLATIVE
INFORMATION
SERVICES OF HAWAII
677 Ala Moana Blvd.
Suite 815
Honolulu, Hi. 96813

Richard C. Botti, CAE,
President

Phone 533-6750
Fax 599-2606
E-Mail lish@aloha.net

January 13, 1997

Claudio Suyat, Chair
Civil Rights Commission
830 Punchbowl St., Room 411
Honolulu, HI 96813

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII
86
JAN 14 P1:36

Re: Proposed Hawaii Administrative Rules relating to
Criminal Conviction Records.

We do not agree with your interpretation of the Hawaii Revised Statutes with respect to criminal convictions. Convictions are public record, and every employer has a legal right to know who has been convicted of a crime in our judicial system, and also a responsibility to insure the protection of all employees, which includes potential workplace violence. To remove this right by regulation under the guise of "it's the responsibility of employers to help rehabilitate convicted felons" is passing the responsibility of society and government to the private sector as an unfunded mandate.

If your intention is to require employers to hire convicted felons unknowingly, then it is the responsibility of the Civil Rights Commission to provide protection from legal action by any injured employee or customer that is injured by such employee that was hired based on inadequate information provided the employer because of the Civil Rights Commission's Rules.

Our suggestion is that this measure be sent back to the Legislature for clarification. If it is their intent to create an unfunded mandate, we can address the issue as such.

It is our recommendation that the legislature fund any mandates with rewards, grants, or insurance against potential liability for damage caused by a convicted felon.

In short, we oppose your proposed regulations in their entirety.

Respectfully submitted,

Richard C. Botti,
President

FILE

**Testimony of
ROBERT FLATING
Security/Loss Prevention Director, LIBERTY HOUSE**

Approximately 5 years ago, I testified in behalf of making the records of the Hawaii Criminal Justice Data Center available to the public. The basis for most of the testimony at that time was the protection of hotels and condominiums when hiring security guards who would be required to enter rooms or private residences with or without the resident being present.

Everyone (including the Legislature) agreed that individuals convicted of theft, particularly burglary should not be allowed in those situations.

Since that time, use of the Criminal Justice Center has expanded, allowing the average citizen to check for sexual predators who may live close to their residence or children's schools. Parents can check the criminal histories of baby sitters.

Hiring an individual convicted of a work-related crime is both unfair to the employer and the individual. The potential and actual losses to the employer are obvious. Employees steal 3-5 times the dollar value that outsiders steal. Hiring an individual with a criminal background and placing that individual in a position of temptation isn't fair to that individual.

I personally make use of the public record information only when it is relevant. Example - an individual with a drunk driving conviction who is not in a position to use a company vehicle would not be rejected. A set of guidelines could be drafted to address appropriate crimes and conviction dates (i.e. a ten year old misdemeanor conviction would not disqualify an applicant).

Also, the guidelines could include protection for the employer. The liability of knowingly hiring an individual who has a history of violence is obvious. If forced to hire such an individual, what protects the employer if the individual injures someone at work ?

Business in Hawaii is in a decade-long struggle. External threats, such as the poor financial situations of our tourist-based neighbor states and countries,

are having a negative effect on us all. Adding to that, increasing the losses from internal sources can only hurt all in the community - including those who benefit from the taxes generated from sales . . . taxes which support counseling programs for criminals.

If you truly stand for the civil rights of all of Hawaii's people, stand for the honest employee who would be forced to work next to a criminal because of this suggested change to the employment law.

Thank you.

14 January 1998
LIBERTY HOUSE Ala Moana
1450 Ala Moana Blvd.
Honolulu, HI 96814

cc: M. Storfer, J. Sinnott, J. Breman

TESTIMONY IN OPPOSITION TO THE PROPOSED ARREST AND COURT RECORD "DISCRIMINATION" RULES

Before the Hawaii Civil Rights Commission
Friday, January 16, 1998 1:00 p.m.

My name is Joyce Hedani and I am the Managing Director for Employee Relations for Liberty House. Liberty House is a Hawaii retailer employing more than 3500 employees in the state of Hawaii. I am testifying on behalf of my employer to express our opposition to the proposed arrest and court record rules which we believe compromise the safety of our employees, our customers and the public.

Liberty House believes there are some legitimate, non-discriminatory business reasons for using information from a person's conviction record in making employment decisions that outweigh the rights of those with arrest and court records.

1. We have a responsibility to our employees, our customers and the public to provide a safe work environment and a safe place to shop or dine. A person convicted of a violent crime such as assault and battery should not be employed in a position, such as a store detective, that requires interactions with customers or employees who are often uncooperative, hostile and combative and where there is the potential for such crimes to be repeated even though the person could very well be qualified in every other aspect of the job. The proposed rules ignore the issue of safety.
2. We have a responsibility to take reasonable precautions for the financial safety of our employees and customers. A person convicted of theft, embezzlement, credit card fraud or other similar types of criminal offenses should be denied employment for positions that require access to cash, financial information on customers or property of our employees or store. Our ability to do business successfully depends upon our reputation and the trust and faith of our customers and employees. If disregarded, our ability to conduct business successfully in Hawaii will be seriously impacted.

The proposed rules as drafted are unworkable and should not be adopted.

1. The State says employers must maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. The proposed rules conflict with existing legal obligations on employers to avoid negligent hiring, supervision and retention. For instance, a company would certainly be jeopardizing public safety by allowing an employee with a record of DUI's to drive a company vehicle. Yet, under the proposed rules, the employer cannot even require a driving abstract before offering employment.

2. The BFOQ requirements are too vague. How does a company determine the "essence" of the business? How does a company determine whether "substantially all individuals with a conviction record for a specified offense" cannot perform the job?
3. Liberty House and other private employers have the same bona fide issues of employee and customer safety as schools, condominiums, healthcare facilities and the State. If statutory exemptions are to be granted, they should be extended to appropriate private as well as public employees. Hawaii is a very difficult place to do business because of burdensome government regulations - this is just one more reason to add to the list. These proposed rules appear to be in direct conflict with the goals of the Governor, the legislature, and the entire State to revitalize the State economy.

We believe that all employers should be free to select their employees based on sound discretion and legitimate business reasons. All employers, private business and government, have a duty to their employees, customers and general public to keep the workplace and place of business safe and minimize any foreseeable injuries or losses. In order to do this, employers must be free to exercise judgment and discretion in the employment process without violating the rights of those in the established protected categories. **All we are looking for is some reasonableness to this process. The proposed rules create an unjust, undue burden.**

Liberty House believes the law itself is unworkable. It places the arrest and court record in the same category as race, sex, age, national origin, disability and most other protected categories, when, in fact, a person's arrest and court record is a reflection of his/her conduct and not the circumstances of his/her birth or physical condition. We recognize that the law itself needs to be changed through legislative action. If there is solid evidence that rehabilitation through employment results in reduced recidivism, then positive incentives such as training, educational and/or tax credits should be established. Unduly, burdensome regulations and rules that make doing business even more difficult will not achieve these goals.

While we are aware of the desire to protect the rights of persons with arrest and court records to obtain or retain employment, Liberty House as well as other businesses want to be able to use this type of information in a reasonable way to determine whether or not the crime is substantially related to the job the individual is performing or applying for. These proposed rules do not allow us to do that. Consequently, Liberty House urges the Commission to withdraw the proposed rules in their entirety and reevaluate the premise on which they were formulated.

TORKILDSON, KATZ, FONSECA, JAFFE, MOORE & HETHERINGTON

FILE

ATTORNEYS AT LAW

A LAW CORPORATION

Amfac Building
15th Floor
700 Bishop Street
Honolulu, HI 96813
(808) 523-6000

FAX (808) 523-6001

NEIGHBOR ISLAND OFFICES:

KAILUA-KONA

75-5706 Kuakini Highway
Suite 105
Kailua-Kona, HI 96740
(808) 329-8581
FAX (808) 329-3837

HILO

100 Pauahi Street #201
Hilo, HI 96720
(808) 961-0406
FAX (808) 935-6725

MAUI

2158 Main Street #105
Wailuku, Maui, HI 96793
(808) 242-9292

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5932.500

TELECOPIER TRANSMITTAL

Date: January 15, 1998

To: Commissioners

Company: Hawaii Civil Rights Commission

From: Richard M. Rand
(Honolulu Office)

Our Telecopy No: (808) 523-6001

Our Callback No: (808) 523-6000

Your Telecopy No: 586-8655

Number of Pages: 03
(including cover page)

Description of document being transmitted:

January 15, 1998 Statement from Drug Stores California, Inc. in Support of Testimony Regarding Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission

Original is not being sent to you.

We are transmitting from a Xerox Telecopier 7033, which is fully automatic to send to and receive from Group I, Group II, or Group III telecopiers.

If there are any problems receiving this message, please call and ask for: Francine

Thank you.

COMMENTS:

Longs Drug Stores

Hawaii District Office: 2270 Hoanee Place, Honolulu, Hawaii 96819

January 15, 1988

STATEMENT FROM DRUG STORES CALIFORNIA, INC. IN SUPPORT OF TESTIMONY REGARDING FINAL ARREST & COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the Senior Vice President and Hawaii District Manager of Longs Drug Stores California, Inc. We employ 2,300 Hawaii residents in our business. The ability to check on a potential employee's criminal past is crucial as we are a service-oriented drug store with numerous employees involved in the handling of over the counter and prescription drugs, cash handling, and the provision of customer service to the public. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons cited below.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

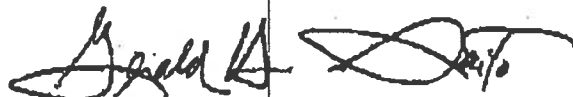
Statement from Longs Drug Stores
January 15, 1998
Page Two

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself, is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose the risk of danger to them. We strongly support the testimony and the alternative rules proposed by the Society of Human Resources Management and urge the Commission to withdraw, in their entirety, these rules.

Sincerely,

LONGS DRUG STORES CALIFORNIA, INC.



Gerald H. Salto
Senior Vice President &
Hawaii District Manager

FILE



MAISON FONDÉE EN 1854

January 15, 1998

LOUIS VUITTON HAWAII
2255 KUHIO AVENUE, #1400
HONOLULU, HAWAII 96815
TEL: (808) 971-8444
FAX: (808) 971-8411



Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Rm. 411
Honolulu, Hawaii 96813

Testimony of Louis Vuitton Hawaii Regarding
Final Arrest & Court Record Rules
of the Hawaii Civil Rights Commission

I am the Vice President & Chief Operating Officer of Louis Vuitton Hawaii. We employ 204 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

Our employees handle high value merchandise on a daily basis. Our store employees handle large sums of money in the course of their work.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

LV

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Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Thank you for considering our company's point of view on this issue.

Yours truly,



Gary L. Hahn
Vice President & Chief Operating Officer

GH:kl
1689/98





MAUI LAND & PINEAPPLE COMPANY, INC.

January 19, 1998

Mr. John Ishihara
Chief Counsel
Hawaii Civil Rights Commission
830 Punchbowl St., Suite 411
Honolulu, HI 96813

MAUI RIGHTS COMPANY
HONOLULU, HAWAII

98 JAN 22 P12:42

Re: Proposed Rules on Arrest and Court Record

Dear Mr. Ishihara:

Please accept the enclosed written testimony regarding the Commission's proposed rules on arrest and court records. Maui Land & Pineapple Company, Inc. opposes the proposed rules, in its entirety and respectfully requests the Commission withdraw the rules for the reasons stated in our testimony.

Thank you for the opportunity to express our thoughts on this important issue.

Sincerely,

Iris Y. Matsumoto
Director of Human Resources

Encl.

TESTIMONY OF MAUI LAND & PINEAPPLE COMPANY, INC. REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

My name is Iris Matsumoto, Director of Human Resources for Maui Land and Pineapple Company, Inc. As the largest private employer based on Maui, we employ more than 1,500 Hawaii residents in our businesses. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. The rules are overly complex and will foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in almost any capacity. Under the draft rules, an employer cannot even require a driving abstract before offering employment to a truck driver who is entrusted with driving a vehicle carrying tons of cargo and at times hazardous material. This does not make sense.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers and their customers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are the private sector employers, once again, the only ones targeted by these rules?

Within the family of Maui Land & Pineapple Company, our employees perform a wide range of duties wherein an applicant's criminal history would be absolutely critical. Here are a few of the examples of the applicability of the proposed rules. Maui Pineapple Company employs truck drivers and tractor operators who are responsible for the safe operation and transportation of tons of fruit on a daily basis. Our trucks travel the entire island of Maui continuously every day along with the island's residents and visitors. The proposed rules could force our company to hire a person who has a history of DUI convictions who applies for a truck driver's position. Also, both Kapalua Land Company and Kaahumanu Center employ many security officers whose primary responsibility is to ensure our guests and customers enjoy a safe experience while at the Kapalua resort and the shopping center. Under the Commission's proposed rules, we could be forced to hire a person who has a history of violating the very rules that security officers at our facilities are required to uphold. These are serious safety concerns that should not be overlooked.

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. The Commission's proposed rules would make that impossible to achieve.

We strongly urge the Commission to withdraw, in their entirety, these rules.

I am here to testify today on behalf of other ex-offenders so that they won't be unlawfully turned away from an opportunity that may change their life, as I have been in the past. To qualify myself I'd like to tell you that I started a life of prostitution, drug and alcohol addiction at the age of 18 that lasted until I was 36, half of my life. I eventually ended up in prison doing 4 concurrent 5 year sentences for forgery and theft. I attended Alu Like Workshops to learn how to fill out employment applications and do interviews. I was taught to be honest, but I found that when I went out to actually put what they taught me to work, I was turned away for having been honest with them about being an ex-offender. My self-esteem wasn't so great at this time, I felt like I had a big EX-CON written on my forehead, I felt like I was never going to be hired, so I went back to where I knew I could survive, to the streets. Two weeks later, I was arrested and put back in prison, where I stayed for 14 months. When I was released to T.J. Mahoney's and sent back out to find employment. After a month of filling out applications and doing interviews I began getting very frustrated, but the staff at T.J. Mahoney's kept encouraging me that TOMORROW would be the day! I was one of the lucky ones because TOMORROW finally came and I was hired at Mikey's Favorites, where I still work. Mikey's is a small family owned cookie company, I realized right away that I was very lucky to get hired there. I was luckier still because I could be honest with my employers and they supported me in my struggles to get my life in order. After a year and a half, I began my new training in working with customers, computing invoices, handling money and even given my own set of keys to the shop. The trust that they give to me, encouraged me, it showed me that I could be responsible, dependable, and make a honest living. I felt I was a part of the community and no longer an outsider scorned by passers-bys. This encouragement that I received by the trust that was instilled in me pushed me to become a better person, today I also attend Leeward Community College, where I'm in my 2nd semester of Substance Abuse Counseling, I'm an A.A. sponsor for 2 women, I own my own car, and have just recently gotten married. If I had not been lucky enough to get understanding and supportive employers.....WELL YOU KNOW WHERE I'D BE!

THANK YOU FOR ALLOWING ME TO TESTIFY!

FILE



Monarch Seafoods
Hawaii's Premier Fish Distributor

TESTIMONY OF MONARCH SEAFOODS, INC. REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the President of Monarch Seafoods, Inc. and we employ 8 Hawaii residents in our business. I respect the intent of the proposed arrest and court record rules and believe persons with prior arrest and conviction records should be given a fair chance for employment. However, I cannot support any measure that will compromise the safety of our employees.

We are a small company with very limited resources. We do not have supervisors or management staff that can oversee our employees. Our employees are entrusted to perform their duties with unlimited access to every aspect of the business (inventory, cash, delivery vehicles, etc.). I feel that the proposed arrest and court record rules will threaten the safety of our employees, customers and the public, and will be detrimental to my business for the following reasons.

The rules expose us to negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to utilize before hiring any person in any capacity.

The rules punish us employers by forcing them to hire individuals who have committed crimes. The fact that the HCRC and the State of Hawaii is exempt from this ruling only reinforces our position that these employees are not only unqualified, but pose a serious safety risk

I respectfully request that the commission withdraw, in their entirety, these rules.

Sincerely,

Thomas Mukaigawa
President, Monarch Seafoods, Inc.

NATIONAL EMPLOYMENT LAWYERS ASSOCIATION

HAWAI'I CHAPTER

Davies Pacific Center
841 Bishop Street, Suite 909
Honolulu, Hawai'i 96813

Elbridge W. Smith
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Michael F. Nauyokas
Elizabeth Jubin Fujiwara
Founder

January 16, 1998

Good afternoon. My name is Elbridge W. Smith; I am the Hawai'i Chapter President of the National Employment Lawyers' Association ("NELA"). We strongly support the rules proposed by the Hawai'i Civil Rights Commission prohibiting discrimination in employment because of arrest, conviction or court record.

NELA, was founded in 1985 to provide assistance and support to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar. NELA is the country's only professional organization that is comprised exclusively of lawyers who represent individual employees in cases involving employment discrimination, wrongful termination, employee benefits and other employment related matters. The Hawai'i chapter has a membership in excess of 50 of the most qualified and experienced plaintiffs' labor and employment lawyers.

NELA believes that the proposed rules strike a fair balance between Legislative policy favoring rehabilitation and an employer's prerogative to make employment decisions. The proposed rules seek only to implement that law to protect workers from discrimination for arrest records, i.e. criminal conduct that is charged but not proved, or convictions which cannot in good-faith be considered related to a qualification for employment or advancement. They do not create new categories or new illegal practices.

Non-union workers in Hawai'i are at-will employees who, except in a few limited circumstances, may be discharged from employment without cause and refused hire without cause. Employers, of course, strongly favor a system that permits them unfettered discretion to hire and fire employees for any cause or no cause at all. It is not surprising, therefore, that many employers, and the lawyers who represent them, are frantically waving the red flag in response to the Commission's proposed rules concerning arrest and court record discrimination. NELA believes that the red flag raised by these opponents of the proposed regulations is, rather, a red herring.

A. The Proposed Rules are a Balanced Approach to Effectuate Legislative Policy

The most important point to be made concerning the proposed regulations is that they embody and advance express legislative policy. Section 378-3, of the Hawai'i Revised Statutes, categorically prohibits discrimination in employment because of arrest or court record. The Hawai'i Legislature has determined, therefore, that the discretion ordinarily accorded employers of at-will employees should be limited in this area. In proposing the rules relating to arrest and court record, the Commission is doing nothing more than what the Legislature directed it to do when it adopted the statute and directed the promulgation of rules to achieve the statutory purpose.

B. The Proposed Rules Permit Employers Necessary & Appropriate Discretion

Sections 12-46-208, -209 & -210 create a two-tiered process for evaluating employment applications and for determining an employee's terms or conditions of employment. In the case of new applicants, an employer must first evaluate whether a BFOQ exists for the particular position. If the employer determines that a BFOQ exists, the employer may disclose this fact to a candidate for employment and inform the applicant that employment may be conditioned upon an inquiry into the conviction record or unresolved arrests for the specified BFOQ offense. And, the prospective employer may inquire into the applicant's arrest, court and conviction records concerning such offenses, once the application process has been concluded and the applicant is determined to be otherwise qualified. If the employer determines that the arrest, conviction, or court record reveals facts that would conflict with the BFOQ, the employer may deny employment, so long as no alternative with less discriminatory impact is available.

Section 12-46-210 operates similarly, prohibiting inquiry into an employee's arrest, conviction or court record unless related to a BFOQ, as determined by the employer.

Thus, an employer may deny employment or advancement where the applicant's arrest, conviction or court record contains information that establishes that the applicant is unable to fulfill a BFOQ. Both the "good faith" determination of the BFOQ as well as the assessment of whether the denial of employment is the least discriminatory action are left to the employer, in the first instance. Rather than prohibiting discrimination based on arrest, conviction or court record altogether, the proposed rules permit such discrimination so long as it is founded on a "good faith" occupational qualification, and the employer articulates why the action taken is the least discriminatory alternative available.

C. Conditional Employment Offers may be Withdrawn for Work-related Misconduct

One criticism leveled at the proposed rules is that an "offer" of employment must be made before work-related misconduct may be investigated. The effect of this provision in Section 12-46-209 will be to prohibit employers from using "work history" as a pretext for circumventing the rules prohibiting investigation of arrest or court record until after determining the applicant is otherwise qualified. Prohibiting such inquiry before a conditional offer of employment is made will discourage such pretextual investigations that would otherwise undermine the purpose of the proposed rules. The rules clearly do not prevent an employer from consideration of work-related misconduct, as seems to a public misperception.

D. Employees may be Discharged or Disciplined for Work-related Misconduct

The assertion, raised by anti-labor lawyers, that employers must pay employees who are arrested for misconduct **at work** is wrong, in our opinion, and we urge the Commission to adopt the following rationale or amend these rules to ensure such. Sub-section 12-46-205(e) states that employees arrested for acts involving violence against persons may be barred from the work premises pending resolution of the charges. During such time, they must be paid. If such misconduct occurs at the place of employment, sub-section 12-46-203(b) [the "causation standard" section] states that the employee may be disciplined for work-related misconduct, even if the employee was arrested or convicted. Although possibly the language of -205(e) could be more clear, we believe the interplay of these provisions seems obvious: an employee may be disciplined for work-related misconduct even if the person is arrested for the misconduct; but an employee who has been arrested for an offense against another person that is **not** work-related may be suspended with

pay only if the employee poses a substantial threat of harm to co-workers or customers. And in the latter case, the employee could be discharged, after conviction, if the non workplace conduct contravenes a BFOQ.

Nor, must an employee who engages in work-related misconduct be reinstated if arrested but not convicted. While sub-section 12-46-205(i) requires reinstatement if an arrest does not result in conviction, sub-section 12-46-203(b) still permits discipline and presumably dismissal, if the individual engages in **work-related** misconduct. Thus the rules require reinstatement only where an arrest resulted from misconduct that was **not** work- related and the arrest does not result in conviction, **and** under 12-46-205(h) the not work-related misconduct does not also contravene a BFOQ.

In other words, these sections should and do mandate an actual direct adverse impact on the workplace, in order for non work-related arrests, convictions and misconduct to put employment in jeopardy.

E. Conclusion.

NELA believes that the proposed rules give fair consideration to employers' interests in owning, managing and maintaining safe and efficient business enterprises. Equally important, they protect employees and prospective employees from unwarranted inquiry into private matters that are not work related, in an effort to achieve the important Legislative goal of rehabilitation and integration into the work force of persons whose actions are unrelated to any "good faith" qualification for employment. It provides workers who may have made a mistake in life with an assurance that such a mistake will not affect their employment where the conduct has no bearing on their qualifications to do the work.

This law and these regulations do not mandate that we small business owners, which is what many of our members are too, hire career criminals or those who will be a substantial risk to ourselves, our workers or our businesses. The question is, do we believe in the American dream and are willing to pay the small price of this compliance to get there?

The point, after all, is only to give a good faith opportunity for someone who may have made a mistake to get another fair chance. We want people working and paying taxes, not on welfare or turning to crime.

The Hawai'i Chapter, National Employment Lawyers Association, thanks you for the opportunity to testify.

FILE

**NEIGHBORS
OF THE
ALA WAI
KANALI
PO BOX 75542 HON, HI 96836 848-1512**

January 15, 1998

TESTIMONY

Executive Director,
Hawaii Civil Rights Commission,
Room 411, 830 Punchbowl Street,
Honolulu, HI. 96813

While the State Legislature struggles with ways to prevent further economic disaster to the State, your commission is attempting to adopt rules to further push the recovery attempt down.


Representing many of the condominiums and apartments along the Ala Wai Canal, it behooves us to establish the fact that many are secured buildings. To allow tradespeople into these buildings without an employer's ability to do background checks violates the security of the building and the occupants.

What liability does the State assume should the rules be adopted and one so favored by the new rules takes advantage of being inside and rapes, pillages and or torches an individual, an apartment or a building?

We did not ask the individual seeking your protection to violate the laws of the land. We do not ask you to offer them protection beyond that which we who have NOT broken the law are allowed.

Think twice before your attempt to do that beyond what the corrections professionals have attempted to do. They have failed in most every attempt. Do you think your odds as amateurs are better?

Don't compound the situation by making employment possibilities for those whose work experience was gained at taxpayers money while in prison and are released because of lack of space to continue detention.



Sam Bren, Vice-President

January 16, 1996

Executive Director
Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

Good Morning Ladies and Gentlemen of the Civil Rights Commission:

My name is Signe Godfrey and I am the Owner/Manager of a temporary help service called Olsten Staffing Services. Our company employs over 3,000 people a year and interviews approximately 6,000 to 7,000 people a year. We interview nearly twice the amount in order to fill all the jobs that we receive from our clients.

The process to fill these jobs is to prescreen, interview, test and reference check each person. We have standards and requirements that must be met before we can place anyone on a job since each person is a representation of our company and its services. Part of this process is asking questions that would give us a true picture of the person. This then allows us to place people on jobs with confidence. Our clients trust that we have checked each person to the best of our ability.

I would like to cite a case which I recently encountered. I received a phone call from the Sheriff's office asking for a certain female. I checked our records and found she had indeed worked for us. The sheriff was asking for any recent information of her

whereabouts such as address changes or anything that would help him locate her.

Evidently this person had signed up with 4 or 5 different temporary services, and when she was placed on jobs through each service, she was able to acquire information about the client companies such as how they process checks and she would access their checking account and was able to embezzle over \$250,000.

She was convicted and deported to the Phillipines and was able to return to the USA by falsifying her identification documents. On paper she looked great, graduated from UCLA as an accountant, had great references (these references were totally false, she had a phone installed in her home with a number that her sister answered who pretended to be the company she had notated as a former employer) and she was very articulate.

Fortunately, for our company we placed her on jobs where she did not have access to any sensitive information although she did make attempts to enter into their computer system looking for information.

Another case I had in 1995, where we hired a male to perform unskilled labor. He immediately began to enter the Ladies Restrooms pretending to have entered in error or saying he had to use the restroom quickly and did not think anyone would mind. The next day after he had scouted the facility, he followed a female into the Ladies shower room pretending to be a janitor. He waited just long enough for the female to remove her



clothes and then entered knowing she was there alone. Our client was so angry for sending this person that they threatened to close our account and never do business with us again. After this person was removed from the premises, his probation officer called us looking for him and we found out he had just recently been paroled having been convicted of sexual assaults. He did have a gap in his work history and his reason for the gap was he worked for jobs that paid cash and the people had gone out of business so employment verification was not possible; however, he did have one good reference. Is this negligent hiring?

If we had been able to ask the question of everyone, "Have you ever been convicted of a crime?" and some lied and some did not, at least we as a company did our very best to get to know the person we were interviewing. I believe that I have been fortunate up to this day and it would be only a matter of time before we place someone who will do considerable damage to a client simply because we were not able to ask questions that would provide us with a better picture of the person we are interviewing.

Let us pretend now that we are able to ask the question and the answer is yes. And we place this applicant on a job that they can perform, we would place them somewhere where they can be supervised 100% of the time or in a situation where opportunity and



temptation would not present itself. And this person does a good job and begins to build trust and credibility, at least they were given a chance to prove themselves honestly.

Would you trust a rapist to babysit your children or a convicted felon to do your accounting knowing that they have embezzled prior to working for you?

I believe that when people break the law there are consequences, and as in any relationship, they have to build their credibility and trust again with employers. The first step is to **BE HONEST** so everyone can work together, so we know what we are working with, so we know what would be best, so that no one will be hurt, so that we can all work together peacefully.

I hope you will heed these cases bearing in mind that someone could be hurt financially or physically.

**TESTIMONY OF OTAKA, INC. REGARDING FINAL ARREST & COURT
RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am Marsha Azuma, Director of Human Resources for Otaka, Inc., owner and/or manager of the Hawaiian Regent Hotel, Hawaiian Waikiki Beach Hotel and the Kona Surf Resort and Country Club. We employ approximately 1,300 Hawaiian residents. We are very disturbed and concerned about the proposed arrest and court record rules for several reasons.

In our present economic climate (which is entering its ninth year of limited, little or no growth), we should be looking at incentives to attract new businesses. These proposed rules will definitely discourage any business where security and honesty are essential. The rules place such a tremendous burden of separate recordkeeping, paid leave to an employee for absences while under indictment or after an arrest, and accommodations to include transfer to less sensitive positions. Why would any business select Hawaii, which already has more constraints on employers than almost any other state in the nation, with this additional burden?

Why are constraints constantly being placed on the private sector and not the public sector? If the public sector is not willing to administer overly burdensome rules why should it feel that it is reasonable for private sector employers to do so? Is the Hawaii Civil Rights Commission or the Governor's Office willing or able to abide by these rules in the employment of its staff?

For our company, the major reasons for concern are the impact of these rules upon the safety of our employees and guests.

Hotels are entrusted, by our guests and employees, for the safety and security of their person and possessions. How can we maintain in our employment as managers, room cleaners, maintenance workers, bellhop, valets and drivers, employees who have been convicted for theft, embezzlement, burglary, murder, rape, assault and battery, violence of any sort, driving under the influence and still maintain our duty to keep our guests and their possessions safe and secure. We can understand the desire to give these people an opportunity to turn their lives around, but what assurances will employers have that they are truly rehabilitated?

How do we maintain our OSHA/HIOSH obligations to provide a safe workplace for our employees under these conditions?

We should be able to use conviction for crimes against property as disqualifiers from employment for employees responsible for management, cash-handling, merchandise handling, or other financial related duties. How will compliance with the rules impact on our ability to bond employees who handle cash? Conviction for crimes against persons should disqualify persons from employment for any position which requires unsupervised contact with employees, customers, and/or the general public. Is the State willing to accept all of the liability which may result from employers following these proposed rules?

In our business our guests' perception of the hotel and the image we maintain are very important. Would you be willing to stay at a hotel if you were aware that previously convicted rapists serve on its maintenance staff and are able to access any guest room? That the limousine drivers have a multitude of moving violations? That the bellhelp have been convicted of burglary or theft?

We may be misinterpreting your intent. Perhaps your language is creating the problems. We have so many questions.

How does a conviction or arrest record affect anyone's ability to do the functions of a job? Criminal action affects other requirements, not functions. Being convicted of rape doesn't affect the ability to perform tasks or functions of any job, but it does affect your trustworthiness to have access to women in very private environments.

How in the world do you prove that a criminal record of an individual will affect the "essence of your business" ? How do you quantitatively define "essence of business"? Basically, what it seems to boil down to is that, under your rules as presently stated, any conviction or arrest record could not disqualify anyone from any job as long as they have the skills to perform the functions..

These rules are not only difficult to understand the intent, it's also difficult to understand content.

Why are the employers being punished for actions of individuals who commit crimes? Somehow I don't quite understand the justice for employers and the general public in the whole rationale of the proposed rules.

**TESTIMONY OF OTAKA, INC. REGARDING FINAL ARREST & COURT
RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION**

Addendum to Previously Submitted Testimony

I am Marsha Azuma, Director of Human Resources for Otaka, Inc., owner and/or manager of the Hawaiian Regent Hotel, Hawaiian Waikiki Beach Hotel and the Kona Surf Resort and Country Club. Earlier this week I submitted testimony regarding general concerns about the rules. It has been suggested that more specific and direct testimony would be helpful to the Commission. Some of the following comments were previously addressed.

I am aware that hotels have been recognized as being qualified for BFOQ's. In order for us to comply with the rules, the concerns identified in my original testimony still exist.

- We need to understand language such as "essence of business".
- We need to know how you feel convictions can affect an applicant/employee's suitability for a position. Actions which result in convictions often do not affect one's ability to perform the functions and responsibilities of the job, yet the rules continue to refer relationship between the conviction and the ability to perform job functions.
- Who determines whether the "acceptable alternative" is acceptable?
- The rules also state that the BFOQ exception will be "strictly and narrowly construed". Unless we are given more definitive guidelines than "strictly and narrowly", how do we develop BFOQ's?

While we appreciate the Commission allowing BFOQ's for hotels, the rules only allow BFOQ's for any employee that has "access to the keys of, or entry into the units". What about our employees (Guest Service Agents, Cashiers, Accounting Clerks) through whose hands millions of dollars pass? What about our parking valets and drivers to whom we entrust the vehicles and lives of our guests? Why are we not permitted BFOQ's for positions such as these?

I understand your desire to get employers to be more flexible in hiring those individuals with convictions who have rehabilitated, but I do feel that, as addressed above, your rules are not clear. Additionally, in some cases, the rules are overly burdensome.

- For example, you want to require employers to keep separate files for arrest and court records. We're already keeping separate files for medical and disability related documents. Where do we draw the line in keeping separate files.

Addendum to Testimony of Otaka, Inc. before the Hawaii Civil Rights Commission
Re: Court and Arrest Records

- The rule regarding keeping an employee on paid status can also be financially burdensome as it can take a lengthy period before the person actually goes to trial. That would mean that we would have to hire a replacement and continue to pay the employee.
- It is also not clear and potentially burdensome, whether the person for whom we must offer an "acceptable alternative with less discriminatory impact" will have preferential treatment over those who otherwise may be better or equally qualified for the position. Will employers be required to create "acceptable alternatives" or may we confine ourselves only to available vacancies?

I feel that the rules, as stated, creates questions and does not provide clear and reasonable guidelines for employers.

I ask that the Commission review and seriously consider the rules as submitted by the Society for Human Resource Management (SHRM).

FILE

TESTIMONY OF
OUTRIGGER HOTELS & RESORTS
REGARDING FINAL ARREST & COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS
COMMISSION

I am the Vice President, Human Resources of *Outrigger Hotels & Resorts*. We employ 2,600 Hawai'i residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

In our business of hospitality, Outrigger employees are responsible for the safety and security of each of our guests and their personal property. Additionally, each employee is accountable for the control of a least \$500.00 in cash and/or company equipment in their day to day work activities. Both co-workers and guests expect Outrigger to perform due diligence in hiring and employing people whom the company reasonable expects will uphold our safety and security responsibilities. These rules would expose us to negligent hiring and/or employment without provision of a safe harbor. The rules articulate no social or economic issue that would take precedence over the expectations and liabilities.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawai'i law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is , of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O. J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Partington and Foley

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January 13, 1998

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ARUE, TAHITI
*Licensed to practice
in France and its
overseas territories*

William Hoshijo
Executive Director
Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

98 JAN 13 P 1:58
CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

**RE: Proposed Subchapter 10 of Chapter 46, Title 12
of the Hawaii Administrative Rules, "Arrests and
Court Record Discrimination"**

Dear Mr. Hoshijo:

I submit this testimony in support of the proposed Subchapter 10 relating to arrests and court record discrimination. I submit this testimony as a civil rights attorney who frequently represents offenders and ex-offenders.

The proposed Subchapter 10 on arrests and court record discrimination adequately protects the interests of the ex-offender. I am aware of recent news reports where employers have been critical of these proposed regulations. Some of this criticism is directed at the underlying law that prohibits discrimination in employment because of an individual's arrest record and court record, unless there is a statutory exemption or a bona fide occupational qualification. The Hawaii Civil Rights Commission is not the proper forum in which to criticize the law or to seek changes in the law -- that forum is the legislature. As long as this law is in effect, the Hawaii Civil Rights Commission must enforce this law and implement it by the appropriate regulations.

The law itself serves an important social function. It provides for the rehabilitation and reintegration of offenders into society. I have worked with the Criminal Justice System in the State of Hawaii for the last fourteen years. I have represented offenders and ex-offenders on parole and probation, as well as in the area of employment discrimination. Anyone who is familiar in this area knows ex-offenders are discriminated against in the work place. Even with the current law, it is difficult to prevent this discrimination.

William Hoshijo
January 13, 1998
Page 2

It has been my experience that ex-offenders on parole are usually required to notify their prospective employer of their offense. When respective employees submit job applications, the time those ex-offenders spent in prison similarly comes to the attention of the prospective employer, whether or not there is any direct questioning by the employer about prior records.

It is in the interests of this state to assist ex-offenders in their rehabilitation and with successful reintegration into the community. This obviously is in the interest of public safety in reducing recidivism and those on the welfare roles.

Employers obviously have an interest in getting the best employees. These are not always ex-offenders, and employers are not required under the law to hire ex-offenders if there are more qualified applicants. Under the law and under the proposed regulations, employers are not required to hire ex-offenders, even if they are the most qualified applicants, if there is a statutory exception or a bona fide occupational qualification.

I believe it is incumbent upon employers and their representatives who disagree with the proposed regulations to offer an alternative. Chapter 91 of Hawaii Revised Statutes requires the publication of proposed regulations to create this forum where interested parties make comments and make recommendations.

I look forward to reviewing any proposed changes or recommendations of employers and their representatives that are consistent with our current laws that prohibit any employer from discriminating in employment because of an individuals arrest record and court record. I am sure the Hawaii Civil Rights Commission would give these proposals and recommendations its most serious consideration.

Thank you for the opportunity to submit this testimony on the proposed regulations.

Respectfully submitted,



Daniel R. Foley

DRF:csl

FILE

PROSTAFFING

STAR TEMPS • PACIFIC TECH

January 14, 1998

Ms. Lorraine Akiba
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Dear Ms. Akiba,

I am the Human Resource Consultant for *ProStaffing, Inc.* We employ approximately 200 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

ProStaffing, as a supplier of temporary help, does not supervise the employee on the job. The Client Company depends on our background checks to determine whether that employee is qualified to do the job according to the specifications requested. If we cannot check the background, it would be impossible to service our clients. Unknowingly, *ProStaffing, Inc.* could be endangering the lives of our customers, causing sexual harassment, stealing of money or property, creating distrust in the workplace for other new employees who have no criminal records. I believe the insurance rates would be escalated to such a cost as to discourage businesses from coming to Hawaii.

The three main reasons the proposed arrest and court record rules threaten the safety of our employees, customers and the public are:

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law, which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver who is entrusted with driving a vehicle carrying tons of cargo?

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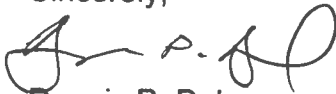
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Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HRCR itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Sincerely,



Dennis P. Daley
H.R. Consultant
ProStaffing, Inc.



Reid Psychological Systems®

153 W. Ohio Street
Chicago, IL 60610
300-922-7743
312-937-9200
Fax 312-291-0110

FILE

Stephen Coffman
President

T H E R E I D S Y S T E M™

January 13, 1998

Executive Director
Hawaii Civil Rights Commission

Re: Testimony of Reid Psychological Systems Regarding
Final Arrest & Court Record Rules

My name is Stephen Coffman and I am the president of Reid Psychological Systems. We have maintained offices and conducted business in Hawaii for over ten years. After reviewing the proposed Arrest and Court Record Rules, I find them inconsistent with the Equal Employment Opportunity Commission's ("EEOC") interpretation of federal law, while significantly diminishing the ability of employers to make job related hiring decisions, threatening the safety of the public and opening employers to significant liability.

Under the Americans with Disabilities Act ("ADA"), employers cannot conduct medical examinations or make medical inquiries until a conditional offer of employment has been tendered. See Section 102 (c) of the ADA. In interpreting this provision, the EEOC has stated that absent extenuating circumstances, non-medical information must be obtained at the pre-offer stage. See ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, October 10, 1995 and Policy Letter Re: Post-Offer Inquiries, 8 NDLR ¶373(EEOC 1996). Thus, the requirements currently set forth in Section 12-46-209 regarding the timing of inquiries is obviously inconsistent with federal law.

The restrictions contained in Section 12-46-210 (d) regarding misconduct at work are extremely vague, overreaching and completely inconsistent with the statute's intent. This section prohibits employers from posing questions which seek information about counterproductive behavior (e.g., surfing the Net, sleeping on duty, attendance, etc.) during previous/current employment until an offer of employment has been tendered. As a result, employers must offer employment to job applicants about whom they have extremely limited information. Theoretically, any job applicant might receive an offer of employment due an employer's limited ability to gather information.

Also, Section 12-46-210 (d) prohibits any inquires about misconduct away from work. This provision has no merit whatsoever. It inappropriately assumes that misconduct outside the workplace has no bearing on a person's character. However, implicit to this provision, favorable conduct outside the workplace is useful when evaluating an applicant. Again, this prohibition is totally inconsistent with the actual focus of the statute--arrest and court records.

Many positions in the workplace pose the risk of danger to co-workers, customers and the general public when conscientious and responsible employees are not hired. Examples include but are not limited to the following:

1. Reckless operation of trucks, automobiles and machinery commonly poses significant physical risks to co-workers, pedestrians, drivers, etc.;
2. Customer contact and delivery jobs pose the risk of physical harm associated with violent behavior; and
3. Access to cash and trade secrets by unscrupulous employees creates a risk to the personal property of businesses, co-workers and clients.

In light of these dangers, it is imperative that the proposed rules allow for employers to utilize job related convictions and information regarding misconduct to protect the public, customers, co-workers and themselves against the common risks identified above.

Hawaii law recognizes the doctrines of negligent hiring and vicarious liability. Job related information regarding misconduct, as well as information gathered from criminal background and motor vehicle checks, are the most effective mechanisms for minimizing the likelihood of situations which give rise to these claims.

In sum, an extensive proportion of the proposed rules is inconsistent with federal law and beyond the intended scope of Hawaii's Employment Practices Law. Moreover, it places unnecessary restrictions on employers, while not considering the risks such restrictions place on co-workers, customers, employers and the general public. Finally, it fails to recognize the most basic axiom of psychology--previous behavior predicts future behavior.

Respectfully submitted,


Stephen Coffman

SMC/mpt



**RETAIL
MERCHANTS
OF HAWAII**
539 COOKE STREET, SUITE 203
HONOLULU, HAWAII, 96813
PHONE 808. 592. 4200
FAX 808. 592. 4202

January 15, 1998

**TESTIMONY OF THE RETAIL MERCHANTS OF HAWAII
REGARDING FINAL ARREST AND COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am Jan Berman, President of the Retail Merchants of Hawaii, which represents more than 200 retail and supporting companies of all sizes in the state of Hawaii. I speak on behalf of these members who own approximately 600 storefronts, employ thousands of workers, and are very concerned for the welfare of those employees. I also have been a small retail business owner for over 25 years.

The proposed arrest and court record rules threaten the safety and welfare of not only our employees but our customers. Retailers typically hire people who have to handle money, deal with safety issues on the job, and generally have to be trustworthy. These rules are oppressive and unworkable.

First the rules are overly complex, foster disrespect for the law, and will be ignored rather than followed. We agree with the Society of Human Resource Management's comments.

Secondly, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and avoid foreseeable losses caused by employees. We cannot even require a driving abstract before offering employment to a truck driver. Felony convictions for crimes against property and persons should be recognized as making a person unqualified for almost any type of duties in a retail business.

Third, the economic burden is placed on businesses in an unreasonable manner. The rules punish employers by forcing them to hire someone who has committed a crime. However we note that the HCRC is exempt from these rules as is the state. Why are the private sector employers any different?

Our employees have the right to trust us to exercise sound discretion in hiring persons who do not pose a risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Thank you for the opportunity to express our deep seated concerns.

Jan Berman, President

FILE

January 16, 1998

Testimony of Remedy Intelligent Staffing Regarding
Final Arrest & Court Record Rules
of the Hawaii Civil Rights Commission

I AM THE PRESIDENT/OWNER OF REMEDY INTELLIGENT STAFFING. WE PROCESSED OVER 3000 APPLICANTS FOR 1997 AND ANTICIPATE TO DO THE SAME FOR 1998 IF NOT MORE. WE HAVE APPROXIMATELY 300 HAWAII RESIDENTS WORKING ON A DAILY BASIS.

THE NATURE OF OUR BUSINESS REQUIRES US TO GUARANTEE OUR CLIENTS THAT WE ARE SENDING THEM TEMPORARIES WHO ARE HONEST, TRUSTWORTHY, DEPENDABLE AND QUALIFIED TO RELIEVE THEIR EMPLOYEES WHO ARE ON VACATION, OUT ON MEDICAL LEAVE OR TO HELP WITH WORK OVERLOAD.

MORALLY, I COULD NOT SEND A TRUCK DRIVER TO HELP MY CLIENT NOT KNOWING IF HE/SHE HAD A CLEAN ABSTRACT. WHAT IF THE PERSON HAS A DRUG DEPENDENCY AND HAD KILLED AN INNOCENT VICTIM IN THE PAST? OR HE/SHE WAS DEEMED A RECKLESS DRIVER? AM I SUPPOSE TO CROSS MY FINGERS AND HOPE FOR THE BEST? I DON'T THINK SO. AND IF I DO HAVE THE MISFORTUNE OF SELECTING SOMEONE WHO DOES GET IN A ACCIDENT WHILE WORKING FOR MY CLIENT...WHO IS GOING TO PAY FOR THE REPERCUSSIONS? AS A SMALL BUSINESS OWNER, I KNOW THAT ONE MAJOR LAW SUIT COULD PUT ME OUT OF BUSINESS! ALSO AS A SMALL BUSINESS OWNER, I AM ALREADY HEAVILY BURDENED WITH TAXES, EMPLOYEE MEDICAL INSURANCE PAYMENTS AND NOT TO MENTION EVERYONES FAVORITE... "WORKERS COMP".

NO WONDER HAWAII HAS A NATIONWIDE REPUTATION OF BEING THE TOUGHEST AND MOST COSTLY STATE TO DO BUSINESS! AND NOW YOU WANT TO MAKE IT EVEN HARDER BY INFLECTING THESE RULES THAT THREATEN THE SAFETY OF OUR EMPLOYEES, CUSTOMERS AND THE PUBLIC. RULES THAT YOU ARE NOT WILLING TO PRACTICE YOURSELF! THIS IS ONE MORE EXAMPLE OF WHY BUSINESSES PULL OUT OF HAWAII AND GO ELSEWHERE AND WHY MAINLAND BUSINESSES DO NOT WANT TO COME HERE. CORRECT ME IF I AM WRONG, BUT ARN'T WE THE ONLY STATE IN THE NATION THAT HAS THIS RIDICULOUS LAW OR IS THERE 1 MORE UNREASONABLE STATE?

I SPEAK FOR MY COMPANY AND WE DO NOT SUPPORT YOUR PROPOSED ARREST AND COURT RECORD RULES, AND STRONGLY URGE THE COMMISSION TO WITHDRAW, IN THEIR ENTIRETY, THESE RULES. HOWEVER, WE DO SUPPORT THE ALTERNATIVE RULES PROPOSED BY THE SOCIETY OF HUMAN RESOURCE MANAGEMENT.

RESPECTFULLY,



MARY PATTEE
PRESIDENT/OWNER
REMEDY INTELLIGENT STAFFING

●S●

FILE



SAFEGUARD SERVICES, INC.

Suite 608, 1000 Bishop Building / 1000 Bishop Street / Honolulu, Hawaii 96813-4206

Telephone: (808) 526-2002 / FAX: (808) 523-3826

<http://www.safeguard-hi.com>

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CIVIL RIGHTS COMMISSION
HONOLULU

January 15, 1998

Mr. John Ishihara, Esq.
Chief Counsel
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

CONFIDENTIAL

RE: HAR Title 12, Subtitle 7,
Chapter 46, Subchapter 10,
Arrest and Court Record Discrimination

Dear Mr. Ishihara:

I am president and CEO of Safeguard Services, Inc. We employ 500 security officers and investigators in the State of Hawaii and provide security services to most of the commercial office complexes in the financial district, and provide internal investigation services to many large Hawaii employers, generally through their law firms.

Based on our telephone conversation, although, guard and detective industries may have a statutory exemption, I believe the rules in their present form, are unworkable for most Hawaii employers. The rules promulgated are overly complex and unworkable. Besides presenting a tremendous risk to the public, the rules will be misunderstood and possibly ignored by many employers.

The rules will expose many Hawaii employers to negligence under prevailing Hawaii law, which imposes a duty on employers to maintain a safe workplace.

The rules in their current form do not address recidivism. Has the commission studied recidivism rates for criminals who commit crimes against property or crimes against persons who have been incarcerated for those crimes? What is the probability that they'll commit those crimes against customers or invitees as employees of private employers?

Mr. John Ishihara, Esq.
January 15, 1998

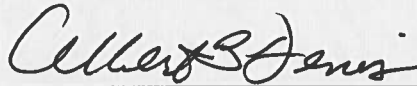
Page 2

I believe these proposed changes will severely impact the ability of private investigative operations conducting pre-employment screening to fulfill their current contractual obligations with employers, and certainly will hamper employers from making educated decisions about job applicants. The rules will also create a tremendous economic burden on businesses. I find it hard to imagine that a covered employer would be forced to hire felons and place them in the workplace, thus exposing other employees and the public to danger and the company to liability.

I would be honored to present verbal testimony at the hearing concerning my position on this matter.

Very truly yours,

SAFEGUARD SERVICES, INC.



ALBERT B. DENIS, CPP, CFE
President

TESTIMONY OF ST. FRANCIS HEALTHCARE SYSTEM OF HAWAII REGARDING FINAL ARREST & COURT RECORD RULES OF THE HAWAII CIVIL RIGHTS COMMISSION

St. Francis Healthcare System of Hawaii employs approximately 2,400 Hawaii residents who work in various settings: in the hospitals, out in community clinics, and even in our patients' homes. By doing this, we need to ensure that our patients, visitors and employees have the best care we can provide. The proposed arrest and court record rules are too complex, exceed statutory authority and threatens the safety of our patients, visitors and our employees. The following are three examples of how we would be impacted by these rules.

EXAMPLE 1:

Section 209(e), "An employer or other covered entity may not inquire about misconduct not occurring at work where such inquiry could be an indirect inquiry into an arrest record, court record, or conviction record." If on our application we notice a gap in continued employment, we would not be allowed to inquire as to why that gap exists for such an inquiry could be construed as "an indirect inquiry into an arrest record, court record, or conviction record".

EXAMPLE 2:

Second, the rules expose us to potential negligence actions under prevailing Hawaii laws which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules, we cannot even require a driving abstract before offering employment to a van driver who is entrusted with carrying employees and cargo.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

EXAMPLE 3:

Finally, as stated in Sections 205(e), "an employer or other covered entity may bar an employee from the premises, with pay, if the individual while currently employed has been arrested or charged for an offense against the person, the charge has not been resolved, and the offense may be considered a substantial threat to the safety of other employees". In our current policies, an assault by one employee on another, but not arrested for it, may be suspended, without pay. Under the new rules, the employer will have to suspend the employee, **with pay** if arrested for the crime.

Employers are therefore given an added financial burden and would behoove us to bring criminal charges against employees, and it wrongfully encourages silence by employers. It is also unfair that this only applies to the private sector but not the state.

Overall, St. Francis Healthcare System of Hawaii finds the proposed rules to be unfair and provide undo hardship to employers, but most importantly the safety of our patients, visitors and employees will be compromised. We therefore, stand in support of the Society of Human Resource Management's stand on the issues and strongly oppose the proposed rulings.

FILE

SEARS

Hawaii District
98-600 Kamehameha Highway
Pearl City, Hawaii 96782

TESTIMONY OF SEARS ROEBUCK AND COMPANY REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the District General Manager for Sears Hawaii and we employ over 1500 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver and auto mechanic.

As one of Hawaii's main retailer in the areas of home appliances, home furnishings and automotive services, we consider the responsible actions of our employees critical to the safe delivery of merchandise and services to our customers. To disallow researching every applicant's job qualifications, including previous driving history, is irresponsible on our part given the nature of our business.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons.

Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

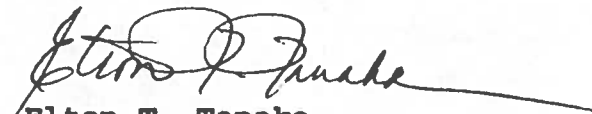
SEARS

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest.

The rules punish private employers by forcing them to hire individuals who have committed crimes. The HCRC itself, is of course, exempt from these rules; as is the State of Hawaii. Why are private sector employers the only ones targeted by these rules?

Our employees and customers have the right to trust us to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Respectfully submitted,



Elton T. Tanaka
District General Manager



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**TESTIMONY OF SEVEN-ELEVEN HAWAII, INC. REGARDING
FINAL ARREST & COURT RECORD FILES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am the Human Resources Manager of Seven-Eleven Hawaii, Inc. We employ approximately 700 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. We as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employer to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules, an employer cannot even require a driving abstract before offering employment to a truck driver.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Seven-Eleven Hawaii, Inc. is a 24-hour convenience store retailer in Hawaii. Our employees deal with thousands of customers per day and are responsible for cash and merchandise. It would be ridiculous for the company not to consider convictions against persons or property when making a hiring decision. Failure to do so will put our

employees, customers and our company at risk. We have an obligation to provide a safe working environment for our employees and customers. We have an obligation to protect our assets by ensuring our employees can be entrusted with handling cash and merchandise. A person's misconduct whether it occurs at work or outside of work are good indicators of an employee's future performance and trustworthiness. The employer should be allowed to make employment decisions based on convictions after considering other factors such as length of time since the conviction, mitigating circumstances, likelihood of recurrence and severity of the offense. However, the proposed rules will severely limit our company's ability to formulate its own judgment in order to operate its business in a prudent and efficient manner.

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Respectfully Submitted,



Blake Yokotake
Human Resources Manager
Seven-Eleven Hawaii, Inc.

FILE

Shirokiya INCORPORATED

2250 ALA MOANA CENTER, HONOLULU, HAWAII 96814 • 1015 KAAHUMANU CENTER, KAHULUI, HAWAII 96732
THE HAWAIIAN REGENT, 2552 KALAKAUA AVE., HONOLULU, HAWAII 96815 • PEARLRIDGE CENTER, PHASE I, AIEA, HAWAII 96701

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January 13, 1998

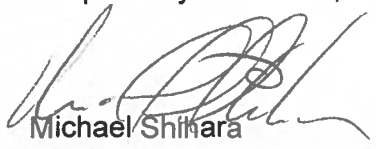
CIVIL RIGHTS COMMISSION
HONOLULU, HI

The Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

To The Executive Director:

Enclosed are seven copies of Shirokiya's Testimony Regarding Final Arrest and Court Record Files to be used at the public hearing on January 16, 1998.

Respectfully Submitted,



Michael Shihara
Personnel Manager
Shirokiya, Inc.

Encl.

EAGLE-A
Trojan Bond
WASHINGTON D.C.



2250 ALA MOANA CENTER, HONOLULU, HAWAII 96814 • 1015 KAAHUMANU CENTER, KAHULUI, HAWAII 96732

THE HAWAIIAN REGENT, 2552 KALAKAUA AVE., HONOLULU, HAWAII 96815 • PEARLRIDGE CENTER, PHASE 1, AIEA, HAWAII 96701

TESTIMONY OF SHIROKIYA, INC. REGARDING
FINAL ARREST & COURT RECORD FILES
OF THE HAWAII CIVIL RIGHTS COMMISSION

I am the Personnel Manager of Shirokiya, Inc. We employ approximately 600 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

First, the rules as drafted are unworkable. We as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employer to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules, an employer cannot even require a driving abstract before offering employment to a truck driver.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

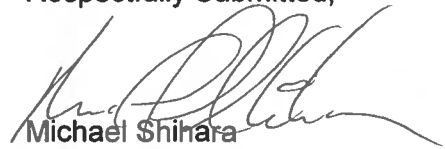
Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Employees of Shirokiya, Inc. come in contact with our visiting tourists and general public everyday and are responsible for cash and merchandise. It would be ridiculous for the company not to consider convictions against persons or property when making a hiring decision. Failure to do so will put our employees, customers and company at risk. We have an obligation to provide a safe working environment for our employees and customers. We have an obligation to protect our assets by ensuring our employees can be entrusted with handling cash and merchandise. A person's misconduct whether it occurs at work or outside of work are good indicators of an employee's future performance and trustworthiness. The employer should be allowed to make employment decisions based on convictions after considering other factors such as length of time since conviction, mitigating circumstances, likelihood of recurrence and severity of the offense. However, the proposed rules will severely limit an

employer's ability to formulate its own judgment in order to operate its business in a prudent and efficient manner.

Under these rules, an individual with a harassment conviction could be hired for a position involving personal information on employees, customers and clients. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in the entirety, these rules.

Respectfully Submitted,



Michael Shihara
Personnel Manager
Shirokiya, Inc.

FILE

AN AFFILIATE OF



SOCIETY FOR
HUMAN
~~January 15, 1998~~
RESOURCE
MANAGEMENT

William Hoshijo
Executive Director
HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: Testimony on Proposed Regulations for Arrest and Court Record
Discrimination

Dear Mr. Hoshijo:

Our organization, the Society for Human Resource Management – Hawaii Chapter (SHRM), is part of a national organization comprised of professional human resource managers. The Hawaii Chapter has more than 330 members on the island of Oahu who work for large, medium and small employers. SHRM’s goals are to promote professional interaction and continuing education among its members, and to educate our communities on labor and employment issues.

SHRM is opposed to the Hawaii Civil Rights Commission’s (HCRC) proposed rules on arrest and court record. We have reviewed the proposed rules with our members and we have concluded that if the proposals are implemented, they will have significant and detrimental impact on Hawaii employers. Our concerns are as follows.

First, the statute does not prohibit employers from considering the effect of the underlying criminal behavior on its business. See *Kinoshita v. Canadian Pacific Airlines*, 803 F.2d 417 (9th Cir. 1986) and *Tachera v. United Airlines*, 4 IER Cases 1386 (D. Haw. 1989). The law was intended to prohibit stereotypical biases against hiring criminal offenders solely based on the fact of an arrest and court record, not the underlying conduct.

Second, the rules ignore the legislative intent to permit inquiry and consideration of offenses “substantially related” to the job in question. Standing Committee Report No. 851 on HB 656, 1973 Senate Journal 967; Report No. 376 on HB 656, 1973 House Journal 912; and Standing Committee Report No. 733 on HB 656, 1973 House Journal at 1109; 1974 House Journal 261-62, Statement of Sen. Cobb (“ . . . the bill before us will allow the denial of employment for any crime related to the job . . .”); Standing Committee Report 862-74 on HB No. 2485-74, 1974 Senate Journal 1079.

Third, the "General Policy" in the proposed regulations states that: "Rehabilitation of individuals convicted of crimes is essential to society, and gainful employment is necessary for rehabilitation." The proposed regulations go on to establish procedures, obviously modeled after the procedures for disability discrimination, for individuals with arrest, court and/or conviction records. These principles and assumptions are incorrect.

I. **THE PROPOSED REGULATIONS ARE BASED ON ERRONEOUS ASSUMPTIONS**

A. **Employers Are Not Equipped To Assist In The State's Rehabilitation Of Criminals And Others Who Have Had Problems With Our Laws**

The proposed regulations would require employers to take "affirmative steps" to assist individuals with arrest, court and/or conviction records ease back into society through "gainful employment." These steps include: (1) hiring and retaining them unless the employer is prohibited from doing so by a specific statutory exemption (§§ 12-46-202 and -206); (2) hiring and retaining them if an "alternative with less discriminatory impact" can be found (§§ 12-46-202 and -209); (3) providing them with leaves of absence, usually with pay, should their legal problems require time away from work (§ 12-46-205); and (4) presumably, reinstating them after their incarceration, unless there is a statutory exemption or BFOQ preventing the reinstatement (§ 12-46-205). In short, employers are being forced, except in extremely limited circumstances, to employ persons who have demonstrated behavior which our government has declared to be illegal and sometimes dangerous.

Employers are not equipped to handle individuals with these behavioral problems. We already live in work environments, which are so complex and stressful that we barely have time to pay attention to our businesses. For example, federal and state laws already have us: checking immigration documents to help them catch illegal aliens; testing applicants and employees for drugs to ensure that adults "Just Say No;" learning psychiatry and medicine so that we can appropriately handle individuals with mental and/or physical impairments; and monitoring the behavior of our employees to ensure that they do not cross the line from simple romantic attraction or rudeness to illegal sexual harassment. The labor and employment laws have become so complicated that many of us must call our attorneys to decide how to respond to an employee's request for leave without violating the law.

Unfortunately, the proposed regulations do not appear to recognize the great burden that all employers are being asked to bear. Think about it. If our State's justice and prison system has been unsuccessful in deterring crime and rehabilitating individuals, what can an overburdened and untrained employer do? ***Most of us cannot handle the burden of assisting the State in its rehabilitation efforts.*** We may be able to assist in limited circumstances (*i.e.*, in situations where we can generally determine that there is no substantial relationship to the job

and the risks to our operations, customers and employees are small). However, we do have the professional or monetary resources to make precise predictions of recidivism risks in order for us to employ individuals with a greater variety of arrest, court and/or conviction records, as required by the proposed regulations. See §§ 12-46-202 and -209.

We are not asking for elimination of arrest and court record as a protected class. We are simply asking that you allow employers the discretion to make their own general business decisions on whether they can assume the risks of hiring and/or retaining an individual with an arrest, court and/or conviction record. If the State wants to encourage more employers to assist in rehabilitation efforts, perhaps the better way to do so is to provide tax incentives or credits to encourage those who can, to take on the responsibilities. Do not force it upon employers who are not equipped to handle the responsibilities.

B. Individuals With Arrest And Court Records Should Not Be Afforded Better Treatment Than Other Protected Classifications.

The proposed regulations include certain requirements which are at odds with accepted fair employment practices. The basic tenet of discrimination is that individuals in the protected classes should be treated the same as individuals who are not in the protected classes. Except for the preferential treatment afforded pregnant employees, as well as the reasonable accommodation requirements for disability and religious discrimination, there are no preferential treatment requirements for the vast majority of protected classifications.

The proposed regulations, however, provide individuals with arrest, court and/or conviction records with preferential treatment. For example, individuals with arrest, court and/or conviction records receive: (1) leave with pay (§ 12-46-205); (2) guaranteed reinstatement (§ 12-46-205); and (3) accommodation (§§ 12-46-202 and -209).

No other protected classification is given leave with pay or guaranteed reinstatement by law. Employers are only required to allow pregnant employees and disabled employees to use available leaves of absence (such as vacation or sick leave), or leave without pay (such as FMLA leave). Why should individuals with arrest, court and/or conviction records be treated any different? Fair employment practice only requires they be treated the same as others not in their protected classification.

It is true that disability and religious discrimination rules require reasonable accommodation to persons in those protected classifications. However, the reasons these protected classifications are afforded "preferential treatment" are not applicable to individuals with arrest, court and/or conviction records.

Individuals with disabilities, for example, have physical and/or mental impairments, which may make them incapable of performing the physical and/or mental functions a non-disabled person, can perform. The reasonable accommodations afforded the disabled are intended to provide the necessary assistance to "equalize the playing field" so that the disabled can effectively compete for jobs with the non-disabled. Individuals with arrest, court and/or conviction records, on the other hand, are capable of performing the basic physical and/or mental functions of a job. Their situations are no different than the situations of women, ethnic minorities, older workers, and other similar protected classifications. They do not require affirmative assistance to perform the essential job functions.

Accommodation for religious reasons is equally unique. Generally, most accommodations are provided to enable the individual to engage in the *practice of his/her religion*. For example, allowing an employee to trade days off so that he/she can attend religious services is the type of "accommodation" required under fair employment practices. Surely the HCRC cannot be suggesting that we should allow a "similar" accommodation to individuals with arrest, court and/or conviction records so that they can *practice behaviors which our State has declared to be legally suspicious (by virtue of an arrest or court record based on probable cause) or illegal (by virtue of a conviction based on proof beyond a reasonable doubt)*.

In short, there is no justification for providing individuals with arrest, court and/or conviction records with preferential treatment. As with other protected classifications (race, age, sex, etc.), the regulations should be limited to ensuring that individuals with arrest, court and/or conviction records receive the same treatment as non-protected individuals. Why should an embezzler be treated better than an employee who was simply fired from his last job for poor performance? Isn't criminal behavior a relevant job consideration?

II. THE PROPOSED REGULATIONS ARE CONFUSING AND UNNECESSARILY RESTRICTIVE

The proposed regulations create a special system for handling individuals with arrest, court and/or conviction records which is complex and vague. The following points illustrate our concern.

A. The Definitions Of "Statutory Exemption" And BFOQ Are Confusing

The proposed regulations state: "Statutory exemption" means jobs for which an employer or other covered entity is specifically authorized by statute to inquire about or consider an individual's arrest record, court record, or conviction record and the inquiry or consideration is not authorized as a BFOQ." § 12-46-202. The proposal also specifies that "[a]n employer or other covered entity has the burden of establishing the specific offenses within the statutory exemption and must do so before conducting an inquiry." § 12-46-202(b). *What does this*

mean? Does this mean that the exempting statute must (1) identify a particular job and (2) state the specific arrest, court and/or conviction records that would disqualify the individual from the job? If so, then there will be few if any statutory exemptions to assist employers. This is because *statutory exemptions are written broadly by federal and state governments*. For example, the statutory exemption for schools included in HRS § 378-2(8) simply states that the State Department of Education and private schools may consider any criminal convictions to determine whether an individual is “suited to working in close proximity to children.” The language of the exemption does not explicitly state that:

- Individuals *arrested* for child molestation should not be hired as teachers;
- Individuals convicted of *raping adult women* should not be hired as school janitors; or
- Individuals *awaiting trial for abusing and selling illegal drugs* should not continue to work on school grounds.

Does this mean these individuals must, under the proposed regulations, be hired and/or retained as school employees because the statute does not specifically disqualify them from working the job in question given their particular arrest, court and/or conviction record? If that is not the intent of the HCRC’s proposed rules, the proposed rules must be amended.

If the intent is to cover the above examples under the BFOQ defense, then you should also note that the BFOQ provisions in the proposed regulations are equally confusing. This is because the proposed regulations conflict with one another. § 12-46-202 and -206 suggest that statutory exemptions are separate from BFOQs. However, § 12-46-207(f) states that statutory exemptions must also satisfy the BFOQ standard. Are they separate defenses or must an employer prove a BFOQ in every case? If so, then there are really no statutory exemptions.

B. The Standard Of Proof Required For Employers Is So High That Few If Any Will Be Able To Meet That Standard

The proposed regulations specify that in order to prove a discriminatory practice, it must be shown by a preponderance of the evidence that: (1) a causal connection existed between an individual’s arrest, court and/or conviction record and the alleged discriminatory conduct; and (2) the individual’s arrest, court and/or conviction record was any part of the reason for the conduct. § 12-46-203. The proposal also prohibits employers from obtaining or reviewing any information on arrest, court and/or conviction records – including information maintained by persons or non-governmental entities such as newspapers, magazines, and television reports. § 12-46-202.

These proposed regulations, when combined with the HCRC's ruling in Treehouse, places an *impossible burden of proof* on the employer. Essentially, it becomes the employer's burden to show that knowledge of an arrest, court and/or conviction record did not play any part in an employer's decision. In short, *we must prove the absence of discrimination*. How can this possibly be done . . . particularly given society's current penchant for publicizing crime! Consider the following facts:

- Maui's courts regularly "advertise" the convictions of individuals by publishing their pictures in the local newspapers and by making the offenders stand on public highways with signs around their necks declaring their crimes;
- State law provides for publication of the names and addresses of sexual offenders so that communities will know where these individuals are located; and,
- Publication of arrests, court proceedings and convictions are daily events in newspapers, magazines, radio and television.

How can we disprove that any of this information was known (pre-offer) to any of the individuals who have input in our hiring process? The most notorious criminals would receive the greatest protection under the HCRC standard! Since most supervisory and management employees have hiring authority (for that is part of what makes them supervisory/management employees), we would have to isolate them from all contact with the outside world to ensure the employment process is not tainted. This is unworkable and unrealistic . . . but nevertheless, the logical construction of the proposed regulations.

C. The Guidelines On "Alternatives With Less Discriminatory Impact" Are More Confusing Than Helpful

§ 12-46-202 of the proposed regulations sets forth factors that must be considered by an employer in determining whether there is an "acceptable alternative with less discriminatory impact" that would enable the employer to hire an individual with an arrest, court and/or conviction record who otherwise qualifies for a "potential BFOQ." However, this section of the proposed regulations is problematic in three important respects.

First, the language is vague and does not specify if each factor will be construed individually or as a group. For example, does a juvenile conviction argue in favor of an employer refusing employment to the individual or does it argue in favor of an employer hiring the individual? Furthermore, what if some of the factors are favorable to the employer while others are favorable to the employee; will the employer be required to hire the individual because

it could not satisfy all seven factors? There are simply no answers in this section of the proposed regulations – only more questions, and a morass of debilitating considerations which do nothing but feed the coffers of employment lawyers on both sides.

Second, it is not clear how the application of the seven factors in this section of the proposed regulations relates to “acceptable alternatives.” If the employer meets the seven factors, can it reject the applicant or terminate the employee? Does this mean if the employer fails the test the employer must hire/retain the individual in the position he/she initially applied for? Or does it simply mean the employer must now find an “alternative?” What is an “acceptable alternative?” Again, there are no answers, only lawsuits.

Third, many of the factors require the employer to make a subjective assessment of recidivism risk (the individual’s likelihood to commit another crime). As stated above, employers are not qualified to make this professional judgment. Moreover, most employers do not have the resources to hire the professional criminal psychologists (assuming some were available in Hawaii for such tasks) to evaluate individuals for recidivism risks.

Overall, the “acceptable alternative” component of the proposed regulations is the most difficult part of the requirements. It is the least defined and most confusing part of the entire proposal.

D. The Provisions Regarding “Misconduct” Will Be Ineffective

We recognize the HCRC has attempted to counterbalance the burdens placed on employers by allowing management to make employment decisions based on an employee’s commission of misconduct on the job while employed by a former employer or by his/her current employer. See §§ 12-46-203 and –209. However, these provisions will be totally ineffective.

First of all, former employers generally will not tell a prospective employer about an individual’s misconduct at his/her former employment. This is because disclosure of such information can result in tort claims for defamation and invasion of privacy.

Second, the proposed rules specify that “misconduct at work” means conduct in the course of employment which results in disciplinary action. § 12-46-202. However, not all incidents of misconduct will result in disciplinary action. Moreover, most employers do not have detailed rules of conduct that make each and every criminal and traffic violation *simultaneously* a violation of company policy. Yet, that is what the regulations imply – namely, that there should be a work rule prohibiting the conduct so that the individual can be disciplined for violating the rule and not because of an arrest, court and/or conviction record.

Third, certain types of “misconduct” occur during an employee’s off duty time which are still highly relevant to the individual’s ability to hold the job. For example, most individuals do not engage in rape at work. However, an arrest, court and/or conviction record for rape during non-working time would be highly relevant to individual’s qualification to work in a hotel, hospital, school, etc. The proposed rules prohibit any “indirect” inquiry which could reveal an arrest or court record, thereby making illegal questions regarding an applicant’s past misconduct if it also would reveal criminal behavior!

E. The Proposed Regulations Create A Complex Process That Will Restrict Or Prevent Employers From Efficiently And Effectively Managing Their Workforces

The proposed regulations establish a 5-step hiring process that requires an employer to: (1) establish the BFOQ pre-offer (and identify the specific crimes which would undermine the “essence of the business”); (2) make a conditional offer of employment before asking any questions that might reveal a criminal record rendering the applicant unsuitable for the particular job; (3) only then inquire about the specific arrest, court and/or conviction record relevant to a BFOQ; (4) determine if there are “no acceptable alternatives with less discriminatory impact” if the crime does render the person unsuitable; and (5) only if there is no acceptable alternative, then withdraw the offer. §§ 12-46-205(d), -208, and -209(a). This is an extremely restrictive and cumbersome process that may take days or weeks to compete given the level of detailed analysis required to prove a BFOQ. In turn, the process makes it extremely difficult for Hawaii employers to respond quickly to business opportunities which require prompt increases in manpower (i.e., hiring of construction workers for new projects, visitor industry workers for conventions or special events, workers for government contracts).

The procedures for handling employees who run afoul of the law are equally cumbersome. Employers are required to provide paid leaves for indeterminate periods of time and, in most circumstances, to reinstate the individuals to work when their legal problems are resolved. § 12-46-205. Such leaves can severely strain company resources, particularly for medium and small employers. Moreover, they place extra burdens on coworkers who must cover for the absentee, and who may resent the *preferential treatment* being afforded to the individual with an arrest, court and/or conviction record.

Section 205(I) section provides that if an employer has declined to hire or has discharged an employee based on an arrest for an offense which falls within a BFOQ, and the arrest has been “resolved” (defined as no pending investigation, charge or indictment, or the charge is dismissed, or the individual is acquitted), the employee must be hired or reinstated. This section assumes that if charges are dropped and no conviction results, the employee is innocent of the charged offense. This ignores the fact that charges (particularly claims for assault) are often dropped by complainants, or are dropped because witnesses cannot be located.

This rule prohibits the employer who nevertheless has a good faith belief that the employee engaged in conduct which is unsafe, or poses a hazard to co-workers or customers, etc. from protecting itself.

Hawaii has been suffering and continues to suffer from an economic recession which has severely stressed our businesses. Employers should not be forced to take on further stress by adding confusing and overly restrictive regulations to an employment system that is already complex and difficult to handle. We need *less regulation, not more*.

III. THE PROPOSED REGULATIONS IMPOSE AN UNFAIR BURDEN ON EMPLOYERS

Apart from the above-described problems that specific provisions in the proposed regulations will create, SHRM also believes that the regulations *as a whole* will create severe problems for Hawaii businesses. This is because the proposed regulations impose an *unfair burden* on employers in several areas.

A. The Proposed Regulations Conflict With Existing Laws

The basic principle of the proposed regulations is that the hiring of individuals with arrest, court and/or conviction records should be routine, and rejections/terminations the occasional exception. This principle is at odds with the trends established in numerous employment areas and industries. For example:

- The federal government routinely requires contractors to exclude employees with criminal records from working on government jobs. There is no specific statutory exemption, simply a contract provision. Failure to comply leads to a loss of a government contract.
- More and more customers are seeking companies whose employees are bonded and/or licensed. Typically, bonding and/or licensing require the absence of a criminal record. There is no specific statutory exemption, simply a customer demand. Failure to comply leads to a loss of customers.
- Negligent hiring, negligent supervision, and negligent retention claims are built upon an employer's failure to exclude individuals who have exhibited behavior, which the employer knew or should have known, constituted a foreseeable risk. A large percentage of these cases involve individuals with arrest, court and/or conviction records.

- Occupational safety and health laws require employers to maintain workplaces which are safe. HIOSH/OSHA has established regulations which require employers to anticipate and eliminate sources of potential violence. Needless to say, individuals with arrest, court and/or conviction records – especially violent crimes – are an identifiable risk which employers are obligated to eliminate.

Employers must comply with these and many other similar requirements. Passage of the proposed regulations will simply force employers into a *Hobson's Choice*: violate the proposed regulations and risk an HCRC complaint or violate the other requirements and risk other violations and/or loss of business.

B. The Proposed Regulations Deprive Employers Of Management Discretion

“Management discretion” does not mean a license to treat employees unfairly or arbitrarily. Most employers try very hard to follow the laws and treat their employees well. What is meant by “management discretion” is the ability to make decisions about what is best for your company.

Unfortunately, the proposed regulations assume that the only legitimate reason for which an employer may exclude an individual with an arrest, court and/or conviction record is if the specific offense for which he/she was convicted prevents him/her from performing the functions of the job in question, undermines the essence of the business and for which no alternative with a less discriminatory impact exists. The absence of a criminal record is increasingly imposed by statutes and regulations, court decisions, contracts, and plain old customer demands. In addition, criminal records (or the absence thereof) can demonstrate important work-related qualities such as honesty, dependability, respect for authority, self-control, and judgment. These are all legitimate, non-discriminatory reasons for considering an individual's arrest, court and/or conviction record. As with other protected classifications, employers should be able to consider these work-related factors when considering whether to hire or retain an individual with an arrest, court and/or conviction record. The conduct which resulted in a conviction is certainly as relevant to evaluating one's future performance as non-criminal misconduct or bad character traits.

C. The Proposed Regulations Treat Private Employers Less Favorably Than Public Employers

HRS § 831-3.1(b) authorizes the State and its political subdivisions to “consider as a possible justification for the refusal, . . . or revocation of . . . employment . . . any conviction of a penal offense when such offense directly relates (I) to the applicant's possible performance”

William Hoshijo
Executive Director
January 15, 1998
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in the job applied for or (ii) to the employee's possible performance in the job which the employee holds." This provision enables the State to exclude any individual with a conviction from employment if the offense relates to the applicant's *possible* performance. It is an extremely more reasonable standard for public employers to meet.

On the other hand, HCRC is proposing rules which would impose an extremely unreasonable standard for private employers to meet. This is *not fair*. Private employers should be entitled to the same deference as public employers. There should be no "*double standard*" in Hawaii's discrimination laws.

IV. CONCLUSION

In summary, SHRM believes the proposed rules are unworkable as drafted. They will create significant problems for Hawaii employers. We are not capable of handling the burdens and responsibilities HCRC proposes to impose on us. We ask that you reconsider the proposed rules and amend them so that they conform with existing policies and procedures for other protected classifications and conform to the legislative intent. Attached to this testimony is suggested language which we believe will accomplish the goals of clarifying "arrest and court record" discrimination, while preserving the Legislature's intent to preserve employers' obligations to effectively and efficiently handle operations.

Thank you for your time and attention to this matter. If you have any questions or you require further information, please feel free to contact us.

Very truly yours,

SOCIETY FOR HUMAN RESOURCE
MANAGEMENT – HAWAII CHAPTER



LISA FONSECA
President

Enclosure

cc: Governor Benjamin Cayetano
DLIR Director Lorraine Akiba

SOCIETY FOR HUMAN RESOURCE MANAGEMENT
HAWAII CHAPTER

**ALTERNATIVE PROPOSAL FOR HCRC REGULATIONS
ON ARREST & COURT RECORD DISCRIMINATION**

§ 12-46-201 General Policy. Chapter 378, HRS, prohibits any employer or other covered entity from discriminating in employment because of an individual's arrest and court record, unless there is a statutory exemption, a bona fide occupational qualification (BFOQ) or other statutory defense under HRS § 378-3. This subchapter provides interpretive guidance for enforcement of this provision and is declaratory of existing law.

§ 12-46-202 Definitions. As used in this subchapter, unless the context otherwise requires:

- (a) "Arrest record" includes but is not limited to any information about the questioning, apprehension, arrest, detention, investigation or custody of an individual by any law enforcement or military authority. It includes any of the above information contained in court records, including military court, police records or reports, criminal justice data files, criminal history or other records maintained by the state or federal government or computer databases.
- (b) "Bona fide occupational qualification" (BFOQ) means a job qualification which is reasonably necessary to the normal operation of the employer's business and is either: (i) substantially related to the functions and responsibilities of the job the applicant is applying for; (ii) substantially related to the functions and responsibilities of the job which the employee holds; or (iii) directly related to the applicant's or employee's possible performance in the job. BFOQs are strictly and narrowly construed.
- (c) "Court record" includes but is not limited to any information in an arrest warrant, summons, charge, indictment, information, criminal complaint, grand jury proceeding, plea, jury selection record, verdict, judgment, conviction, conviction record, pre-sentence report, sentence, parole matter, and criminal court pleading or paper. It includes any of the above information contained in court records, including military court, police records or reports, criminal justice data files, criminal history or other records maintained by the state or federal government or computer databases.
- (d) "Conviction record" includes but is not limited to information about a judicial, military, or law enforcement judgment, verdict, deferred acceptance of guilt, deferred acceptance of no contest, or adjudicatory finding that an individual has committed an offense, and the judgment, verdict, acceptance, or finding has not been reversed, annulled, expunged, or vacated.

- (e) "Employment agency" means any person engaged in the business of providing employment information, or procuring employment for applicants.
- (f) "Inquire" means, in general:
 - 1) Asking an applicant or employee about his/her arrest, court and/or conviction record;
 - 2) Requiring or requesting an applicant or employee to fill out a form which contains questions about whether the individual has an arrest, court and/or conviction record;
 - 3) Obtaining or reviewing arrest, court and/or conviction records;
 - 4) Contacting other persons about an individual's arrest, court and/or conviction record;
 - 5) Having a third party do any of the above.
- (g) "Offense" means penal offenses and crimes.
- (h) "Statutory exemption" means jobs for which an employer is authorized, by federal or state statutes, rule or regulation, to inquire about and/or consider an individual's arrest, court and/or conviction record.
- (i) "Temporary agency" means any person engaged in the business of providing its employees for temporary placement with employers upon request of such employers.
- (j) "Work-related misconduct" means disciplinary action imposed upon an individual by his/her employer due to the individual's violation of the employer's established policies or rules.

§ 12-46-203 Information about arrest, court and/or conviction records. All information related to or obtained regarding the arrest, court, and/or conviction record of an applicant or employee shall be kept confidential and shall not be disclosed to persons who have no legitimate business reason to know the information. Information related to or obtained regarding arrest, court and/or conviction records shall not be used for any purpose inconsistent with this subchapter.

§ 12-46-204 Unlawful discriminatory practices. It is an unlawful discriminatory practice for:

- (a) An employer to refuse to hire or employ, to bar or discharge from employment, or otherwise to discriminate against an applicant or employee in terms, conditions or privileges of employment on the basis of the individual's arrest, court and/or conviction record, unless the action is covered by a statutory exemption, constitutes a BFOQ or is otherwise permitted under HRS § 378-3.

- (b) An employment agency or temporary agency to fail or refuse to refer for employment or assignment, or to classify, or to otherwise discriminate against an individual because of the individual's arrest, court and/or conviction record, unless the action is covered by a statutory exemption, constitutes a BFOQ or is otherwise permitted under HRS § 378-3.
- (c) A labor organization to exclude or expel from its membership, or to discriminate in any way against any of its members, because of an individual member's arrest, court and/or conviction record, unless the action is covered by a statutory exemption, constitutes a BFOQ or is otherwise permitted under HRS § 378-3.

§ 12-46-205 Charging party's burden of proof.

- (a) In determining whether a discriminatory practice constituting disparate treatment has been committed under this subchapter, charging party must show by a preponderance of the evidence that:
 - 1) He/she is a member of the arrest and court record;
 - 2) He/she was subjected to an adverse employment action;
 - 3) A causal connection existed between an individual's arrest, court and/or conviction record and the alleged discriminatory conduct; and,
 - 4) The offense is not substantially related to the position sought or held.
- (b) In considering whether an employee has satisfied a prima facie element that the offense is not "substantially-related," probative evidence of the following may be considered:
 - 1) The length of time since the conviction for the specified offense;
 - 2) Any evidence of the individual's rehabilitation;
 - 3) Any mitigating circumstances, including but not limited to whether the circumstances leading to the specified offense still exist or are likely to recur;
 - 4) The number and severity of the offense(s);
 - 5) The length of time the individual has performed the job since the arrest, charge, indictment and/or conviction;
 - 6) The employer's legitimate interests; and
 - 7) Whether the individual poses a substantial threat to the safety of employees, customers and other guests of the employer or other covered entity.
- (c) In the event there is evidence that the adverse employment action was motivated by multiple factors, the charging party must prove, by a preponderance of the evidence, that but for his/her arrest, court and/or conviction record, the adverse employment action would not have occurred.

- (d) Notwithstanding subsections (a) and (b), an employer or other covered entity may take an adverse action against an individual for work-related misconduct, even though the individual was arrested for, charged with, or convicted of an offense arising from such misconduct.

§ 12-46-206 Employer's Defenses.

- (a) It is not an unlawful discriminatory practice for an employer or other covered entity to inquire about or consider an individual's arrest, court and/or conviction record if:
- 1) The inquiry or consideration of the arrest, court and/or conviction record is covered by a statutory exemption;
 - 2) The employer or other covered entity has a BFOQ for making the inquiry about or considering the arrest, court and/or conviction record; or
 - 3) The individual with the arrest, court and/or conviction record is permitted under § 378-3.
- (b) The burden of articulating a statutory defense rests upon the employer or other covered entity seeking to rely upon the affirmative defense. The determination of whether an affirmative defense exists will be made from an examination of the employer's or other covered entity's business requirements and the totality of the circumstances.

§ 12-46-207 Unqualified Within HRS § 378-3

- (a) It shall not be an unlawful discriminatory practice for an employer, employment agency or labor organization to require an employee or applicant to disclose whether the employee, applicant, or member has been convicted of an offense in the preceding seven (7) years (excluding any period of incarceration) if the offense is substantially related to the actual job duties of the employment sought or at issue.
- (b) It shall not be an unlawful discriminatory practice for an employer, employment agency, or labor organization to refuse to employ or discriminate against an employee, applicant or member because that person is unqualified for the position due to a conviction substantially related to the position sought or at issue.

- (c) Federal or other state offenses, are substantially related to any employment requiring access to the cash, finances or property of the employer or the employer's customers, clients or patrons.

Burglary and other offenses of intrusion;
Theft;
Robbery;
Forgery;
Computer crime;
Credit card offenses or money laundering;
Hawaii Revised Statutes, Chapter 708 or offenses related to drugs; and,
Intoxicating compounds, Hawaii Revised Statutes Chapter 712, Part IV.

- (d) A person shall be deemed unqualified, within the meaning of HRS § 378-3(2), for any position involving access to the cash, finances or property of the employer or the employer's customers, clients or patrons if the person has been convicted of any felony offense substantially related to the duties of the employment defined in § 12-46-207(d), above, in the preceding seven (7) years (excluding any period of incarceration).

- (e) The following criminal offenses, and any similar federal or other state offenses, are substantially related to any employment requiring unsupervised contact with co-employees, customers, clients or the public:

Criminal homicide;
Criminal assaults and related offenses;
Kidnapping and related offenses;
Sexual offenses;
Child abuse or extortion, Hawaii Revised Statutes, Chapter 707; or,
Prostitution and promoting prostitution, Hawaii Revised Statutes, Chapter 712, Part I.

- (f) A person shall be deemed unqualified, within the meaning of HRS § 378-2(2), for any position involving unsupervised contact with co-employees, customers, clients or the public, if the person has been convicted of any offense substantially related to the duties of employment as defined in § 12-46-207(e), above, in the preceding seven (7) years (excluding any period of incarceration).

- (g) More than one misdemeanor or felony offense substantially related to any employment in the preceding twenty (20) years shall render the employee or applicant unqualified for the employment within the meaning of HRS § 378-3(2).

- (h) It shall not be an unlawful discriminatory employment practice to suspend any employee who has been arrested, taken into custody or charged with an offense substantially related to the employment at issue.

January 16, 1998

Testimony of
Jared H. Jossem, attorney pro bono publico, for
Special Education Center of Hawaii
Opposing Proposed Administrative Rules of the Hawaii Civil Rights
Commission for "Arrest and Court Record Discrimination"

I, Jared H. Jossem am an attorney who represents Special Education Center of Hawaii. SECOH respectfully opposes the currently proposed administrative rules of the Hawaii Civil Rights Commission ("HCRC") for "Arrest and Court Record Discrimination" as currently drafted, and proposes that the original latitude for employers to exercise sound judgment in this area be restored. We also believe that the HCRC must recognize that there is a myriad of potential victims of crime who are not only children in our society, and that **all are equally deserving of the protection** that common sense employment decisions provide. Finally, we urge you to hear our plea that, like many of the states' struggling for-profit businesses, the nonprofit agencies simply lack the resources to even deal with the cost of prevailing in a case under your proposed regulations.

I. **Although Private Schools Are Exempt as to Children, SECOH as a provider to Adults faces the same risks with no clear exemption**

H.R.S. § 378-3(8) expressly provides that: "Nothing in this part [H.R.S. § 378] shall be deemed to" "[p]rohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children."

SECOH services some 200 adults with severe and profound mental retardation and/or developmental disabilities. Our clients are predominantly unable to communicate, and are easy targets for abuse, criminal neglect, assaults of all kinds, and theft. For this very reason, the State requires us, as a condition of our contracts, to refuse employment to persons convicted of such offenses. Your proposed regulations, however, would expose SECOH and similar agencies, ARC, Easter Seals and others, to potential liability simply for complying with our state contracts.

We agree with the notion that not all criminals are unemployable, and we believe that if allowed to exercise reasonable judgment, we could employ some individuals with unrelated convictions in some occupations. However, we do not believe the HCRC has any competency in judging what sorts of people we should permit to care for our clients, drive their paratransit vehicles, or take them into the community.

II. SECOH Cannot Afford the Transaction Costs of Coping with Your regulations

SECOH has already been put into the ludicrous situation of being served with a Civil Complaint for an alleged "arrest and court records" violation filed by a disgruntled former employee we hired without knowing of his prior conviction for being a drug dealer. We have a trained nursing staff and there are drugs on our premises. The case was completely frivolous; what is more, the plaintiff who filed the case did so while he was already back in prison. SECOH had to spend valuable management time preparing its defenses and working with legal counsel while the plaintiff was still in jail!!!!

Agencies such as ours simply do not have money to pay lawyers or to pay off plaintiffs. This is not what donors to the United Way want us to use our very limited discretionary funds for. As a matter of public policy, our limited resources should be spent on programs for our clients, not on transaction or settlement costs arising from a law originally intended to help persons, like our own clients, who are excluded from the mainstream of society for reasons beyond their own control.

If the HCRC believes that the costs of rehabilitating all convicts should be borne by private sector employers including nonprofits, then the State and Federal government must pass on not only the transaction costs but also the costs of resulting risks to our clients. Who is going to pay for this--since we do not have the funding to do so--or even to hire staff to figure out what you mean about a BFOQ or about paying criminals while they are off work. We do not even have sufficient funding to send our loyal and hardworking staff to seminars and training programs-- yet you want us to pay wages to people who are awaiting trial. It is an understatement to say that we consider such impositions to be a ludicrous form of public policy.

SECOH respectfully urges the HCRC to revise the regulations to make absolutely clear that all employers have never lost their right to inquire as to job-related conviction records and past conduct of a criminal nature, whether or not the subject of a court proceeding or arrest.

We are entitled to judge people by the content of their character, as reflected in their life's behaviors. We should not have to pay to justify our rejection of applicants who have engaged in conduct, whether or not prosecuted, which would be unacceptable. Nor can we subscribe to the unfounded notion that our penal system has been so successful that its "graduates" are to be presumed safe prospects for employment. All the data we are aware of suggests that the contrary is true.

Penalizing us with the threat of litigation is simply not the way to deal with the problems presented.

III. SECOH's Special Concerns

If the HCRC determines that it is going to adopt any regulations, it should use the opportunity to restore the original intent of the law, which was to allow employers latitude in considering convictions having job-related aspects.

The HCRC should restore the guideline originally published by the DLIR after the law was amended to include conviction records.

In the alternative, and even preferably, "convictions" should be deleted from the definition of "arrest and court records" entirely.

Recognize that our clients are at risk from independent contractors and vendors as well as our own employees

We assume that the HCRC does not dispute that a person with convictions for any crime against a person, including murder, rape, sexual assault, molestation, abuse, domestic violence, stalking, criminal neglect, and theft is unsuited to working in close proximity with individuals with severe mental retardation.

You must be concerned not only for the physical safety of all people, but also of these special persons who cannot protect themselves and who may not even be able to communicate that they have been victims.

Our campuses are of necessity open to various contractors, building trades, vendors, and others who are not our employees. Your proposed regulations raise the likelihood that persons we are prohibited from employing by the State contracts we sign might nevertheless come into contact with our clients as employees of others. The judgments of all school administrators as to who should be on our campuses should not be lightly set-aside by the HCRC. In the Interest of Jane Doe, 77 Haw. 435, 887 P.2d 645 (1994), a case concerning the privacy interests of public school children, the Hawaii Supreme Court recognized the importance of creating and maintaining a proper educational environment, and the danger of courts "unduly interfering]" with the

maintenance of the internal operations of the schools. Id. at 440-441. The Hawaii Supreme Court explicitly recognized public schools as a "unique social environment, and the "legitimate and substantial interest" that teachers and administrators in public schools have "in maintaining discipline in the classroom and on school grounds to create an environment where learning can take place." Id. at 441, 887 P.2d at 651. See also New Jersey v. T.L.O., 469 U.S. 325 (1985) and Napolitano v. Princeton University, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

Relevant here, the court stated:

. . . [W]e must give substantial deference to the importance of institutional integrity and independence. Private educational institutions perform an essential social function and have a fundamental responsibility to assure the academic and general well being of their communities of students, teachers and related personnel. At a minimum, these needs, implicating academic freedom and development, justify an educational institution in controlling those who seek to enter its domain. "

Id. at 272-73 (emphasis added).

If courts recognize the doctrine of judicial deference to schools, in light of the unique mission of schools, we urge the HCRC to protect professional educators and administrators to decide who should have access to those whose care and safety are entrusted to them.

Placing SECOH's administration at risk of personal as well as organizational liability risk is simply untenable. Because those who "aid or abet" discrimination are vulnerable to suit under HRS Ch 378, your proposed regulations literally make any administrator of a care center for individuals with mental retardation potentially liable for denying employment to a convicted thief or rapist.

To simply state the consequences of what you are proposing in the context of our sort of service is to demonstrate how ridiculous and unworkable your proposals are.

Conclusion

We respectfully submit that the proposals, no matter how well intentioned, are ill-conceived and overly burdensome, and urge that in their place, a reasonable amount of

Testimony of Jared H. Jossem
January 15, 1998
Page 5

latitude be given **all employers**, comparable to that exercised by the State itself.
Anything less denies us the equal protection of the laws.

TESTIMONY OF STAFFING PARTNERS REGARDING
FINAL ARREST AND COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

My name is Wendy Rose. I am a Staffing Manager of Staffing Partners. We employ over 1,000 Hawaii residents a year in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons.

We all remember Mckesson. We all remember the horror of watching a wounded hostage drop from a window. We all were horrified with the thoughts of the employees working in the building thinking they may never see tomorrow. I personally was not related to any of these individuals. Imagine the serendipity - finding out that your auntie, uncle, brother, sister or fiance was the hostage. I can imagine, for one of my current employees was engaged to that hostage. The individual that committed this crime had had a criminal record prior to working for Mckesson and Mckesson was not allowed to ask a single question to be able to find out about crimes involving violence prior to hiring that individual. Scary thoughts. Current laws allowed for reasonable relationship exemptions, and the scenirio I just spoke about still happened. Imagine what could happen if we removed the very minimal questions that we are currently allowed to ask. Imagine the caous.

We all have the right to belive that our Hawaii Civil Right Commission will propose laws to protect the law abiding citizens of Hawaii. We all, not just the State, the schools, or the condiminun managers, have the right to feel equally protected by the Civil rights Commission.

I urge you to please consider the alternative arrest and court record rules.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any poosition involving unsupervised contact with co-employees, customers, clients of the public.

Third, the economic burden the proposed rules place on business is unreasonable. The

rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. the HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for the termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

FILE

TESTIMONY OF STAFFING PARTNERS REGARDING
FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION

January 16, 1998

I am Vicki von Stroheim-Seay, Area Manager of Staffing Partners, a Division of SOS Staffing Services. We employ over 1000 Hawaii residents a year. The proposed arrest and court record rules threaten the safety of our employees, our customers employees who are sitting in this room right now and the public.

When interviewing applicants as in all businesses we are looking for gaps in employment history. These gaps can signify many things, maternity leave, family illness, being on unemployment, lack of being able to keep a job due to attendance or incarceration. According to the proposed rules we could discriminate because of poor attendance but not because this person has broken the law and been incarcerated. We need the right to ask if this persons past will affect our employer, employee relationship. Will our employees or customers employees be but in danger. I'm sure in the past you have employed baby sitters or child care person. When considering someone who will just be spending several hours with your child you want to know as much about this person as possible. Now your child has grown up and is working at a job. If these proposed regulations become law you are forcing their employer to make a blind hiring decision that may allow a convicted rapist to work beside your daughter. While your daughter is working late one night, the rapist returns to work finds your daughter working alone and she is raped, beaten and left there for the morning workers, all because of the Hawaii Civil Rights Commission won't let us make hiring decisions based on past history. You will be forcing employers to discriminate against law abiding employees. It is our responsibility as employers to provide a safe work environment. When OSHA comes in and finds an unsafe work environment you can see it and correct it. When a applicant walks in your door thief, rapist or murderer is not written on their foreheads we need to protect our law abiding citizens. If you want a work program that will help get convicted criminals back to the work place the State of Hawaii should subsidize a return work program and back it up with the money so the employers willing to take that risk can pay for the liability insurance when they are sued for wrongful employment.

As an employment service we interview several thousand applicants a year. We are responsible for sending our employees to our clients location to work. We as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. Even when trying to follow these unfair rules we must protect our present employees.

They have a right to a drug free work environment. They have a right to a safe workplace. These rules punish employers by forcing them to hire individuals who have committed crimes, I don't want to work next a person who may again decide to break the law. I don't think your want your son's and daughter's to either.

Please consider the alternative arrest and court record rules.

First, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients of the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. the HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for the termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

● STATE OF HAWAII ●

TESTIMONY OF THE STATE ATTORNEY GENERAL
EMPLOYMENT LAW DIVISION

ON HAWAII CIVIL RIGHTS COMMISSION'S PROPOSED ADMINISTRATIVE RULES
ON ARREST AND COURT RECORD DISCRIMINATION

Before the Department of Labor and Industrial Relations
Civil Rights Commission

January 16, 1998, at 1:00 p.m.,
Room 310, Ke'elikolani Building
830 Punchbowl Street, Honolulu, Hawaii

The Honorable Chairperson and Committee Members:

The Department of the Attorney General cannot support the promulgation of the rules pertaining to arrest and court record discrimination as they are currently drafted.

The State currently has statutory authority, and in certain cases, the responsibility to consider the background of applicants to determine their suitability for the positions that they apply for. We call the Commission's attention to sections 352-5.5, 353C-5, 57134, 846-43 and 831-3.1 and 831-3.2, Hawaii Revised Statutes.

Department of the Attorney General does not support the promulgation of the proposed rules because the rules are inconsistent with the practice authorized under current law and also because the rules encumber the application process and result in prolonging the recruitment process unnecessarily.

Section 378-3(1), Hawaii Revised Statutes, specifically provides that nothing in part I of chapter 378 is deemed "to repeal or affect any law, ordinance, or government rule having the force and effect of law." To the extent that the rules are inconsistent with law, they are invalid given section 378-3(1), Hawaii Revised Statutes.

For the following reasons, we believe that sections of the rules are inconsistent with law.

Section 12-46-205(a) makes it "an unlawful discriminatory practice for an employer to . . . refuse to hire . . . on the basis of the individual's arrest record, court record, or conviction record where there is no conviction for a specified offense within a statutory exemption or potential BOQ, except as provided by this section."

It is not clear what is meant by "for a specified offense within a statutory exemption." None of the sections which authorizes the State to consider a conviction record specify the criminal offenses that would disqualify an applicant or deem the applicant unsuitable. Indeed, such a recitation of criminal offenses would be impractical since each application is reviewed on a case-by-case basis, taking into consideration the unique circumstances of each offense.

Section 12-46-206(b) requires the State employer to establish the specific offenses within the statutory exemption and must do so before conducting an inquiry. Section 12-46-208 allows the State to make inquiry about an applicant's conviction record before an offer of employment is made if the inquiry is limited to specific offenses within the statutory exemption.

The statutory sections that authorize the State to consider conviction records do not specify the offenses within the statutory exemption.

One of the analysis that the employer must do under § 831-3.1, Hawai'i Revised Statutes, before an applicant is denied employment is whether the applicant has been rehabilitated. In order to make this determination, the employer may consider the absence of "subsequent criminal conviction" as a factor in determining sufficiency of rehabilitation. The proposed rules are inconsistent with § 831-3.1 to the extent that the rules require a list of specific offenses and § 831-3.1 permits a broader consideration.

Section 12-46-205(f) authorizes the employer to bar an employee from the work premises, with pay, if the employee has been arrested for or charged with a specified offense within the exemption.

Section 831-3.1 prohibits the use of arrest records not followed by a valid conviction. Moreover, most collective bargaining contracts applicable to State employee provide for when an employee may be placed on a leave with pay pending investigation. Section 12-46-205(f) is not consistent with section 831-3.29 or with the applicable sections of the collective bargaining contract provisions.

In addition to the rules provisions which are inconsistent with law, section 12-46-206(a) and section 12-46-205(a) and (d) are internally inconsistent.

Section 12-46-206(a) allows the State to continue its current practice with regards to the use of conviction records. Section 12-46-205(a) and (d) requires the State to show "specified offense within the statutory exemption."

For the reasons provided above, we do not support the rules as they are currently drafted. Thank you for the opportunity to submit this testimony.

FILE

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES
STATE DEPARTMENT OF THE ATTORNEY GENERAL

**ON TITLE 12, CHAPTER 46,
HAWAII ADMINISTRATIVE RULES**

RELATING TO ARREST AND COURT RECORD DISCRIMINATION

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRIAL
RELATIONS, CIVIL RIGHTS COMMISSION

DATE: FRIDAY, January 16, 1998

TIME: 1:00 P.M.

PLACE: Room 310
Keelikolani Building
830 Punchbowl Street

PERSON(S) TESTIFYING:

Moya T. Davenport Gray
Director
Office of Information Practices

or

Lynn M. Otaguro
Staff Attorney
Office of Information Practices

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES
ON TITLE 12, CHAPTER 46, HAWAII ADMINISTRATIVE RULES
RELATING TO ARREST AND COURT RECORD DISCRIMINATION

Honorable Chairperson and Commission Members:

The Office of Information Practices ("OIP") opposes the adoption of section 12-46-204 of the proposed rules for the following reasons. The OIP administers and implements the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), which governs the disclosure of government records.

Among the records subject to the UIPA are the personnel records of all government employees. Therefore, with regard to personnel records, government agencies are subject to the provisions of the UIPA as well as the provisions of chapter 378, Hawaii Revised Statutes, and the proposed rules designed to implement that chapter.

The OIP is concerned with proposed rule section 12-46-204, because of the potential conflict the rule appears to present with regard to government employers who are subject to the UIPA. Section 12-46-204 as presently written appears to attempt to make confidential all arrest records, court records, and conviction records, as it states that such records "...shall not be disclosed to persons who are not entitled to

have access to the information....” Yet, under existing law, the OIP has determined that conviction records are open to the public. See OIP Op. Ltr. No. 97-5 (June 10, 1997); OIP Op. Ltr. No. 95-15 (May 8, 1995). Arrest records also may be disclosable under limited circumstances. See OIP Op. Ltr. No. 97-5 (June 10, 1997); OIP Op. Ltr. No. 91-4 (Mar. 25, 1991)(police blotter information subject to disclosure under the UIPA).

Furthermore, it is unclear under the UIPA whether the OIP would be able to recognize the proposed section 12-46-204 as a law providing for the confidentiality of arrest records, court records, and conviction records. Section 92F-13(4), Hawaii Revised Statutes, excepts from disclosure “government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure.” However, the provisions of a rule may not qualify as state law that can protect a record from disclosure. Commentary to section 2-103(a)(11) of the Model Code, the parallel provision to section 92F-13(4), Hawaii Revised Statutes, for exemption from disclosure for “information that is expressly made non-disclosable under federal or state law or protected by the rules of evidence” states:

Subsection (a)(11) is a catch-all provision which assimilates into this Article any federal law, state statute or rule of evidence that expressly requires the withholding of information from the

general public. The purpose of requiring an express withholding policy is to put a burden on the legislative and judicial branches to make an affirmative judgment respecting the need for confidentiality.

Model Code § 2-103 commentary at 18 (1980) (emphasis added). This commentary seems to indicate that it was not envisioned that a state executive agency, by rule, could exempt records from disclosure. In fact, section 92F-13(4), Hawaii Revised Statutes, previously has been strictly construed by the OIP, such that a provision of a county charter did not constitute a state law which protected a government record from disclosure. See OIP Op. Ltr. No. 95-14 (May 8, 1995).

Alternatively, if the language, "...shall not be disclosed to persons who are not entitled to have access to the information..." in proposed section 12-46-204 is intended to except from its application all persons and agencies entitled to the records under the UIPA, confusion would be avoided if this were clearly stated.

Because of the potential conflict with the provisions of the UIPA, the OIP recommends that the language of proposed section 12-46-204 be reviewed and amended.

BENJAMIN J. CAYETANO
GOVERNOR



HERMAN M. AIZAWA, Ph.D.
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2380
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

January 13, 1998

The Honorable William D. Hoshijo
Executive Director
Civil Rights Commission
830 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Hoshijo:

Re: Public Hearing on Proposed Rules to Arrest and Court Record
Discrimination

The Department of Education would like to request the modification of proposed rule §12-46-206 to permit general criminal history record checks in accordance with Section 846-43, Hawaii Revised Statutes. The DOE believes that it has broad statutory authority to conduct criminal history record checks for all criminal convictions and to consider such convictions in contemplating the employment of any employee or applicant who poses a risk to the health, safety or well-being of children. The DOE also has the statutory authority to require any prospective employee to provide a sworn statement indicating whether or not the person has ever been convicted of a crime other than minor traffic offenses involving a fine of \$50 or less.

We request either the deletion of paragraph (b) or the adoption of the proposed paragraph (c) exempting the DOE and private schools from the requirement to identify specific criminal offenses as follows:

§12-46-206 **Statutory Exemptions.** (a) An employer or other covered entity which has a statutory exemption to inquire about or consider an individual's conviction record

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CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Honorable William D. Hoshijo
Proposed Rules; Arrest and Court Records
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may make inquiries and employment decisions as allowed by the exemption.

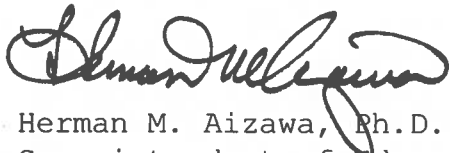
(b) An employer or other covered entity, has the burden of establishing the specific offenses within the statutory exemption and must do so before conducting an inquiry.

(c) Paragraph (b) above does not apply to the department of education and respective private schools who are authorized by statutory exemption to conduct unrestricted criminal history record checks to determine the suitability of prospective employees who work in close proximity to children.

We have enclosed a copy of Chapter 8-7, Hawaii Administrative Rules and the DOE's implementation instructions for the screening of prospective employees for your information. We request that your proposed rules do not intentionally or unintentionally diminish the DOE's statutory authority to prevent the employment of persons who may pose a risk to the health, safety or well-being of children.

Thank you for your consideration of our request.

Sincerely,



Herman M. Aizawa, Ph.D.
Superintendent of Education

cc. Karen Knudsen, Chairperson, Board of Education

Working Draft

**IMPLEMENTATION
INSTRUCTIONS FOR
CHAPTER 8-7,
HAWAII ADMINISTRATIVE
RULES**

JUNE 29, 1992

The Honorable John Waihee
Governor, State of Hawaii

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Working Draft

IMPLEMENTATION INSTRUCTIONS FOR CHAPTER 8-7, HAWAII ADMINISTRATIVE RULES

JUNE 29, 1992

The Department of Education, State of Hawaii, is an Affirmative Action/Equal Opportunity Employer and does not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap.

Office of Personnel Services/Personnel Management, Certification & Development Branch
Department of Education State of Hawaii June 1992

FOREWORD

AS TRUSTEES RESPONSIBLE FOR THE CARE AND DEVELOPMENT OF STUDENTS, DEPARTMENT OF EDUCATION EMPLOYEES ARE EXPECTED TO ADHERE TO THE HIGHEST STANDARDS OF PERFORMANCE AND BEHAVIOR BOTH WITHIN AND OUTSIDE THE WORKPLACE. THIS IS NECESSARY TO PROVIDE AN EFFECTIVE EDUCATIONAL SETTING WITHIN WHICH STUDENTS CAN DEVELOP ENABLING ATTITUDES AND RESPONSIBLE CHARACTER.

THE DEPARTMENT OF EDUCATION ENDEAVORS TO RECRUIT, SELECT, HIRE, DEVELOP AND MAINTAIN THE BEST AVAILABLE EMPLOYEES TO STAFF ITS SCHOOLS AND TO SERVE THE EDUCATIONAL NEEDS OF ITS STUDENTS. IT IS OUR DESIRE TO STRIVE FOR HIGH IDEALS AND TO SEEK WAYS TO ASSURE THE HIGHEST POSSIBLE LEVELS OF CONFIDENCE IN THE QUALITY OF OUR PUBLIC SCHOOL WORKFORCE.

THE HAWAII PUBLIC SCHOOLS PROVIDE A WIDE VARIETY OF EMPLOYMENT OPPORTUNITIES IN ALL JOB CATEGORIES THAT SERVE IN THE CLOSE PROXIMITY OF STUDENTS. THIS INCLUDES BOTH CERTIFICATED AND CLASSIFIED EMPLOYEES; SALARIED AS WELL AS PART-TIME EMPLOYEES. EMPLOYEE SCREENING WILL HELP TO IDENTIFY THOSE INDIVIDUALS WHO MAY NOT BE OF REPUTABLE AND RESPONSIBLE CHARACTER. RIGOROUS SCREENING REQUIREMENTS WILL ALSO STRONGLY DISCOURAGE AND PREVENT THE EMPLOYMENT OF PERSONS WHO MAY POSE A RISK TO THE HEALTH, SAFETY OR WELL-BEING OF CHILDREN.

THIS MANUAL PROVIDES GUIDELINES AND PROCEDURES TO CONSISTENTLY AND EFFECTIVELY IMPLEMENT THE PROVISIONS OF CHAPTER 8-7, HAWAII ADMINISTRATIVE RULES PERTAINING TO CRIMINAL HISTORY, EMPLOYMENT HISTORY AND BACKGROUND SCREENING OF EMPLOYEES.

I ASK FOR YOUR ASSISTANCE AND COOPERATION TO EFFECTIVELY IMPLEMENT THESE NEW EMPLOYEE SCREENING PROCEDURES.

CHARLES T. TOGUCHI
SUPERINTENDENT OF EDUCATION

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IMPLEMENTATION GUIDELINES
CHAPTER 8-7
HAWAII ADMINISTRATIVE RULES

PUBLIC SCHOOL PERSONNEL: CRIMINAL HISTORY RECORD,
EMPLOYMENT HISTORY, AND BACKGROUND CHECKS

I. OVERVIEW

The Board of Education recently adopted Department of Education Hawaii Administrative Rules Chapter 8-7, Public School Personnel: Criminal History Record, Employment History, and Background Checks, to help assure the reputable and responsible character of employees and potential employees who work in close proximity to students. Chapter 8-7, Hawaii Administrative Rules, is primarily intended to implement Act 257, SLH, 1990 (Section 846-43, HRS). (See Appendices A and B.) This rule authorizes the Department of Education to screen employees and potential employees by (1) requiring a sworn statement (Personnel Form 90) from the employee or potential employee declaring any background information that indicates a possible risk to the health, safety or well-being of students and (2) checking for fingerprints against the FBI criminal history files. This new rule provides hiring authorities within the Department, e.g. principals and other supervisors, the means to better screen for school employees who may pose such a threat.

The Department of Education's broader objective is to recruit, select, hire, develop and maintain the best available employees to staff its schools and to serve the educational needs of its students. The Department employs approximately 16,000 salaried certificated and classified personnel and 12,000 part-time/intermittent school employees such as substitute teachers, part-time hourly-paid teachers, classroom cleaners, adult supervisors, emergency hire and substitute classified employees, A+ After-School Program workers, etc. Hiring decisions, especially for non-salaried employees, are often delegated directly to school principals and other supervisors who currently assume most of the responsibility to recruit,

screen, select and monitor the performance and conduct of school employees who work in close proximity to students.

These procedures identify guidelines, activities and responsibilities for the implementation of Chapter 8-7, Hawaii Administrative Rules. (See Appendix A) Wherever possible, these new screening requirements will be integrated directly into and, thus, strengthen existing recruitment, selection, and hiring practices.

II. GUIDELINES FOR THE CONDITIONAL HIRING OF NEW DEPARTMENT OF EDUCATION EMPLOYEES SUBJECT TO COMPLETION OF THE EMPLOYMENT SCREENING PROCESS

Effective immediately, hiring of Department of Education employees who work in close proximity to children shall be conditional upon the satisfactory completion of the employment screening process including criminal history record, employment history, and background checks authorized by Chapter 8-7, Hawaii Administrative Rules.

Employment screening is an on-going process of discovery to reasonably assure that applicants and potential employees are of reputable and responsible character and do not pose a risk to the health, safety and well-being of students. The employment screening process includes, but is not limited to, self-disclosure on the Personnel Form 90; fingerprint checks through the Federal Bureau of Investigation (FBI); and name checks against the Hawaii Criminal Justice Data Center (HCJDC). Criminal history checks may take six to eight weeks or more depending on the nature of follow-up screening required. There is no time limit to the discovery of other screening information that is not properly self-disclosed on the Personnel Form 90. Consequently, all conditional employment shall remain ongoing and continuous subject to the later discovery of evidence reflecting the improper self-disclosure of required information.

Prospective new DOE employees shall be notified that their hiring is conditional and subject to cancellation or discontinuation. Should employment be discontinued, the prospective employee may receive entitled compensation for time worked, if any, during the interim period of continuous screening. (See Appendix I, "NOTICE" and Appendix J, Procedure SP-4)

III. GUIDELINES FOR IMPLEMENTATION: INITIATING CRIMINAL HISTORY, EMPLOYMENT HISTORY AND BACKGROUND SCREENING OF NEW EMPLOYEES AND ACCUMULATED BACKLOG OF CURRENT EMPLOYEES

Act 257, SLH, 1990 (Section 846-43, Hawaii Revised Statutes), exempts from criminal history checks all salaried employees continuously employed since June 30, 1990. Salaried employees hired subsequent to June 30, 1990 and all other (non-salaried) employees regardless of date of hire are targeted for screening. Screening includes the completion and processing of Personnel Form 90 which can be done immediately and fingerprinting which must be done incrementally because of time and resource limitations.

A. Processing of Personnel Form 90 for New Employees and Employee Backlog.*

- Effective immediately, all new (Certificated and Classified) employees shall complete and submit Personnel Form 90 "Employment Suitability Check for Department of Education Employees". Personnel Form 90's are to be completed as part of the package of pre-employment forms such as the I-9 (INS Employment Eligibility Verification), W-4 and HW-4 Tax Forms, etc. that all persons must complete prior to beginning their employment. Personnel Form 90 shall be processed according to instructions on the form. (See Appendix C, Personnel Form 90 and Appendix F, Procedure SP-1)
- All salaried employees (Certificated and Classified) hired after June 30, 1990 and all non-salaried employees (Certificated and Classified not exempted by law) shall complete and submit a Personnel Form 90 prior to June 30, 1992 or earlier as requested by their supervisors or as requested by the district or state personnel office. (See Appendix E, Memorandum)

* The backlog refers to current employees not exempted by law who are targeted for screening. Chapter 8-7, Hawaii Administrative Rules permits the fingerprinting of and completion of Personnel Form 90 for employees who work in the close proximity of students (K-12). District and state office personnel and adult education teachers who do not work in the close proximity of K-12 students (not stationed at school campuses or who do not directly serve students) are not required to undergo criminal history screening checks.

Appropriate hiring authorities at the State, District or School (i.e., OPS for new hire teachers, District Personnel Office for teacher and other substitute employees, and Principal or designee for A+ employees, PTT's, etc.) are responsible for assuring the completion of the form and carefully screening for employment suitability based on information provided by the employee or potential employee. Appropriate action should be taken to cancel, discontinue or terminate the employment of the employee or potential employee when any information indicates this person poses or may pose a possible risk to children.

After it is used for preliminary screening by DOE hiring authorities, Personnel Form 90 is forwarded, according to procedure, for screening against the (in-state) criminal records file maintained by the Hawaii Criminal Justice Data Center (HCJDC). The report provided by HCJDC may indicate the need for further investigation and follow-up by the Department of Education to determine the affected person's suitability for working in the proximity of children.

B. Fingerprinting of New Employees and Other Backlogged Employees.*

Fingerprint screening is conducted on the FBI's Fingerprint Information Card (FIC) a sample of which is displayed in Appendix D. (Also see Appendix G, Procedure SP-2 and Appendix H, Procedure SP-3) The process of FIC completion involves:

- Completion of the demographic information including description of physical characteristics, social security number, address, etc. checked against a pictured identification of the person being fingerprinted.
- Rolling of clear, separate fingerprints of all fingers and thumbs, and simultaneous fingerprints taken of the fingers of each hand and thumb.

Completed Fingerprint Information Cards (FICs) are processed to the Federal Bureau of Investigation (FBI) where, for a fee (currently \$23 per card), the FICs are screened through the national criminal history computer file. An FBI identification record (sometimes referred to as the "Rap Sheet") is provided to the Department of Education for each FIC processed. Again, the FBI

identification record may indicate the need for further investigation and follow-up by the Department of Education to determine the affected person's suitability for working in the proximity of children. (The above described process is hereafter referred to as "fingerprinting" or "processed for fingerprinting.")

Effective immediately, all newly hired salaried (Certificated and Classified) employees shall be processed for fingerprinting at the time of hire or earlier. District and State personnel offices shall coordinate responsibilities to implement this requirement.

Other newly hired employees (temporary and non-salaried) may be incrementally processed for fingerprinting based on available resources and workload demands.

District Superintendents shall develop and implement a plan to phase in the incremental fingerprinting of the backlog of employees who are not exempted by law from criminal history checks. Such employees shall cooperate fully and submit to fingerprinting as scheduled and notified by Department of Education representatives.

IV. DEPARTMENT-WIDE COMPUTER INFORMATION FILE

The Department of Education shall maintain a computer information file to administer and record the results of criminal history record, employment history, and background checks conducted on employees and prospective employees. The information file may include the following types of information, if available:

- Name of employee or prospective employee
- Identification number
- Dates to indicate processing of Personnel Form 90 and FBI Fingerprint Information Cards (FIC) and any other significant activities.
- Results of criminal history record checks, if any.
- Information relating to background checks including medical information if applicable.
- Information relating to employment history checks. This could include prior DOE records of suspension, firing, unsatisfactory or marginal performance, and behavior that indicate a threat to the health, safety or well-being of students. This could also include

information acquired through current and previous employment application procedures.

- Information relating to follow-up screening and investigation conducted by the Department.
- Information regarding certificate revocations.

V. GUIDELINES FOR THE USE AND DISCLOSURE OF SCREENING INFORMATION, ACCESS TO CONFIDENTIAL INFORMATION, AND RESPONSIBILITY FOR SAFEGUARDING CONFIDENTIAL INFORMATION

According to law and rule, the DOE must use information obtained from criminal history record checks exclusively for the purpose of determining whether or not a person is suitable for working in close proximity to students.

A. Information Obtained From the FBI

Information from the FBI identification record generally cannot be disclosed to the general public. Information contained in the FBI national criminal history files are obtained from reports submitted by various law enforcement agencies throughout the country. The FBI cannot vouch for the 100% accuracy of the information, thus, its rules prohibit the disclosure of information to non-government agencies. The FBI identification record and information contained therein can be used only by Department of Education officials and employees on a need-to-know basis, generally for the purposes of hiring consideration or employment screening. By agreement with the FBI, the DOE is permitted to disclose the information only under the following circumstances:

- The DOE can disclose information that an affected individual's FBI criminal history check shows a "clean criminal history record".
- An FBI identification record and information contained therein may be disclosed to the affected individual when contemplating the individual's possible non-suitability to work in close proximity to children or in explaining decisions resulting in refusal to hire, cancellation or discontinuation of the employment process, refusal to issue a teaching certificate, termination of employment, or revocation of teaching certificate. Note: The affected individual, if desired, may request the correction of FBI criminal history information by

following FBI Rules to correct the FBI identification record. (See Appendix K, Procedure SP-5 for instructions to request the correction of FBI records.)

- The DOE, with the permission of the affected individual, may also disclose/display information from an FBI identification record to a union representative or at an administrative hearing to resolve issues concerning the record's content and use.

B. Information Obtained From the HCJDC and From Other Sources

Criminal history information obtained from sources other than the FBI may be categorized into criminal convictions and arrest records.

- Criminal conviction information (except information obtained from the FBI files) is considered public information and may be disclosed to the general public.
- Arrest records are private and shall not be released by the DOE except in the process of verifying the disposition of the arrests, or as otherwise required by law. Arrest records for offenses that may pose a risk to the health, safety, and well-being of children may be used as a basis to delay hiring decisions or for the suspension of employment or the employment process pending further investigation. Every effort should be made to expedite the process of determining the disposition of each arrest. Procedurally, arrest records may be shared with the affected individuals when feasible. The affected individual's cooperation should be sought to obtain verification of the disposition of such arrests. The Office of Personnel Services and the District Personnel Office will provide supportive assistance to help verify the disposition of arrests. In compliance with the provisions of Section 378-2, Hawaii Revised Statutes, arrest records shall not be used as the basis to refuse to employ a prospective employee or to terminate an employee.

Physical records pertaining to criminal history, employment history and background information obtained by the

Department of Education will be maintained and filed by the Office of Personnel Services. Pertinent screening information will also be maintained in computer files with access terminals in the Office of Personnel Services and at each district personnel office. Department of Education officials and employees may be given access to the information regarding particular individuals who are being considered for employment, for placement, or for determination of suitability to work in the close proximity of students. Department officials and employees who obtain access to such information are responsible for safeguarding confidentiality and disclosure requirements.

VI. GUIDELINES FOR REFUSAL TO HIRE; CANCELLATION, DISCONTINUATION OF EMPLOYMENT PROCESS; AND TERMINATION OF EMPLOYMENT

Chapter 8-7, Hawaii Administrative Rules, provides the Department of Education (DOE) the option to refuse to employ, refuse to issue a teaching certificate to, terminate the employment of, or revoke the teaching certificate of any employee or applicant who has a criminal history record, employment history, or background involving violence, alcohol or drug abuse, sex offense, offense involving children, or any other circumstance which indicates that the person may pose a risk to the health, safety or well-being of students. The DOE may also refuse to hire or terminate any person who willfully fails to provide required information, or fails to comply or cooperate fully with fingerprinting and other screening requirements. (See Appendix L, Procedure SP-6.)

A. Criteria for Taking Action

The Department of Education shall refuse to hire, cancel or discontinue the hiring process for or terminate the employment of an applicant or prospective employee when:

1. It is determined that the person has a criminal conviction, criminal history record, employment history or background involving:
 - Violence (murder, manslaughter, assault, battery, terroristic threatening, robbery, rape, extortion, etc.)
 - Illegal possession, distribution, manufacture or sale of restricted substances.

Implementation Guidelines for Chapter 8-7
Hawaii Administrative Rules
June 29, 1992

- Substance abuse.
 - A pattern of alcohol abuse or addiction.
 - Sex offense.
 - Child abuse/neglect or other offense involving children.
 - Questionable ability to responsibly manage, supervise, control or interact with children (breach of responsibility; neglect of children; failure to perform essential duties; and other unsuitable, inappropriate, immoral, or non-professional behavior that is offensive to the care and development of children at school).
 - Any other circumstance which may indicate a risk to the health, safety or well-being of students. (This determination requires case-by-case judgment and assessment of the specific nature and circumstances of the offense/behavior.)
2. It is determined that the person intentionally or unintentionally:
- Failed to accurately and fully complete and submit Department of Education employment application documents.
 - Failed to declare, concealed or falsified criminal history, employment history, or background information as required on Personnel Form 90.
 - Failed to cooperate fully and failed to make every reasonable effort to comply with fingerprinting or other criminal history, employment history or background screening procedures.

B. Responsibility for Initiating Action

The hiring authority/supervisor shall be primarily responsible for initiating any action against the applicant or employee.

The hiring authority/supervisor shall consult with the District Superintendent or designee and with the Office of Personnel Services when he/she has reason to believe that an applicant or employee may pose a risk to the health, safety, or well-being of students or when otherwise contemplating possible action arising from a prospective employee's ongoing and continuing screening process.

C. When to Take Action

Employment screening information is obtained in various ways through a continuing process which may include voluntary disclosure during the employment application process, required disclosure on Personnel Form 90, face-to-face interaction between hiring authority and employee or candidate, during follow-up checking including information provided by the Department of Education's screening files, former employers, criminal justice agencies, supervisors, doctors, references, etc. Information can also be obtained from the HCJDC and FBI screening reports.

The hiring authority/supervisor is responsible to initiate follow-up checking (e.g., checking with employment references, verifying the disposition of pending criminal charges, verifying the status of possible health or emotional fitness concerns, etc.) as necessary when available information indicates possible concern pertaining to the prospective employee's suitability to work in the close proximity of students.

Note: It is recommended that, whenever feasible and appropriate for investigative purposes, the affected person be asked to actively become involved in clearing up questions and concerns regarding his/her suitability to work in the proximity of students.

Whenever the hiring authority/supervisor has reason to believe, based on information available, that an applicant or employee poses a risk to the health, safety or well-being of students, the hiring authority/supervisor shall initiate action as soon as possible. (See Appendix L, Procedure SP-6)

D. Possible Action to Take

Whenever the hiring authority/supervisor has reason to believe that (1) an applicant or employee poses a risk to the health, safety or well-being of students, or (2) an applicant or employee has intentionally or unintentionally failed to declare, concealed or falsified information, or failed to cooperate fully with screening procedures, the hiring authority/supervisor may, with respect to the applicant or employee:

1. Refuse to hire.
2. Cancel or discontinue the hiring process.

3. Terminate the employment.
4. Postpone the decision to hire if further information is necessary. For an employee, the employment status shall be suspended (without pay) until a final suitability determination can be made.

(See Appendix L, Procedure SP-6)

E. Petitioning for Determination of Current Employment Suitability for Working in Close Proximity to Students

Applicants and employees with unsuitable criminal history, employment history or background may petition the Department of Education for a determination of current suitability for working in close proximity to students. (See Appendix M, Procedure SP-7) The petition for employment suitability may be based on the factors listed below:

- Elapsed time since the offense/behavior occurred.
- Demonstrated rehabilitated behavior over a long period of time.
- Extenuating circumstances justifying the offense/behavior and making it unlikely to recur.
- Current written medical or expert opinion indicating successful treatment, cure or rehabilitated behavior.
- Successful current experiences working in close proximity to children.
- Supporting current written testimony from references, co-workers, potential clients, community leaders, hiring authorities, students, etc.
- Other evidence and good reasons.

All factors shall be construed to assure the health, safety and well-being of children.

The Office of Personnel Services may appoint a review panel to consider a petition. The Office of Personnel Services, or an appointed panel may review a petition, may question references, may consider testimony and may make a recommendation to the Assistant Superintendent for Personnel Services or designee who may grant or not grant the petition, or take other appropriate action based on the recommendation and other relevant factors. The decision of the Assistant Superintendent for Personnel Services is final.

The Office of Personnel Services is not obligated to accept or review petitions involving persons with

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June 29, 1992

revoked certificates or persons appealing revoked certificates. The Office of Personnel Services is also not obligated to accept or review petitions involving former DOE employees who received marginal or unsatisfactory performance ratings or who were terminated for cause or who resigned because of unsuitable behavior.

Successful petitioners may apply and be considered for DOE employment for which they otherwise qualify under the terms and conditions specified in the Assistant Superintendent's ruling.

Unsuccessful petitioners may submit a new petition after a minimum waiting period of two years after the date of the Assistant Superintendent's notification of decision. A new petition shall be based on accumulated new evidence, however, the Department of Education is not obligated to accept or respond to any new petition submitted within five years of the latest decision.

CTT:mac

Implementation Guidelines for Chapter 8-7
Hawaii Administrative Rules
June 29, 1992

APPENDIX

- A. Chapter 8-7, HAWAII ADMINISTRATIVE RULES
- B. ACT 257, SLH, 1990 (Section 846-43, HAWAII REVISED STATUTES)
- C. Personnel Form 90 (2/26/92)
- D. Fingerprint Information Card (FIC)
- E. Memorandum: Criminal History, Employment History, and Background Checks for School Personnel; Personnel Form 90 (April 9, 1992)
- F. Procedure SP-1: Personnel Form 90 Criminal History Record, Employment History, and Background Checks (June 4, 1992)
- G. Procedure SP-2: FBI Criminal History Screening Fingerprint Information Card (FIC) (June 4, 1992)
- H. Procedure SP-3: Instructions for Fingerprinting (June 4, 1992)
- I. NOTICE. Department of Education Employee Notice of Conditional Hiring Pending the Completion of Criminal History, Employment History and Background Screening (June 5, 1992)
- J. Procedure SP-4: Perspective Employee: Procedural Responsibilities for Complying With Chapter 8-7, Hawaii Administrative Rules (June 5, 1992)
- K. Procedure SP-5: Federal Rules and Regulations for Changing the FBI Record
- L. Procedure SP-6: Procedure to Refuse to Hire, Cancel or Discontinue the Hiring Process for Department of Education Prospective Employees Conditionally Hired Subject to the Completion of Screening (June 4, 1992)
- M. Procedure SP-7: Petitioning for Determination of Current Suitability for Working in Close Proximity to Students (June 4, 1992)

JOHN WAHNEE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P. O. BOX 2380
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

April 10, 1992

MANAGEMENT ANALYSIS & COMPLIANCE BRANCH

MEMORANDUM

TO: District Superintendents
Assistant Superintendents
Directors, Office of the Superintendent
Principals

FROM: *Osmond A. Okazaki*
Osmond A. Okazaki, Acting Director
Management Analysis and Compliance Branch

SUBJECT: **ADOPTION OF CHAPTER 7, PUBLIC SCHOOL
PERSONNEL: CRIMINAL HISTORY RECORD,
EMPLOYMENT HISTORY, AND BACKGROUND CHECKS**

Chapter 7, Public School Personnel: Criminal History Record, Employment History, and Background Checks, has received the final approval by the Governor on March 24, 1992. Attached for your information is the advance copy of the approved administrative rule which became effective April 3, 1992.

The Management Analysis and Compliance Branch shall arrange for printing and distribution of the administrative rule for insertion in the Administrative Rules of the Department of Education binder retained at each school, district and state offices.

OAO:jst

Attachment

cc: Dr. Mistugi Nakashima, Chairperson, Board of
Education
Charles T. Toguchi, Superintendent of Education

Learn to Care
Care to Learn

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

DEPARTMENT OF EDUCATION

Adoption of Chapter 8-7
Hawaii Administrative Rules

January 23, 1992

SUMMARY

Chapter 8-7, Hawaii Administrative Rules, entitled "Public School Personnel: Criminal History Record, Employment History, and Background Checks", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2 EDUCATION

PART 1 PUBLIC SCHOOLS

CHAPTER 7

PUBLIC SCHOOL PERSONNEL:
CRIMINAL HISTORY RECORD,
EMPLOYMENT HISTORY,
AND BACKGROUND CHECKS

- §8-7-1 Definitions
- §8-7-2 General rule
- §8-7-3 Applicant or employee duty to provide information
- §8-7-4 Fingerprinting requirement
- §8-7-5 Use of criminal history records results
- §8-7-6 Implementation procedures and instructions

§8-7-1 Definitions. As used in this chapter:

"Affected individual" means the person to which a Federal Bureau of Investigation (FBI) identification record pertains.

"Applicant" means a person seeking employment to a position in the department of education.

"Arrest records" means criminal history information obtained from sources other than the FBI pertaining to arrests for alleged criminal behavior.

"Background information" means information pertaining to a person's behavioral history that may indicate a significant risk to the health, safety, or well-being of children.

"Children" means students enrolled in public schools up to grade twelve.

or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

"FBI rules to correct the FBI identification record" means rules and regulations published in the Federal Register by the FBI pertaining to the procedure for the affected individual to obtain, review, and request change, correction or updating of any alleged deficiency to the FBI identification record.

"Fingerprinting" means the recording of a person's fingerprints using conventionally accepted equipment and procedures to satisfy the quality, readability, and specifications of the FBI's criminal history record checking requirements.

"Persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990" means salaried employees of the department who were on employment status on June 30, 1990, and who continuously remain so employed.

"Position" means a specific office or employment in the department whether occupied or vacant, consisting of a group of all the current duties and responsibilities assigned or delegated by competent authority, requiring the full or part-time employment of one person. [Eff. APR 03 1992] (Auth: HRS §§296-12, 843-43) (Imp: HRS §846-43)

§8-7-2 General rule. (a) Employees and applicants who work in close proximity to children shall be of reputable and responsible character.

(b) The department may refuse to employ, may refuse to issue a teaching certificate to, may terminate the employment of, or may revoke the

- (A) Whether the person ever had a teaching certificate or other professional license revoked or not renewed;
- (B) Whether the person within the past ten years was suspended, fired, asked to resign from employment, or separated from military service under conditions other than honorable;
- (C) Whether the person had been convicted of a crime, other than a minor traffic offense involving a fine of \$50 or less;
- (D) Whether the person had been diagnosed as having a mental or emotional condition which may affect the person's ability to responsibly manage, supervise, control and interact with children; and
- (E) A detailed explanation for each of the above when applicable.
- (3) A written consent for the department to conduct a criminal history record check;
- (4) A written consent for the department to obtain information from current and past employers and references; and
- (5) Written permission to be fingerprinted.
- (b) Employees and applicants shall cooperate fully and make every reasonable effort to provide information and comply with fingerprinting and other related requirements when so notified and instructed by the department or its representative agents. The department may refuse to hire or terminate any person who willfully fails to cooperate or fails to provide the requested information. [Eff. APR 03 1992]
(Auth: HRS §§296-12, 846-43) (Imp: HRS §846-43)

§8-7-4 Fingerprinting requirement. Persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990, shall not be required to undergo criminal history record checks. The department shall require all other employees and may require applicants to undergo fingerprinting to conduct criminal history record checks as may be

(c) Criminal history information obtained from sources other than the FBI may be categorized into criminal convictions and arrest records. Criminal convictions are considered public records and may be disclosed to the general public. Arrest records are private and shall not be released by the department except in the process of verifying the disposition of the arrests, or as otherwise required by law. Information regarding a person's arrest records for offenses that may pose a risk to the health, safety or well-being of children may be used as the basis to delay hiring decisions or for the suspension of employment pending further inquiry and investigation. Arrest records shall not be used as the sole basis to refuse to employ a prospective employee or to terminate an employee. [Eff. APR 03 1992]
(Auth: HRS §§296-12, 846-43) (Imp: HRS §846-43)

§8-7-6 Implementation procedures and instructions. (a) The department shall develop necessary plans, procedures, and instructions to implement the provisions of this chapter.

(b) The department may implement the provisions of this chapter incrementally subject to the availability of funds and resources. [Eff. APR 03 1992]
(Auth: HRS §§296-12, 846-43) (Imp: HRS §846-43)

CONFERENCE COMMITTEE REPORT NO. 153

Honolulu, Hawaii

APR 27, 1990

RE: S.B. No. 2881
S.D. 2
H.D. 2
C.D. 1

Honorable Richard S. E. Wong
President of the Senate
Fifteenth State Legislature
Regular Session of 1990
State of Hawaii

Honorable Daniel J. Kihano
Speaker, House of Representatives
Fifteenth State Legislature
Regular Session of 1990
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 2881, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SCHOOL PERSONNEL,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill as received is to require the department of education to develop formal procedures, including criminal history record checks, for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in public or private schools in positions that place them in close proximity to children. This bill in its amended form authorizes the department of education and private schools to develop such procedures.

Your Committee upon further consideration has made the following amendments to S.B. No. 2881, S.D. 2, H.D. 2:

CPS > Action (All Offices)
MAC

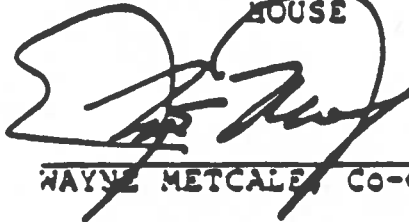
- (1) Deleted the word "shall" at line 14 on page 1 and inserted "and respective private schools may";
- (2) Changed the amount appropriated in section 4 to \$25,000 and the amount appropriated in section 5 to \$38,000 and changed to figures at line 6 on page 1 to "\$63,000" and "0.0025" respectively to reflect these amended appropriations; and
- (3) In section 7, deleted the word "however" at line 20 and inserted "and shall be implemented to the extent resources are available", deleted the word "three" and inserted "at least one" at line 21, and changed the word "positions" at line 22 to "position".

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 2881, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2881, S.D. 2, H.D. 2, C.D. 1.

Respectfully submitted,

MANAGERS ON THE PART OF THE HOUSE

MANAGERS ON THE PART OF THE SENATE



 WAYNE METCALE, Co-Chairman



 MAMORU YAMASAKI, Chairman



 ROD TAM, Co-Chairman




 GERALD T. HAGINO, Member




 CAROL FURUNAGA, Co-Chairman



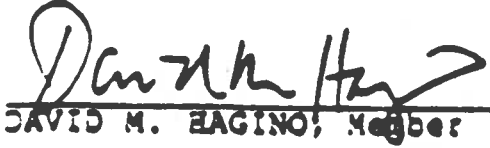
 BERTRAND KOBAYASHI, Member



 REB BELLINGER, Member




 RON MENOR, Member




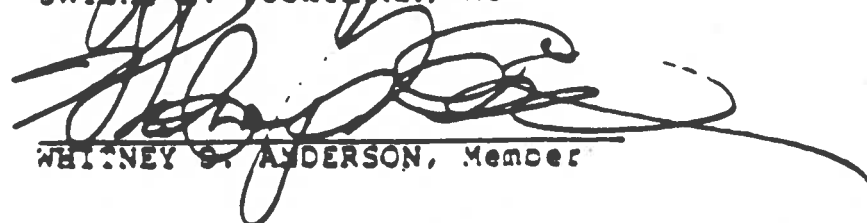
 DAVID M. HAGINO, Member



 STAN KORI, Member


BERTHA C. KAWAKAMI, Member


DWIGHT W. YOSHIZURA, Member


WHITNEY S. ANDERSON, Member

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SCHOOL PERSONNEL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In accordance with Section 9 of Article VII of
2 the Constitution of the State of Hawaii and sections 37-91 and
3 37-93, Hawaii Revised Statutes, the legislature has determined
4 that appropriations contained in this Act will cause the State
5 general fund expenditure ceiling for fiscal year 1990-1991 to be
6 exceeded by \$63,000 or 0.0025 per cent. The reasons for
7 exceeding the general fund expenditure ceiling are that the
8 appropriations made in this Act are necessary to serve the public
9 interest and to meet the needs provided for by this Act.

10 SECTION 2. Chapter 846, Hawaii Revised Statutes, is amended
11 by adding a new section to part III to be appropriately
12 designated and to read as follows:

13 "§846- Employees of the department of education; criminal
14 history checks. (a) The department of education and respective
15 private schools, may develop procedures for obtaining verifiable
16 information regarding the criminal history of persons who are
17 employed or are seeking employment in public or private schools
18 in positions which place them in close proximity to children.
19 These procedures shall include, but not be limited to, criminal

1 history record checks. For the purposes of this section,
2 'criminal history record check' means an examination or search
3 for evidence of an individual's criminal history by means of:

4 (1) A search for the individual's fingerprints in the
5 national criminal history record files and, if found,
6 an analysis and any other information available
7 pertaining thereto; and

8 (2) A criminal history record check conducted by the Hawaii
9 criminal justice data center;

10 provided that the Hawaii criminal justice data center may charge
11 a reasonable fee for criminal history record checks performed for
12 private schools.

13 (b) Except as otherwise specified, any person who is
14 employed or seeks employment with a public or private school in a
15 position which necessitates close proximity to children may be
16 required to provide to the employer or prospective employer:

17 (1) A sworn statement indicating whether or not the person
18 has ever been convicted of a crime (other than a
19 traffic violation involving a fine of \$50 or less), and
20 the details thereof;

21 (2) Written consent for the employer to conduct a criminal
22 history record check as provided in subsection (a) and

1 to obtain other information for verification; and
2 (3) Permission to be fingerprinted.
3 Information obtained pursuant to subsection (a) and this
4 subsection shall be used exclusively by the employer or
5 prospective employer for the purpose of determining whether or
6 not a person is suitable for working in close proximity to
7 children. All such decisions shall be subject to federal laws
8 and regulations currently or hereafter in effect.

9 (c) The employer or prospective employer may refuse to
10 employ or may terminate the employment of any employee or
11 applicant if the person has been convicted of a crime, other than
12 a minor traffic offense involving a fine of \$50 or less, and if
13 the employer or prospective employer finds by reason of the
14 nature and circumstances of the crime that the person poses a
15 risk to the health, safety, or well-being of children.

16 (d) This section shall not be used by the department of
17 education to secure criminal history record checks on persons who
18 have been employed continuously by the department on a salaried
19 basis prior to July 1, 1990."

20 SECTION 3. Section 378-3, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "§378-3 Exceptions. Nothing in this part shall be deemed

1 to:

- 2 (1) Repeal or affect any law or ordinance or government
- 3 rule (or regulation) having the force and effect of
- 4 law;
- 5 (2) Prohibit or prevent the establishment and maintenance
- 6 of bona fide occupational qualifications reasonably
- 7 necessary to the normal operation of a particular
- 8 business or enterprise, and which have a substantial
- 9 relationship to the functions and responsibilities of
- 10 the prospective or continued employment;
- 11 (3) Prohibit or prevent an employer, employment agency, or
- 12 a labor organization from refusing to hire or refer or
- 13 from discharging any individual for reasons relating to
- 14 the ability of the individual to perform the work in
- 15 question;
- 16 (4) Affect the operation of the terms or conditions of any
- 17 bona fide retirement, pension, employee benefit, or
- 18 insurance plan, which is not intended to evade the
- 19 purpose of this chapter; provided that (this);
- 20 (A) -This exception shall not be construed to permit
- 21 any employee plan to set a maximum age requirement
- 22 for hiring or a mandatory retirement age;

1 (provided further that any) and

2 (B) Any existing bona fide retirement, pension,
3 employee benefit, or insurance plan or existing
4 bargaining agreement shall be exempt from (the
5 provisions of) this paragraph for two years after
6 April 30, 1984, or until the termination of the
7 plan or agreement, whichever occurs first;

8 (5) Prohibit or prevent any religious or denominational
9 institution or organization, or any organization
10 operated for charitable or educational purposes, which
11 is operated, supervised, or controlled by or in
12 connection with a religious organization, from giving
13 preference to individuals of the same religion or
14 denomination or from making such selection as is
15 calculated by the organization to promote the religious
16 principles for which it is established or maintained;

17 (6) Conflict with or affect the application of security
18 regulations in employment established by the United
19 States or the State; (or)

20 (7) Require the employer to execute unreasonable structural
21 changes or expensive equipment alterations to
22 accommodate the employment of a handicapped person(.);

1 or
2 (9) Prohibit or prevent the department of education or
3 private schools from considering criminal convictions
4 in determining whether a prospective employee is suited
5 to working in close proximity to children."

6 SECTION 4. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$25,000 or so much
8 thereof as may be necessary for fiscal year 1990-1991, to conduct
9 criminal history checks required by this Act. The sum
10 appropriated shall be expended by the department of the attorney
11 general.

12 SECTION 5. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$38,000 or so much
14 thereof as may be necessary for fiscal year 1990-1991, to the
15 department of education to cover the costs of fees assessed for
16 criminal history record checks conducted pursuant to this Act.
17 The sum appropriated shall be expended by the department of
18 education.

19 SECTION 6. Statutory material to be repealed is bracketed.
20 New statutory material is underscored.

21 SECTION 7. This Act shall take effect on July 1, 1990, and
22 shall be implemented to the extent resources are available.

1 Section 2 of this Act shall take effect only upon the
2 appropriation of funds sufficient to pay for: (1) at least one
3 new full-time clerk-typist position for the department of the
4 attorney general; and (2) all fees assessed to the department of
5 education for criminal history record checks.

EMPLOYMENT SUITABILITY CHECK FOR DEPT. OF EDUCATION EMPLOYEES

(CONFIDENTIAL)

A. PERSONAL EMPLOYEE DATA FOR EMPLOYMENT SUITABILITY REVIEW (Please Print or Type)

Name: Last First Middle Address: Street City, State, Zip

Any alias(es)/former names - including maiden name:

Social Security No.: Date of Birth: Place of Birth: Month/Day/year City, State, Country

Position Title: School or Office Sex

Other previous (identify most recent) or concurrent DOE employment:

B. STATEMENT OF PERSONAL BACKGROUND, EMPLOYMENT AND CRIMINAL HISTORY

- 1. Have you had a teaching certificate or other professional license revoked or not renewed? Yes No
2. Within the past 10 years, were you suspended, fired or asked to resign from any employment or separated from military service under conditions other than honorable? Yes No
3. Have you ever been convicted of any of the following: Sex-Related Offenses? Child Abuse/Neglect Offenses? Substance/Drug Abuse Offenses? Any Violation of the Law (Felony & Misdemeanor) other than minor traffic offense involving a fine of \$50 or less? Yes No
4. Have you ever been diagnosed as having a mental or emotional condition which may affect your ability to responsibly manage, supervise, control and interact with children? Yes No

Use the space below to explain any "yes" responses (write legibly and attach additional sheets if needed). For suspensions or dismissals from employment, please provide the names(s) and address(es) of your former employers. "Yes" answers do not automatically disqualify you from employment. Employment decisions will depend on the circumstances of each situation.

C. SWORN CERTIFICATE AND AUTHORIZATION TO OBTAIN FINGERPRINTS AND VERIFYING INFORMATION

I swear that the above statements and information are true, complete and correct to the best of my knowledge and belief. I give my permission and will fully cooperate to be fingerprinted for FBI Criminal History Record Check. I authorize the Hawaii State Department of Education to obtain information from my current and past employers and references, and/or from any other source that may lead to the verification of the above-listed information; and waive the right to hold liable those persons for providing information or opinions which they believe to be accurate reflections of my personal background, employment history and/or criminal history. I agree that failure to declare, concealing, or falsifying criminal history, employment history, or background information to the department will constitute sufficient reason for immediate dismissal. I understand that my employment with the Department of Education is conditional upon the completion of appropriate suitability checks and cannot begin (or continue) unless this statement is satisfactorily completed.

Date Legal Signature of Applicant

D. REVIEW BY PRINCIPAL, SUPERVISOR OR HIRING AUTHORITY (See instructions on back page)

Based on my screening of the information provided above, and subject to the validation of criminal history record check, I am satisfied that this person will not pose a risk to the health, safety and/or well-being of children. (Attach additional information and/or explanatory report when applicable.)

By: Signature of Principal, Supervisor or Hiring Authority Date:

FINGERPRINT INFORMATION CARD (FIC)

APPLICANT		LEAVE BLANK		TYPE OR PRINT ALL INFORMATION IN BLACK						LEAVE BLANK		
SIGNATURE OF PERSON FINGERPRINTED		RESIDENCE OF PERSON FINGERPRINTED		LAST NAME <u>NAM</u>	FIRST NAME	MIDDLE NAME	FBI NO. <u>HI0021000</u> DEPT OF EDUC HONOLULU, HI			DATE OF BIRTH <u>000</u> Month Day Year		
DATE		SIGNATURE OF OFFICIAL TAKING FINGERPRINTS		ALIASES <u>AKA</u>	CITIZENSHIP <u>CTZ</u>	SEX	RACE	HGT	WGT	EYES	HAIR	PLACE OF BIRTH <u>POB</u>
EMPLOYER AND ADDRESS		REASON FINGERPRINTED		YOUR NO <u>OCA</u>	LEAVE BLANK							
				FBI NO <u>FBI</u>	CLASS _____							
				ARMED FORCES NO <u>ANU</u>	REF _____							
				SOCIAL SECURITY NO <u>SOC</u>								
				MISCELLANEOUS NO <u>ANU</u>								

1 R THUMB	2 R INDEX	3 R MIDDLE	4 R RING	5 R LITTLE	6 R THUMB	7 R INDEX	8 R MIDDLE	9 R RING	10 R LITTLE
1 L THUMB	2 L INDEX	3 L MIDDLE	4 L RING	5 L LITTLE	6 L THUMB	7 L INDEX	8 L MIDDLE	9 L RING	10 L LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

6 L THUMB

6 R THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY



STATE OF HAWAII
DEPARTMENT OF EDUCATION

April 9, 1992

MEMO TO: Assistant Superintendents, District Superintendent and Principals

FROM: 
Donald R. Nugent, Assistant Superintendent
Office of Personnel Services

SUBJECT: Criminal History, Employment History and Background Checks for
School Personnel; Completion of Personnel Form 90

The Department of Education is now requiring criminal history and other screening checks for employees who work in the proximity of students. To complete one part of this screening requirement, effective immediately, the following employees are required to complete and submit a Personnel Form 90 to their school principal prior to May 15, 1992:

1. All certificated salaried employees who began employment with the DOE on or after July 1, 1990.*
2. All non-salaried certificated and classified employees on the school payroll.**

Hereafter, all new non-salaried employees hired directly by the school are also required to complete and submit Personnel Form 90 at the time of hire.

School principals are requested to distribute the form and explain this requirement to all school employees who meet this criteria. Principals are also requested to assure the proper completion of the forms and to screen the employee responses according to instructions provided on the form. Any item marked with a "yes" will require follow-up to ensure that the individual will not pose a risk to students. This process of screening employees should be completed as carefully and thoroughly as possible.

* Salaried employees who were hired by the Department prior to July 1, 1990 are exempted by law from criminal history checks. Also, Classified salaried employees are already required to complete this type of screening upon initial hire and, thus, need not be re-screened on Personnel Form 90. Note: Employees with multiple DOE employment need to be screened on Personnel Form 90 only once. Salaried Employees who are exempted from criminal history screening are not to be screened again when engaged in other DOE Employment.

** This group includes PTT's; Classroom Cleaners; Adult Supervisors; A+ employees; ASIP employees; coaches, trainers and other sports program employees. Substitute teachers and classified substitute employees are hired by the district office and, thus, will be screened by the appropriate district personnel office. Adult school PTT's need not be screened unless they work on a school campus during school hours.

Memo To: Assist. Superintendents, Dist. Superintendets and Principals
Criminal History Checks; Personnel Form 90
April 9, 1992
Page 2

Although this memorandum primarily addresses school employees, state and district level employees who work at a school site(s) or who regularly work in the proximity of students are also required to complete Personnel Form 90. Appropriate supervisors are requested to complete the screening of these employees.

Completed forms are to be submitted to the district office by May 15, 1992. The district personnel office will further review each form and begin the maintenance of employee background files on a computer system. Personnel Form 90 will be sent to the Hawaii Criminal Justice Data Center (HCJDC) for processing.

The Office of Personnel Services will receive screened responses from the HCJDC for tracking and possible follow-up action.

The Board of Education recently adopted Department of Education Administrative Rules Chapter 7, Title 8. This new rule essentially authorizes the Department of Education to conduct employee background checks to determine each employee's suitability to work in the proximity of children. Suitability checks will be conducted primarily through: (1) employer screening of employees and prospective employees using the Personnel Form 90 procedure that also includes the HCJDC's (in state) criminal history file name check and (2) the fingerprinting of employees and screening by the Federal Bureau of Investigation (FBI).

Salaried employees employed continuously prior to July 1, 1990, are specifically exempted by law from criminal history checks. All other employees including all non-salaried employees working in the proximity of students comprise a screening backlog. The Department of Education is proceeding with a two-pronged plan to address the backlog. Personnel Form 90 screening will be completed immediately through a one-time-only mass screening of school employees. FBI fingerprint screening will be conducted incrementally, based on assigned priorities and subject to the availability of resources. Additional information regarding fingerprinting will be disseminated at the proper time.

Personnel Form 90's will be distributed to schools by the district offices. Please call your district personnel officer or the Office of Personnel Services if you have questions or need assistance. Thank you for your immediate attention and cooperation.

DRN:ASY:mac

Attachment

EMPLOYMENT SUITABILITY CHECK FOR DEPT. OF EDUCATION EMPLOYEES

(CONFIDENTIAL)

A. PERSONAL EMPLOYEE DATA FOR EMPLOYMENT SUITABILITY REVIEW (Please Print or Type)

Name: Last First Middle Address: Street City, State, Z.p

Any alias(es)/former names - including maiden name:

Social Security No.: Date of Birth: Place of Birth: Month/Day/year City, State, Country

Position Title: School or Office Sex

Other previous (identify most recent) or concurrent DOE employment:

B. STATEMENT OF PERSONAL BACKGROUND, EMPLOYMENT AND CRIMINAL HISTORY

- 1. Have you had a teaching certificate or other professional license revoked or not renewed? Yes No
2. Within the past 10 years, were you suspended, fired or asked to resign from any employment or separated from military service under conditions other than honorable? Yes No
3. Have you ever been convicted of any of the following: Sex-Related Offenses? Child Abuse/Neglect Offenses? Substance/Drug Abuse Offenses? Any Violation of the Law (Felony & Misdemeanor) other than minor traffic offense involving a fine of \$50 or less? Yes No
4. Have you ever been diagnosed as having a mental or emotional condition which may affect your ability to responsibly manage, supervise, control and interact with children? Yes No

Use the space below to explain any "yes" responses (write legibly and attach additional sheets if needed). For suspensions or dismissals from employment, please provide the names(s) and address(es) of your former employers. "Yes" answers do not automatically disqualify you from employment. Employment decisions will depend on the circumstances of each situation.

C. SWORN CERTIFICATE AND AUTHORIZATION TO OBTAIN FINGERPRINTS AND VERIFYING INFORMATION

I swear that the above statements and information are true, complete and correct to the best of my knowledge and belief. I give my permission and will fully cooperate to be fingerprinted for FBI Criminal History Record Check. I authorize the Hawaii State Department of Education to obtain information from my current and past employers and references, and/or from any other source that may lead to the verification of the above-listed information; and waive the right to hold liable those persons for providing information or opinions which they believe to be accurate reflections of my personal background, employment history and/or criminal history. I agree that failure to declare, concealing, or falsifying criminal history, employment history, or background information to the department will constitute sufficient reason for immediate dismissal. I understand that my employment with the Department of Education is conditional upon the completion of appropriate suitability checks and cannot begin (or continue) unless this statement is satisfactorily completed.

Date Legal Signature of Applicant

D. REVIEW BY PRINCIPAL, SUPERVISOR OR HIRING AUTHORITY (See instructions on back page)

Based on my screening of the information provided above, and subject to the validation of criminal history record check, I am satisfied that this person will not pose a risk to the health, safety and/or well-being of children. (Attach additional information and/or explanatory report when applicable.)

By: Signature of Principal, Supervisor or Hiring Authority Date:

PERSONNEL FORM 90 (HCJDC) CRIMINAL HISTORY SCREENING

<u>Principal/Designee</u>	<u>Hiring Authorities</u> <u>District</u>	<u>Office of Personnel Svcs.</u>
<ul style="list-style-type: none"> • School A+/ASIP Employees • Clrm. Cnrs., Adult Supvs. • Other Classified Casuals • School PTT's • Athletic Coaches 	<ul style="list-style-type: none"> Substitute Teachers Classified Salaried Emp. District Office Emp. District Hired Casuals 	<ul style="list-style-type: none"> Salaried Teachers State Office Employees Related St. Agency Emps.

RESPONSIBILITIES

Hiring Authority:

- Takes primary responsibility to assure the suitability of employees who work in the proximity of students
- Explains procedure and requirements to employee.
- Assures completion of Personnel Form 90.
- Checks correct identity by viewing official social security card and name check to pictured identification.
- Screens for employment suitability.
- Takes action when person may pose a risk to children.
- Processes Personnel Form 90 to District. (Attaches written explanation of action taken when appropriate.)
- Follows up if notified by OPS of criminal history record (if any)

District Personnel Office:

- Reviews Personnel Form 90 for completeness.
- Checks computer files if further processing is necessary. If not, returns to hiring authority with explanation.
- Records information on computer files.
- Batches and sends in envelope via State messenger service to HCJDC.
- Assists schools if notified by OPS about employee criminal history records.

HCJDC:

- Conducts name search against State of Hawaii criminal history files.
- Forwards Personnel Form 90 to Office of Personnel Services with search results.

Office of Personnel Services:

- Coordinates and facilitates processing.

- Receives Personnel Form 90 from HCJDC.
- Logs results on computer files.
- Files Personnel Form 90 in criminal history files. After 1 year, stores in state archives with disposal timetable.
- Provides copies of criminal history results to hiring authority and district (if follow-up is necessary.) Advises and assists hiring authority as necessary regarding taking appropriate action (further investigation, cancellation or discontinuation of employment process, counseling of employee, termination of employee, etc.)
- Records disposition of follow-up on computer files.

PROCEDURES

1. One-Time-Only Backlog Catch-Up.

Principals and supervisors will require all employees in the backlog assigned directly to their organizational jurisdiction to complete the Personnel Form 90 for screening and processing. Backlogged are certificated salaried employees hired after June 30, 1990 and all non-salaried employees who work in close proximity to students. Deadline May 15, 1992.

District personnel office will require all substitute teachers, substitute classified employees and district employees who work in close proximity to students to complete Personnel Form 90 for screening and processing. Deadline June 30, 1992.

2. New Hires.

Hereafter, all new hire employees (salaried as well as non-salaried) who work in proximity to students must complete the Personnel Form 90 at or prior to the time of hire. Hiring authorities (identified at top of page) are responsible for ensuring the submittal and screening of the forms.

Employees Hired by the School

- School A+/ASIP Employees
- Classroom Cleaners
- Classified Casuals
- Lunchroom Supervisors
- School PTT's
- Athletic Coaches

Employees Hired by the District

- Substitute Teachers
- Classified Salaried Employees
- District Office Employees
- District Hired Casual Employees

Employees Hired at the State Level

- Salaried Teachers
- State Office Employees
- Related State Agency Employees

Responsibilities

Hiring Authority/Supervisor:

- Takes primary responsibility for assuring the suitability of employees to work in the close proximity of students.
- Assists in explaining procedures and requirements to employees.
- Assists District Office and Office of Personnel Services in scheduling of fingerprinting sessions.
- Follows-up if notified of employee criminal history record information, then, consults with District Superintendent (or designee) and the Office of Personnel Services to initiate appropriate action regarding the hiring or retention of the affected employee.
- Protects confidential information.

District Personnel Office:

- Develops plans, priorities and timetable to obtain fingerprints and process fingerprint information cards (FICs) for new employees and backlog of casual and salaried employees. Implements plan.
- Protects confidential information.
- Accesses the computer files to obtain information to support hiring or retention decisions and/or to prevent duplication of fingerprint screening.
- Schedules appointments and obtains fingerprints from employees and potential employees.
- Records processing on computer log.
- Attaches check for FBI processing fees.
- Processes FICs directly to the FBI using standard envelope.
- Follows-up when notified of employee criminal history record concerns. Appropriately assists hiring authority/supervisor in making employee hiring or retention decisions.

- Conducts fingerprint check against federal criminal history records.
- Transmits results to Office of Personnel Services. (Normally about 6-8 weeks turnaround time)

Office of Personnel Services:

- Monitors, coordinates and facilitates processing and system-wide screening including training and technical assistance needs.
- Coordinates the creation, implementation and maintenance of a computer support system.
- Manages checking account for FBI fees.
- Manages confidential information.
- Receives, logs on computer system and maintains FBI criminal history results.
- Provides copies of FBI results to hiring authority/supervisor and district when such results require follow-up. Appropriately advises and assists hiring authority and district to collaboratively make employee hiring and retention decisions.
- Records disposition of follow-up on computer files.
- Updates computer files regarding any information pertaining to the conduct of employees that may affect suitability for working in the proximity of children.
- Coordinates FBI disclosure and challenge provisions.
- Coordinates certificate revocation and employment termination proceedings.

Goals, Priorities and Funding:

The Office of Personnel Services will fingerprint employees hired by the state level. Each district office will develop plans and priorities to fingerprint employees hired at the District and the School levels. The availability of funding and other resources will determine how soon Department of Education employees will be fingerprinted.

FBI:

INSTRUCTIONS

1. Greet employee warmly to put him/her at ease.
2. Explain to the employee that the DOE is authorized by law to conduct criminal history record checks of its employees and that this is done through a name search of the Hawaii files and a fingerprint check of the FBI files. Answer any questions the employee may have about fingerprinting. Assist the employee to correctly complete the Fingerprint Information Card (FIC).
3. Ask the employee for at least two identification cards (preferably at least one with a picture identification) and verify that he/she is the correct person. Recheck FIC information to verify the accuracy of form completion.
4. Put on gloves and check the employee's hands:
 - a. If there are open cuts, sores, rashes, etc., explain to the employee that the fingerprinting cannot be done and that he/she should make an appointment to be fingerprinted at a later date when the cuts/sores/rashes are healed.
 - b. If the employee has dry hands, ask him/her to apply some hand lotion.
 - c. If the employee has wet, clammy hands, dry each finger before fingerprinting.
 - d. If the employee has missing/amputated finger, try to fingerprint whatever you can. Indicate in the appropriate space on the card that the finger has been amputated, is missing, etc.
5. Roll the employee's fingers in the ink and fingerprint one finger at a time.
6. Check the fingerprints and re-do if necessary.
 - a. If one or two prints are imperfect, use the print tabs. Apply the print tab to the finger for a print and paste onto the card if the print is satisfactory.
 - b. If more than two prints are imperfect:
 - 1) Re-do the entire card; or
 - 2) use a maximum of two print tabs; for other imperfect prints, take prints on a fingerprint card, cut the prints out, and staple them to the original card.
7. If all prints are satisfactory, ask the employee to wash his/her hands with soap and thank him/her.
8. Input appropriate information into the computer file.
9. Attach a \$23 check made payable to the Federal Bureau of Investigation and
10. Insert fingerprint cards in FBI envelope (up to 10 cards per envelope) and mail to FBI.

June 5, 1992

NOTICE

PROSPECTIVE EMPLOYEE NOTIFICATION OF CONDITIONAL HIRING PENDING THE COMPLETION OF CRIMINAL HISTORY, EMPLOYMENT HISTORY AND BACKGROUND SCREENING PROCESS

Effective immediately, hiring and continued employment of all employees in the Department of Education (DOE), shall be conditional upon the satisfactory completion of the criminal history record, employment history, and background screening process authorized by Chapter 8-7, Hawaii Administrative Rules which became effective on April 3, 1992. This screening process is ongoing and continuous, thus, conditional employment shall remain ongoing and continuous subject to the possible later discovery of evidence reflecting the improper self disclosure of required information.

As a prospective new employee of the Department of Education, or related government agency or private contractor who will work in the close proximity of students, you are required to complete the following employment screening:

- DOE Form 90 Employment Suitability Check for Department of Education Employees and related screening activities. (Instructions and procedures are on the form.)
- FBI Criminal History Check (and related screening activities) based on the submittal of your fingerprints as recorded on the Fingerprint Information Card (FIC).

Your hiring process is subject to cancellation or discontinuation at any future time (there is no time limit) if it is determined that you intentionally or unintentionally failed to declare, concealed or falsified requested information; or failed to cooperate fully with screening procedures; or if it is determined by the DOE that you have a criminal history record, employment history or background that may pose a risk to the health, safety or well-being of students. Should your employment process be discontinued at any time after you begin working on the job, you may receive entitled compensation for time worked, if any, however, you will not be entitled to any rights to continued employment.

PROSPECTIVE EMPLOYEE: PROCEDURAL RESPONSIBILITIES FOR COMPLYING WITH CHAPTER 8-7, HAWAII ADMINISTRATIVE RULES

Department of Education (DOE) employees who work in close proximity to children shall be of reputable and responsible character. You may not be eligible for employment if you have a criminal history record, employment history, or background involving violence, alcohol or drug abuse, sex offense, offense involving children or any other circumstance which indicates that you may be a risk to the health, safety, or well-being of children.

You are required as a prospective new DOE employee to:

1. Take careful responsibility to reveal any past behavior or record that may reflect negatively on your suitability to work in close proximity to students.
2. Carefully read and understand the NOTICE "Prospective Employee Notification of Conditional Hiring Pending the completion of Criminal History, Employment History and Background Screening" and to request clarification and explanation if required.
3. Submit all required Department of Education employment application documents.
4. Accurately complete Personnel Form 90 "Employment Suitability Check for Department of Education Employees."
5. Understand and accept conditional employment which may be canceled or discontinued subject to the completion of criminal history, employment history and background screening.
6. Cooperate fully and promptly to complete fingerprint screening.
7. Cooperate fully in providing or revealing follow-up information to clear-up any past behavior or record that could indicate that you may be a threat to the health, safety or well-being of students.
8. If appropriate, appeal for the correction of FBI records.
9. If appropriate, petition for the determining of current suitability for working in close proximity to students.
10. Keep aware of other appeal rights, if any.

RULES AND REGULATIONS

[Order 556-73]
**PART 16-PRODUCTION OR
 DISCLOSURE OF
 MATERIAL OR
 INFORMATION**

**Subpart C-Production of FBI
 Identification Records in
 Response to Written
 Requests by Subjects Thereof**

By order dated September 26, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee of \$17.00.

Since the FBI Identification Division is not the source of the data appearing in identification records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and Federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General, dated September 26, 1973, and pursuant to the authority delegated to the Director, FBI by 28 CFR 0.85(b), Part 16 of 28 CFR Chapter I, is amended by adding the following new Subpart C:

§ 16.30 Purpose and scope

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record

An FBI identification record, often referred to as a "rap sheet", is a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to FBI, Identification Division, Room 10104, Washington, D.C. 20537-9700, or may present his/her written request in person during regular business hours to the FBI Identification Division, J. Edgar Hoover F.B.I. Building, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for production of identification record

Each written request for production of an identification record must be accompanied by a fee of \$17.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

§ 16.34 Procedure to obtain change, correction or updating of identification records

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.

PROCEDURE TO REFUSE TO HIRE, CANCEL OR DISCONTINUE THE HIRING PROCESS FOR DEPARTMENT OF EDUCATION PROSPECTIVE EMPLOYEES CONDITIONALLY HIRED SUBJECT TO THE COMPLETION OF SCREENING

RESPONSIBILITIES

Prospective Employee:

- Complies and cooperates fully in disclosing required information and in completing all required employment screening procedures including fingerprinting.
- Accepts conditional employment process which may be canceled or discontinued based on the results of on-going and continuous screening. There is no time limit to the discovery of inaccurate disclosure.
- Cooperates and assists in verifying and clarifying information when requested.

Hiring Authority/Supervisor:

- Examines screening information.
- May involve affected (prospective) employee in verifying or clarifying information.
- Conducts further investigation, when appropriate.
- Consults with employee's supervisor, District Superintendent or designee and the Office of Personnel Services when contemplating possible action arising from a prospective employee's on-going and continuing screening process.
- Delays or suspends employment process without pay as necessary while conducting further investigation. Notifies prospective employee of such action in writing.
- Determines the prospective employee's suitability to work in the close proximity of children according to appropriate guidelines and criteria.
- Notifies and provides explanation to prospective employee if the following action is taken:
 - Refusal to hire.

- Cancellation of employment process.
- Discontinuation of employment process.

- Submits report to District Superintendent with records, information and justification for action.
- Processes appropriate personnel and payroll transactions.

District Superintendent or Designee:

- Reviews Personnel Form 90 and other pertinent screening documents and records as they are submitted by the hiring authority or as they become available through the screening process.
- Advises and assists hiring authority or employee supervisor in reviewing screening information that may indicate non-suitability for working in the close proximity of children.
- As necessary, provides hiring authority with investigative assistance and other support services.
- Examines and forwards report from hiring authority to Office of Personnel Services.

Office of Personnel Services (Serving as Superintendent's Designated Representative):

- Advises and assists hiring authority, employee supervisor, District Superintendent or designee as appropriate.
- Supports the hiring authority by appropriately providing investigative assistance.
- Represents the Superintendent in coordinating and assuring the proper application of Chapter 8-7, Hawaii Administrative Rules.
- Receives and files records.
- Manages information on computer files.

**PETITIONING FOR DETERMINATION OF CURRENT SUITABILITY FOR
WORKING IN CLOSE PROXIMITY TO STUDENTS**

RESPONSIBILITIES

Applicant or Other Affected Person

1. Inquires and seeks information regarding eligibility and procedural information.
2. Submits to the Office of Personnel Services a written petition for determination of current employment suitability for working in close proximity to students with supporting documentary evidence of rehabilitation or behavioral reform.
3. Remains accessible for possible follow-up questioning and for possible participation in hearings or meetings to review the petition.
4. Assumes full and sole responsibility for the submittal and presentation of a truthful, accurate and persuasive petition.

Office of Personnel Services

1. Decides to accept or not accept a petition and notifies petitioner of decision.
2. Reviews accepted petitions to make an informed judgment regarding the petitioner's current suitability to work in the close proximity of students. (May also decide to appoint a panel to review the petition.)
2. As necessary to ascertain the facts and circumstances concerning the petition, may conduct investigative activities such as:
 - A. Contacting references, employers, supervisors, co-workers, potential employers and other persons who may provide additional insights into the behavior and character of the petitioner.
 - B. Soliciting the assistance of the petitioner to explain and present additional information.
 - C. Conducting a hearing to receive testimony and input.
3. Submits report and recommendation for the consideration of the Assistant Superintendent for Personnel Services who will make a final decision and notify the petitioner and other affected parties of the decision.
4. Permits successful petitioners to apply for and be considered for DOE employment for which they otherwise qualify under the terms and conditions of the Assistant Superintendent's ruling.

FILE

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



JAMES H. TAKUSHI
DIRECTOR

JAMES C. KIRCHHOFER
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

January 16, 1998

TO: William Hoshijo, Executive Director
Hawaii Civil Rights Commission

FROM: James H. Takushi, Director 
Department of Human Resources Development

SUBJECT: PROPOSED ADMINISTRATIVE RULES ON ARREST AND COURT
RECORD DISCRIMINATION

The Department of Human Resources Development respectfully submits its comments on the proposed administrative rules to administer the arrest and court record employment discrimination under Section 378-2, Hawaii Revised Statutes (HRS) in the attached testimony for your consideration.

Attachment

State Department of Human Resources Development
Director James H. Takushi

Testimony on Hawaii Civil Rights Commission's Proposed Administrative
Rules on Arrest and Court Record Employment Discrimination

January 16, 1998

Chairperson and Commissioners:

I am not going over the details and technical arguments against the Civil Rights Commission's proposed administrative rules change. I am sure the attorneys present will debate these issues today. I speak as a Human Resource professional and a citizen of this State. I am proud that we are a liberal State and the people of Hawaii are generally treated fairly. But the changes you propose may be stepping over the line of fairness to those that put their life savings in their business. Some of them are successful and some are merely surviving, and some have gone bankrupt. The employer is prohibited from asking a broad question like "Have you ever been convicted of a violation of law within the past 20 years?". Instead, the employer may ask a prospective employee, only after making a job offer of employment (post-offer), whether the employee has a specific criminal offense that is statutory exempted or a potential BFOQ. Conversely, this means that employers cannot ask any questions during the selection process related to arrest or conviction records period. This also requires employers to have expert knowledge of the Hawaii's penal code, penal codes of the Federal, military, and other state and municipal governments, and the ability to identify a valid relationship between each possible criminal offense and the job being filled. This is clearly an impractical and impossible standard for any employer to meet - of course the lawyers business should experience economic revitalization.

As the central personnel agency for the State of Hawaii, the Department of Human Resources and Development (HRD) has the statutory authority and oversight under Section 76-18, Hawaii Revised Statutes, in ensuring that all civil service new hires are deemed suitable for civil service employment, and once employed, maintain their employment suitability. Contrary to the Commission's assumption of discrimination occurring once an employer has knowledge of past criminal arrests or convictions, the State's experience for the past 27 + years in conducting post-offer criminal history background checks for all new civil service hires has not resulted in proven court record discrimination.

Based on the proposed rules, it appears that the HCRC has assumed that once employers obtain information on applicants' criminal history backgrounds, employers will automatically misuse this information and discriminate against criminal offenders by making decisions to not hire solely based on the employers' knowledge of their criminal history backgrounds. Should these rules be promulgated, there will no longer be a delicate balance between the employer's rights and needs to make informed hiring decisions and the civil rights of qualified criminal offenders to be gainfully employed.

Employers will no longer make informed hiring decisions because the rules prohibit asking broad questions relating to prospective employees' criminal history backgrounds and the standards to ask about specific criminal offenses are overly burdensome for any employer to comply with. Thus, by making uninformed or limited hiring decisions, employers will inevitably incur prohibitive legal and administrative costs and unforeseen liabilities should they hire unsuitable individuals who have not sufficiently rehabilitated.

Your rules state that an employer can not ask a prospective applicant about criminal offenses during the recruitment and selection process to make an informed hiring decision. Thus, for example, an employer unknowingly hires

and employs a criminal offender with a criminal history of violence and patient abuse as a nurse's aid in a geriatric hospital. While employed, the individual repeatedly abuses and threatens his patients, and this illegal behavior is discovered after a patient's death is investigated. The family of the deceased patient files a negligent hiring and wrongful death lawsuit because a criminal history background check (which is public information) found that the employee had a series of recent criminal offenses that the employer failed to consider a possible BFOQ relationship with the nurse's aid job. How will employers protect themselves from negligent hiring or negligent retention lawsuits and unforeseen liabilities if they comply with the proposed rules? We do not know the answers. However, we do know that employers will be spending more of their resources on administrative recruitment, staffing and legal defense costs.

Further, the BFOQ standard as proposed under the rules is more stringent and burdensome than what is required in charges of EEO discrimination covered by the Federal Uniform Guidelines for Employee Selection Procedures dated August 1978. Furthermore, your rules are inconsistent with new Federal laws such as the Lautenberg Amendment to the Federal Gun Control Act, Omnibus Transportation Testing Act, Drug Enforcement Administration (for hospital pharmacy personnel), and Federal Aviation Administration. These Federal laws require that employers check the backgrounds, including criminal history records, of all prospective and current employees, and determine their suitability for employment.

We strongly believe that it will be an administrative nightmare for employers to comply with the employer standards set forth by the rules. We are additionally concerned that the private sector employers, particularly the "mom and pop" small businesses, will be unable to comply with the overly

burdensome standards and requirements put forth in the proposed rules. We foresee that the economic impact of the proposed rules will result in unwieldy, increased administrative costs to do business in Hawaii, and escalated litigation costs for businesses to defend their employment decisions on the bases of alleged arrest and court records discrimination, negligent hiring and negligent retention.

For these reasons, we respectfully cannot support the proposed administrative rules on arrest and court record discrimination as drafted by the HCRC. While we agree with the Commission's intent to affirm the State law that prohibits employment discrimination based on arrest and court records, we do not think the rules propose employer standards that balance the employers' right to make informed hiring decisions that do not discriminate based solely on criminal history records and the need for society to employ convicted individuals who have demonstrated sufficient rehabilitation. to warrant public trust.

BENJAMIN J. CAYETANO
GOVERNOR



SUSAN M. CHANDLER, M.S.W., Ph.D.
DIRECTOR

KATHLEEN G. STANLEY
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 16, 1998

TO: Hawaii Civil Rights Commission
William Hoshijo, Executive Director

FROM: Susan M. Chandler, Director *Susan M Chandler*

SUBJECT: Proposed Rules to Arrest and Court Record Discrimination

Although the Department of Human Services (DHS) has exemptions under Hawaii Revised Statute (HRS) 831 and the HRS 352-5.5, we have reviewed your proposed rules regarding the Department of Labor and Industrial Relations' Chapter 46, Civil Rights Commission, Subchapter 10, Arrest and Court Record Discrimination and would like to submit the following comments and concerns:

1. Under the HRS 352-5.5., the DHS is required by statute to conduct comprehensive background investigations on staff and prospective staff members of the Office of Youth Services' Hawaii Youth Correctional Facility (HYCF) who are directly involved with the treatment and care of the committed youth. These comprehensive background investigations which are conducted by the Attorney General's Office include such things as name inquiries into the Hawaii Criminal Justice Data Center (HCJDC) and the National Crime Information Center (NCIC), FBI fingerprinting, current and former employers, personal references, and one-on-one interviews. An annual name inquiry into the HCJDC criminal history record files for all HYCF employees is also required under this statute. The statute requires these investigations and background checks to assure the reputable and responsible characters of HYCF staff members.

If an individual has a conviction record reported via the HCJDC, NCIC or FBI fingerprinting, the person is given an opportunity to clarify the circumstances which led to the conviction and provide any other information to assist us in our review. Information obtained during the background investigation is also reviewed and used to determine if the individual has shown sufficient rehabilitation to warrant public trust and to determine if he/she is suitable for employment for the position for which he/she was hired. Since the majority of our positions in the HYCF come into direct contact with the juvenile wards committed to the facility, the staff members serve as role models and thus must possess mature judgment with an established reputation for integrity and impartiality. If our staff members do not possess these characteristics, it would negatively affect the department's ability to carry out the HCYF's mission.

2. §12-46-201, General Policy, states that for an employee, if there is a potential bona fide occupational qualification (BFOQ) and the employee has a conviction record for a specified offense within the potential BFOQ, in evaluating the suitability of the individual, the employer shall consider the length of service and whether the individual has effectively performed the job functions and responsibilities.

§12-46-205(e), pertaining to unlawful discriminatory practices, consideration of arrests or charges where there is no conviction, states, "An employer or other covered entity may bar an employee from the premises, with pay, if the individual while currently employed has been arrested for or charged with an offense against the person, under chapter 707, HRS, or a similar offense in the jurisdiction where the offense allegedly occurred; the arrest or charge has not been resolved; and the type of offense indicates that the individual may reasonably be considered a substantial threat to the safety of other employees or customers."

The DHS believes that these issues pertaining to an employee borders on dealing with employee relations matters. As such, this rules should not outline the issues that management must consider.

3. §12-46-206(b) Statutory Exemption, states that "An employer or other covered entity has the burden of establishing the specific offenses within the statutory exemption and must do so before conducting an inquiry."

The DHS believes that the burden of establishing specific offenses covered by statutory exemption before conducting an inquiry is unreasonable. Due to the nature of the work in the various programs within the department, there are numerous offenses that seriously contraindicate an applicant's suitability for employment. To list each specific conviction against each position would be unreasonable. Additionally, for Hawaii Youth Correctional Facility, Child Protective Services, Housing programs and other programs in the department requiring close relationships between employees and clients, a conviction *in itself* may raise suitability concerns. An individual's background must demonstrate respect for the law (a law abiding citizen) and support reputable, responsible character. Hiring decisions placing too much emphasis on an applicant's civil rights may subject clients to increased risk and expose the State to increased liability.

4. §12-46-210((a)(d), Terms, conditions and privileges of employment, states "it is unlawful discriminatory practice for an employer or other covered entity to make inquiries as to whether an employee has an arrest, court record, or conviction record unless there is a statutory exemption, potential BFOQ, or an inquiry is allowed under this subchapter" and "it is an unlawful discriminatory practice for an employer of other covered entity to refuse to hire or employ, or to bar or discharge from employment, or to otherwise discriminate against an applicant or employee in compensation or in the terms, conditions, or privileges of employment on the basis of the individual's arrest record, court record, or conviction record unless there is a statutory exemption, potential BFOQ, or the action is allowed under this subchapter...."

As indicated above, due to the nature of our HYCF, we must consider an applicant or employee's conviction record to determine the individual's suitability for employment or continued employment. If the HYCF hired their staff members without their ability to conduct these overall comprehensive

January 16, 1998

background investigations which includes inquiries into the various criminal history databases, we would be jeopardizing the health and safety of our juvenile wards, the HYCF staff and the general public.

5. The rules prohibit pre-employment inquiries of applicants and removes an employer's discretion in determining when they can request information from an applicant regarding their conviction history. Requiring an employer, including the HYCF, to ask their prospective new hires, post offer, to complete necessary forms, will affect our ability to efficiently and expeditiously hire our staff members.

While the DHS supports the initial intent of the proposed rules, which serve to protect the civil rights of individuals relative to their arrest/court record, we believe said rules circumvent the Department's legal responsibility to protect the clientele we serve and may leave the state liable to charges of negligent hiring and/or negligent retention.

Based on the highly sensitive and close nature of the services we provide to the community while fulfilling our statutory responsibilities, we strongly believe that we have justification to inquire into an applicant's prior criminal history and/or court records to determine that individual's suitability for employment. In doing so, we will continue to be able to make the best hiring decisions possible. The civil rights of all applicants and employees have always been an important consideration, and the Department wishes to retain the option to consider a person's prior criminal history and conviction record only where successful job performance is predicated on a clean record.

For these reasons, the DHS opposes the Department of Labor and Industrial Relations' Chapter 46, Civil Rights Commission, Subchapter 10, Arrest and Court Record Discrimination and we are in full support of the Department of Human Resources Development's position.

Thank you for providing us with the opportunity to comment on this matter.

FILE

BENJAMIN J. CAYETANO
GOVERNOR



KEITH M. KANESHIRO
DIRECTOR

CORA K. LUM
DEPUTY DIRECTOR

JEFF YAMASHITA
DEPUTY DIRECTOR

MARK K. OTO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON
Proposed Administrative Rules Relating to Arrest and Court Record Discrimination
by
Ted Sakai, Administrative Assistant to the Director
Department of Public Safety
to
Department of Labor and Industrial Relations
Civil Service Commission

January 16, 1998

Chairperson and Commissioners:

The Department of Public Safety opposes the proposed Administrative Rules relating to Arrest and Court Record Discrimination. The Department supports the general intent of the laws relating discrimination on the basis of arrest and court record. However, we believe that the proposed Rules, offered a quarter of a century after the enactment of these laws, go far beyond their intent.

In the early 1970's, persons with arrest and conviction records had extreme difficulty in finding suitable employment. Job applicants were required to answer questions relating to arrests, even those that did not lead to convictions. And persons were frequently denied jobs on the basis of these arrests alone.

At that time, the law allowed the State to bar entry by persons with criminal records into professions and trades for which licenses or certificates were required. This occurred because boards and commissions were allowed to deny licenses and certificates upon a finding of "moral turpitude". For example, persons with criminal records could not obtain licenses to become barbers.

In this environment, the laws prohibiting discrimination on the basis of arrest and court records were clearly in order. Since that time, there has been little, if any controversy of abuses that would require a strengthening of the law. We raise this point because the proposed Rules seems to shift the burden to employers in such a way that was not contemplated by the Legislature. In other words, the proposed Rules seem to reach beyond the law.

1199

This concerns us because our Department employs more than 2000 people, the large majority of whom work in correctional facilities or as law enforcement officers with police powers. Many of the remaining positions have access to private, confidential and/or sensitive information, such as personnel records, inmate records, security plans, financial information, and operating policies and procedures. Therefore, it is imperative for us to be able to freely access and use arrest or court records when making employment decisions. This is important enough that §353C-5 of the Hawaii Revised Statutes authorizes us to conduct background checks which include criminal history records on staff members and prospective staff members who are involved with the treatment and care of inmates or who have powers of arrest. Any erosion of the authority granted by this statute, or any additional burdens on our ability to conduct criminal history checks for positions not explicitly covered by the statute, would seriously impact the essence of our business.

Our Department is also covered by the general provisions allowing the State of Hawaii to refuse, suspend or revoke employment to persons who is convicted of a criminal offense, if the offense directly relates to the job. We believe that the proposed rules will undermine the explicit authority we enjoy under these statutes, or add unnecessary requirements on our already overburdened staff. For example:

1. §12-46-204 requires that “[A]ll information related to or obtained regarding the arrest record, court record, or conviction record of an applicant or employee shall be kept in a file separate from the individual’s personnel file and shall not be disclosed to persons who are not entitled to have access to the information” This section contains no exemptions, so we presume that we would have to comply with it. We are already required by law and collective bargaining agreements to keep personnel records confidential, and to limit access only to authorized persons. An additional file would confer no additional protection to applicants or employees, but would create a burden for us. We recommend that this section be deleted, or at the least, that we be specifically exempted from it.
2. §12-46-205(e) allows an employer to “bar an employee from the premises, with pay, if the individual while currently employed has been arrested for or charged with an offense against the person, under chapter 707, HRS” Chapter 707 involves crimes against the person. These are serious crimes, for which an employer may be justified in barring an employee from the premises. But what about such crimes as sale of drugs, theft from the premises, or possession of prohibited firearms, none of which fall under chapter 707? An employer may be equally justified in barring such an employee from its premises. Although this

section does not impact us, we believe that you should consider expanding it to cover more crimes.

3. §12-46-205(f) allows us, as an agency with a statutory exemption, to bar an employee who has been arrested from our premises, but requires that we pay that employee during this period. The various collective bargaining agreements allow us to place an employee under investigation on leave of absence without pay for up to thirty days. We ask that this section be amended to allow us to bar an employee who has been arrested without pay.
4. §12-46-206 would require us to establish the specific offenses within the statutory exemption. This is unreasonable. §353C-5 allows us to conduct checks relating to any criminal conviction other than a minor traffic violation involving a fine of fifty dollars or less. Our list could be more than twenty pages long. We assert that the statute is clear enough, and we should not have the burden of establishing specific offenses.

With regard to employees not covered under §353C-5, we would have the burden of justifying why an offense has a direct relationship with each specific job. Many of our employees work in correctional facilities, but are not directly involved with the treatment and care of inmates. Some employees provide direct support to law enforcement officers. Employees in the Administrative Division routinely handle sensitive information. We would be loathe to hire anyone with any record of criminal convictions or unresolved arrests, except in exceptional circumstances. Under this section, we would have "the burden of establishing the specific offenses" that would disqualify a persons from a specific position. This would be extremely cumbersome, and subject us to needless challenges. We ask that you exempt us from this requirement.

5. §12-46-208 relating to pre-employment offer practices, indicates that we will not be able to inquire about an applicant's criminal history until after we make an offer of employment. Such a requirement would lessen our efficiency, result in the unnecessary expenditure of resources, and may eventually lessen the quality of the employee we eventually hire. For example, if we have ten positions in recruitment, we would make offers of employment to the ten highest rated applicants. We would then be allowed to conduct the background checks. If we find that an applicant has been convicted of a crime, we would withdraw our offer. We would then have to make an offer to another applicant before we could check on this applicant's criminal history. Hopefully, this next applicant is still available for

employment, and hopefully, this applicant will clear the check. Over time, our list of eligibles would be lessened, as applicant without offers take other jobs.

We request that we be exempted from this requirement.

6. §12-46-210 (b) relating to inquiries regarding employees who may have a criminal record, is vague. It requires us, when making such inquiries, to "seek only information to address the concerns which make the inquiry necessary." We ask that you clarify this limitation, perhaps by providing examples of what is and what is not permissible?

For these reasons, we ask that you reconsider the need for these rules. If you should decide to proceed with the rules, we request that it be made clear that our Department is exempted to the extent described above.

BENJAMIN J. CAYETANO
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY

250 South King Street, Room 412
Honolulu, Hawaii 96813

587-1291

FILE

ALFRED K. BEAVER, SR.
CHAIR

MARY JUANITA TIWANAK
MEMBER

LANI RAE SUIO GARCIA
MEMBER

ANTHONY C. COMMENDADOR
ADMINISTRATOR

No. _____

Testimony by Anthony Commendador,
Administrator for the Hawaii Paroling Authority,
on

Hawaii Administrative Rules,
Title 12, Department of Labor and Industrial Relations,
Subtitle 7, Boards, Chapter 46, Civil Rights Commission, Subchapter 10,
Arrest and Court Record Discrimination.

FAX 587-1314

Dear Commission Members:

The Division of Hawaii Paroling Authority is in full support of the proposed Administrative Rules governing Arrest and Court Record Discrimination.

We support the proposed rules because they clearly establish a focus on the merits of the applicant's skills and abilities to perform a job and intends to reduce or eliminate discrimination based on criminal history at the application and interview stages of employment. For many years, we have taught offenders how to present themselves well to employers and encourage them to get to the interview stage of their employment search. Unfortunately, many offenders could not get that far and ultimately settled for less desirable jobs in order to comply with the conditions of parole.

The U.S. Department of Justice (NIJ Research in Brief, 12/96) reports that U.S. prisons release more than 400,000 criminal offenders into the community annually. Most of those released will not remain crime free, and national statistics show that within 3 years of release, 40 percent will be returned to prison or jail. Experts debate the reasons for such high recidivism rates, but all agree that the lack of adequate job training and work opportunities is a critical factor. With no legitimate income, many resort to crime. We not only believe that "rehabilitation of individuals convicted of a crime is essential to society and that gainful employment is necessary for rehabilitation," we are also convinced that an individual in gainful employment, earning a decent

wage and enjoying the work, will be less likely to re-offend. If we can employ more offenders in our community, then we can ultimately have a safer community.

It is obvious that crime is one of the foremost issues on the minds of the public. It dominates nightly newscasts, casual conversations, and takes up the attention and resources of government. Clearly absent in most of the dialogue is a focus on what needs to be done to combat crime from the perspective of those that have to work with offenders, i.e., probation, parole, substance abuse treatment programs, etc. This is surprising, given the fact that the U.S. Department of Justice calculates that nearly three-fourths (71%) of those under some form of correctional control in 1996 were being supervised in the community on probation or parole. This represents nearly four (3.9 million) million offenders under community supervision. We hear much about prisons, and little or nothing about programs or efforts that keep offenders at work or school, supporting their families, receiving treatment and contributing to their communities.

The Division of the Paroling Authority currently has 1,832 parolees assigned to field supervision. The unemployment rate is over 22 percent. We suspect that part of the problem parolees are experiencing in the job market is discrimination based on their criminal history. Whether or not discrimination truly exists in the job market, only the employers can truly answer this, however, we certainly believe that the perception of offenders is that many employers will not hire an ex-con. This is constantly being perpetuated from incarceration to parole and has become a way of thinking for offenders. We treat this mind set as an employment barrier that must be overcome, all vocational and pre-employment programs for offenders must deal with this issue. We are pleased to see the Civil Rights Commission taking a stand on this issue by clearly delineating the criteria to which employers must comply. Again, we fully support the idea behind the Administrative Rules, that employers should not be allowed to discriminate against prospective employees due solely to their criminal history.

FILE

THE JUDICIARY • STATE OF HAWAII

26 JAN 16 AM 11:25

Written testimony on the proposed rules on Arrest and Court Record

HAWAII ADMINISTRATIVE RULES
TITLE 12
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
SUBTITLE 7
CHAPTER 46
CIVIL RIGHTS COMMISSION
SUBCHAPTER 10
ARREST AND COURT RECORD DISCRIMINATION

Section 12-46-206(b) **Statutory exemptions.** An employer or other covered entity has the burden of establishing the specific offenses within the statutory exemption and must do so before conducting an inquiry.

COMMENT: This section is vague and ambiguous. It is not clear how employers are to establish the specific offenses within the statutory exemption.

This section also creates an overly burdensome requirement on entities with statutory exemptions to establish the specific offenses before conducting an inquiry.

Thank you for allowing the Judiciary the opportunity to comment on the proposed rules on arrest and court record. Should you have any further questions, please do not hesitate to contact:

Susan H. Kitsu
Affirmative Action Officer
The Judiciary • State of Hawaii
417 S. King Street, Room 209
Honolulu, Hawaii 96813
(808) 522-6448

July 20, 1954

Dear Mr. [Name]

I have your letter of July 15, 1954.

I am sorry that I cannot give you a more definite answer.

I will try to get back to you as soon as possible.

Very truly yours,

[Name]

[Address]

[City, State, Zip]

[Name]

[Address]

[City, State, Zip]

[Phone Number]



Office of the Administrative Director – Affirmative Action Office

THE JUDICIARY • STATE OF HAWAII • 417 SOUTH KING STREET • ALI'IOLANI HALE
HONOLULU, HAWAII 96813-2902 • TELEPHONE (808) 522-6448 • FAX (808) 522-6440 • TTY (808) 539-4853

Michael F. Broderick
ADMINISTRATIVE DIRECTOR

Clyde W. Namu'o
DEPUTY ADMINISTRATIVE DIRECTOR

'98 JAN 16 11:35
AFFIRMATIVE ACTION OFFICER

CIVIL RIGHTS COMMISSION
HONOLULU, HI

January 16, 1998

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Re: Proposed rules on arrest and court record

Dear Mr. Hoshijo:

Please find enclosed seven copies of written testimony on behalf of the State of Hawaii, Judiciary. We appreciate the opportunity to comment on the proposed rules. Should you have any questions regarding our submission, please do not hesitate to contact me at 522-6448. Thank you for your consideration of our testimony.

Very truly yours,

Susan H. Kitsu
Affirmative Action Officer

enc.

STATE OF CALIFORNIA
COUNTY OF [illegible]

[illegible]

[illegible]

[Handwritten signature]

Maryanne W. Kusaka
Mayor



Hartwell H. K. Blake
County Attorney

OFFICE OF THE COUNTY ATTORNEY

COUNTY OF KAUA'I, STATE OF HAWAII
MO'IKEHA BUILDING
4444 RICE STREET, SUITE 220
LIHU'E, KAUA'I, HAWAII 96766
TEL (808) 241-6315
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Jonathan Chun, First Deputy
Galen T. Nakamura
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Blaine J. Kobayashi
Wayne S. Shimizu
~~Jay Murobawa~~
Sanjay L. Bhatt
Aric T. Fujii

January 15, 1998

Mr. William Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813

Dear Director and Commission members:

Re: Adoption of Proposed Rules, Title 12, Subtitle 7, Chapter 46,
Subchapter 10, Arrest and Court Record Discrimination

On behalf of the County of Kauai, I thank you for the opportunity to testify regarding the proposed rules. While the County supports the work of the Commission and the rehabilitation of convicted persons, it cannot support the proposed rules as currently worded primarily for the reasons set forth below.

I. The Proposed Rules are in Conflict With Existing Statutes and Laws

It is a well accepted rule of administrative law that an agency's rule cannot contradict or conflict with the statute it intends to implement. Agsalud v. Blalack, 67 Haw. 588, 699 P.2d 17 (1985). In addition, it is also recognized by the Courts that administrative rules, like statutes, should be construed and interpreted as consistently as possible with statutes covering the same subject matter. See generally Williams v. Hawaii Medical Service Association, 71 Haw. 545, 798 P.2d 442 (1990); Kam v. Noh, 70 Haw. 321, 770 P.2d 414 (1989). See also HRS Section 1-16 which expressly states that "[l]aws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another."

Based on the above, it is the County's position that the proposed rules not only conflict with the other provisions contained in HRS Chapter 378, but also with the express provisions set forth in HRS Chapter 831. Furthermore, the rules also attempt

to overrule the United States Ninth Circuit Court of Appeals' decision in Kinoshita v. Canadian Pacific Airlines, Ltd., 803 F.2d 471 (9th Cir. 1986).

A. The Proposed Rules Conflict With The Provisions Set Forth In HRS Section 378-3(1)

HRS Section 378-3(1) expressly provides that:

Nothing in this part [Discriminatory Practices] shall be deemed to:

- (1) Repeal or affect any law, ordinance, or government rule having the force and effect of law.**

(emphasis added).

The proposed rules violate this express statutory limitation by attempting to repeal or affect the Rules of the Civil Service Commission of the County of Kauai ("Civil Service Rules"). Currently Section 3-13 of the Civil Service Rules expressly allows the Director of Personnel Services to disqualify any applicant for:

- (6) Habitual, or excessive use of drugs, narcotics, or intoxicating beverages which are detrimental to the proper performance of the duties and responsibilities of the class or position.
- (7) Illegal use of drugs or narcotics;
- (8) Conviction of a penal offense which affects the applicant's suitability to properly perform the duties and responsibilities of the class or position and investigation indicates that the applicant has not been sufficiently rehabilitated to warrant public trust.
- (9) A record of misconduct which is detrimental to the proper performance of the duties and responsibilities of the class or position;
- (10) Conviction of any act, attempt, or conspiracy to overthrow the state or the federal government by force or violence.

While it might be argued that the proposed rules only supplement and not conflict with the County's Civil Service Rules, this argument is false in its application. The proposed rules expressly places the burden of proving the impact of the applicant's criminal record on the County's work force on the County. The shifting of this burden significantly differs from the express provisions of the Civil Service Rules and HRS Section 91-10(5) which expressly provides that "[e]xcept as

otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion." This statutory provision is meant to clearly recognize the long established principle that an administrative agency's decision are accorded the presumption of validity and the person appealing has the burden of showing that the decision was unreasonable and unjust in its consequences. See generally Kilauea Neighborhood Association v. Land Use Commission, 7 Haw. App. 227, 751 P.2d 1031 (1988).

B. The Proposed Rules Conflict With The Express Provisions Of HRS Chapter 831.

In addition to attempting to repeal or ignore the express provisions of HRS Section 378-3.1(b), the proposed rules also attempt to repeal the express provisions of HRS Section 831-3.1 which allow the State and Counties to consider a person's criminal records.

HRS Section 831-3.1(b) expressly provides that:

[T]he State or any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (i) to the applicant's possible performance in the job applied for, or (ii) to the employee's possible performance in the job which the employee holds, or (iii) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For purposes of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust ... **A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person.**

(emphasis added).

It is clear from the above statutory provisions that the Legislature intended to allow government employers to consider the criminal records of persons wishing to be employed by the government. The Legislature also expressly provided the standards that should be followed if the government desires to disqualify an applicant for employment based on the applicant's criminal record. Finally, the Legislature expressly provided a procedure to follow in the event the applicant disagreed with the agency's decision. This procedure called for appeals to be filed with the civil service commission of each respective jurisdiction and not the State Civil Rights Commission. The adoption of the proposed rule would nullify and conflict with this Legislative mandated procedure.

C. The Proposed Rules Conflict With The Decision Of The Ninth Circuit Court Appeals' Decision In Kinoshita v. Canadian Pacific Airlines, Ltd.

The County notes that the impact of the proposed rules would be to negate the United States Court of Appeals' decision in Kinoshita v. Canadian Pacific Airlines, Ltd., 803 F.2d 471 (9th Cir. 1986). In Kinoshita two airline employees were discharged after they were arrested for conspiracy to promote cocaine. Canadian Pacific Airlines had earlier circulated a memorandum to all of its employees stating that "[a]ny employee who commits any act of an illegal nature when off duty which harms or has the potential to harm the company's reputation will be subject to disciplinary action which may include dismissal." Id. at 473. The employees were terminated by the airlines and the employees filed suit alleging, among other matters, that the airlines violated HRS Section 378-2 when it discharged them. Following completion of the trial the Federal District Court ruled in favor of the airlines holding that the airlines did not violate HRS Section 378-2 when it terminated the employees for cocaine trafficking and not for their arrest. On appeal the Ninth Circuit Court of Appeals upheld the trial court's ruling stating:

The district court found that CP Air was justifiably concerned, based on the information it had, that the plaintiffs' conduct involving drugs could harm the company's reputation and that employees' drug involvement was a serious matter, especially because of its status as an international carrier and its contract with Singapore Airlines to provide ground handling services. The trial court also found that other CP Air employees had been arrested for various non-drug related offenses and had not been discharged.

...

[W]e conclude that CP Air did not violate Sec. 378-2 when it discharged the plaintiffs. **The discharges were not based on the "mere fact" of the plaintiffs' arrest and court record, but instead were due to the perception that plaintiffs were involved in drug-**

related activity. See *Moore v. Honeywell Information Systems, Inc.*, 558 F.Supp. 1229, 1230-32 (D. Hawaii 1983). In that case, Honeywell had a policy forbidding any employee from engaging in any activity "directly or indirectly through a family member or other person acting on his behalf" that might conflict with the employee's responsibilities at Honeywell ... When the plaintiff was discharged because her husband formed a computer company in which he owned an interest, she charged that Honeywell violated Hawaii Rev. Stat. Sec. 378-2 by firing her because of marital status, another protected category under the statute. The court concluded that "Honeywell's actions are based not on the fact that the plaintiff is a married person, but upon the relationship between the parties, which relationship may have been coincidentally created by marriage." ... Accordingly, the court held that Honeywell did not violate Sec. 378-2 "because the policy is not based on the mere fact that plaintiff is married." ... Since CP Air did not violate the public policy stated in Sec. 378, the plaintiffs do not have a cause of action in tort under Parnar.

Id. at 475 (emphasis added). Based on the holding in Kinoshita, an employer is justified under HRS Section 378-2 in reviewing an employee's arrest record and determine the extent of employee's conduct (not arrest) has on the employer's reputation and operations. The court carefully distinguished actions that are based on the mere arrest of a person with actions based on the conduct that led to the arrest. The proposed rules would blur this important distinction and forbid employers to even consider an employee's conduct, separate and apart from the fact that he was arrested. The County believes it is improper to attempt to overrule well recognized judicial precedence and interpretation without express legislative authority.

II. The Proposed Rules Violate Public Policy By Discouraging or Preventing Employer From Making Reasonable Attempts to Inquire Concerning an Applicant's Background

As stated in a well recognized legal treatise:

The duty to exercise reasonable care in making a decision to hire a particular applicant includes the employer's obligation to conduct a reasonable investigation into the employer's work experience, background, character, and qualifications. An employer's liability rests on whether, under the totality of circumstances surrounding the hiring, the employer exercised reasonable care.

27 Am. Jur. 2d Employment Relationship Section 474 at p. 914 (1996). The court in Janssen v. American Hawaii Cruises, 69 Haw. 31, 731 P.2d 163 (1987) also recognize this obligation when it stated:

The *Restatement (Second) of Agency* Section 213 (1958) reads in part: "A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless ... (b) in the employment of improper person or instrumentalities in work involving risk of harm to others[.]" Most jurisdictions recognize a duty on the part of the employer to exercise reasonable care in hiring individuals who, because of the nature of their employment, may pose a threat of injury to members of the public.

69 Haw. at 34. If these proposed rules are adopted, employers will be discouraged or outright prevented from making any inquiries into an applicant's past records to insure the protection of its clients, customers, or members of the general public. While the County agrees that the mere fact of an arrest or conviction should not disqualify a person from employment, an employer should be allowed to make reasonable inquiries relating to the potential risk of harm to others if an individual is hired because of the nature of employment. The proposed rules violates public policy which encourages employers to make these legitimate inquiries.

Finally, the County has reviewed the written testimony submitted by the County of Hawaii and agree with their concerns over the possible conflict the proposed rules have with the provisions contained in HRS Chapter 92F and 89.

III. Conclusion

In conclusion, the County of Kauai urges the Commission not to adopt the proposed rules or to amend them so they do not conflict with the express provisions of HRS Section 378-3(1), HRS Section 831-3.1, HRS Chapter 92F, HRS Chapter 89, and the Rules of the Civil Service Commission of each respective governmental jurisdiction.

The County appreciates the time, consideration, and attention that the Commission and staff have devoted to this issue. If the Commission has any further questions or comments regarding the County of Kauai's position, please contact me at the above address and phone number.

Sincerely,



JONATHAN CHUN
First Deputy County Attorney

JC:jg



From the Governor

To:

- Accounting & General Services
- Agriculture
- Attorney General
- Budget & Finance
- Business, Economic Development & Tourism
- Commerce & Consumer Affairs
- Defense
- Education
- Hawaiian Home Lands
- Health
- Human Services
- Labor & Industrial Relations
- Land & Natural Resources
- Lt. Governor
- Human Resource Development
- Public Safety
- Taxation
- Transportation
- University of Hawaii

Date

JAN 20 1953



CPL

PEST CONTROL, INC.

"ASK A FRIEND ABOUT US — WE'VE MADE LOTS OF THEM"

'98 JAN 22 12:48

CIVIL RIGHTS COMMISSION
HONOLULU

January 16, 1998

The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Governor:

Your Civil Rights Commission has proposed regulations that we feel infringe on the civil rights of an employee to be made aware of any co-worker's criminal history and the employer's obligation to provide a safe workplace for both employees and customers. In attempting to eliminate discrimination against convicted felons, the state is creating a situation that will prohibit most employers from inquiring into any convictions of an applicant, and to allow a criminal to file charges of discrimination for not being hired.

With violence in the workplace a major issue, we believe it is the responsibility of an employer to hire based on the knowledge of criminal history and to take the necessary precautions to protect both employees and customers. This includes the hiring and placement, or not hiring of a convicted felon. The regulations place total burden on the employer to prove it is a necessary requirement to request such information. The measure as proposed is a criminal's dream come true.

Although the proposal has yet to go to public hearing, we feel your knowledge of this issue at this time is important and requires your review with a realistic solution that provides a balance in the needs of convicted criminals, employees who may be working next to such an individual without such knowledge, and the employer's responsibility to provide a safe workplace.

Sincerely,

Alan D. [Signature]

President
STATE TERMITE &
PEST CONTROL, INC.



PC-689

2224 ALAHAO PLACE, BAY #205 - HONOLULU, HAWAII 96819

(808) 841-7399



The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Governor:

I have been advised that your Civil Rights Commission has proposed regulations that will require my boss to hire convicted felons, unless the company can prove that the person in question doesn't meet a bona fide occupational qualification. This proposal does not take my civil rights into consideration. If I am going to work next to a killer, thief, spouse abuser, or a person who has been convicted of any violent crime, I want to know about it. I have that right.

Yes, we want to rehabilitate criminals. But, I want to know who they are so I can take precautions that may range from locking my desk. or finding another job.

This measure is out of balance. The rights of criminals seem to take precedence over those of us who are law abiding citizens, voters, and tax payers.

Sincerely,



The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

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Sincerely,



The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813


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Sincerely,

Two handwritten signatures in black ink, one on the left and one on the right, both appearing to be cursive and somewhat stylized.

The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

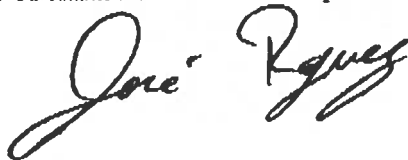
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This measure is out of balance. The rights of criminals seem to take precedence over those of us who are law abiding citizens, voters, and tax payers.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose R. Riquelme". The signature is written in a cursive style with a large, sweeping initial "J".

January 19, 1998

The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Governor:

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Sincerely,

Ake S. Kawasaka

January 16, 1998

The Honorable Benjamin J. Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

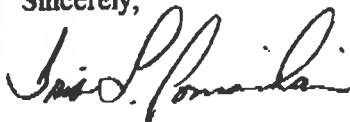
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This measure is out of balance. The rights of criminals seem to take precedence over those of us who are law abiding citizens, voters, and tax payers.

Sincerely,



70

FILE

Patt Martin

**TESTIMONY OF STRAUB CLINIC & HOSPITAL, INC
REGARDING FINAL ARREST & COURT RECORD RULES
OF THE HAWAII CIVIL RIGHTS COMMISSION**

I am the Human Resources Administrator of Straub Clinic & Hospital, Inc. We employ 2,000 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, our patients and the public for three main reasons.

We provide 24-hour patient care in our King Street facility and Home Health Care throughout Oahu. Straub, like most employers, believe organizations are largely defined by who we hire. Can you imagine having a person who in their prior life had been convicted of a sexual crime providing healthcare services to a loved one. The proposed legislation would eliminate our ability to be aware of who we are hiring, rendering us helpless in making appropriate safety decisions for our organization. Example: we need information and discretion to consider placing a person convicted of a sexual crime in a position providing home health care to elderly, frail patients that live alone. Home health care positions are typically positions involving unsupervised contact with our patients.

Yes, you could say we could provide 2 home health care providers to each home, one to provide care and one to supervise; however, the economic burden this would place on our business is unreasonable. In order to limit such risks in hiring and placing, we must know an applicant's criminal history before any employment offer is made to give us the opportunity to place our applicants in positions we determine to be appropriate in limiting our exposure to potential negligent action. We as an organization have a duty to insure the safety and protection of our patients and our employees and to disregard the one piece of information that tells us the most about potential safety risks is unthinkable.

First, the rules as drafted are unworkable. We as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. the rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules and employer cannot even require a driving abstract before offering employment to a truck driver who is entrusted with driving a vehicle carrying tons of cargo.

Felony convictions for crimes against property should be recognized as rendering person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions or crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customer, clients or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while

under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules; as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

FILE

**TORKILDSON, KATZ, FONSECA, JAFFE,
MOORE & HETHERINGTON**

ATTORNEYS AT LAW, A LAW CORPORATION
700 BISHOP STREET, 15TH FLOOR
HONOLULU, HAWAII 96813-4187
TELEPHONE (808) 523-6000 · FACSIMILE (808) 523-6001

**ANALYSIS OF PROPOSED
ARREST & COURT RECORD RULES**

Presented by:

John L. Knorek

on behalf of

Torkildson, Katz, Fonseca, Jaffe, Moore & Hetherington

Friday, January 16, 1998

For over fifty years, our law firm has represented the rights of individuals, partnerships, associations and corporations doing business in Hawaii. Throughout all of these years, we have endeavored to meet our responsibilities to the common weal. In keeping with this tradition and our ethical obligations under the Rules of Professional Conduct, we submit the following testimony because we believe that the law, our legal system and our community will be advanced when there is a open and vigorous debate of community ideals.

1. SUMMARY

Expanding the concept of arrest and court record to encompass those protections that have developed over the years for individuals with disabilities is an unnecessary and ill-advised extension of Hawaii's Employment Practices Law. It will create needless and extensive litigation and provide a safe haven for criminals to the detriment of its tourist economy. Employers should be able to rely upon the employee's behavior and whether or not it results in a criminal conviction. The underlying facts of misconduct whether it occurs at work or outside of work are proven time and time again to be the best indicators of an employee's future performance. The Commission's entire rules are based on the false assumption that a criminal is unlikely to engage in similar behavior after being released from prison or paying the penalty imposed.

All credible studies of recidivism prove the contrary. As much as we as a society wish the criminal justice system to have a rehabilitative effect on individuals, it is an imperfect world and Hawaii's employers should not be burdened with the risk and danger attendant to employing criminals.

In summary, (1) the rules are too complex; (2) ignore the reality of criminal conduct; and, (3) exceed statutory authority.

2. § 12-406-202: Definitions:

The definition of "bona fide occupational qualification" states that the employer has the burden of proving that:

(2) All or substantially all individuals with a conviction record for a specified offense would ~~not be qualified~~ ~~unable~~ to perform the functions and responsibilities of prospective or continued employment in the position;

The use of the term "unable" is misleading and confusing. While an individual might be physically "able" to perform the functions of a position, they may be unqualified due to a prior felony conviction. For example, a convicted rapist may be capable of performing work as a home care nurse, but would be unqualified.

Section (3) of the definition of "bona fide occupational qualification" should be eliminated. The HCRC intends to require employers to prove that "there is no acceptable alternative with less discriminatory impact." This BFOQ requirement, while adopted by a number of lower courts, has not been adopted by a clear majority of courts. See cases cited in Lindemann & Grossman, Employment Discrimination Law, pp. 402-403 (3rd ed. 1996). Moreover, the standard, as phrased in Title VII BFOQ cases, is that there is "no reasonable alternative." Id.

3. Section 203 describes the causation standard for a disparate treatment case. Nowhere in the rule, however, is there any mention of job qualifications. Rule 203 provides that a disparate treatment case can be proven if: (1) a causal connection exists between the arrest, court record or conviction and the discriminatory conduct (*e.g.*, failure to hire, suspension, termination); (2) the arrest, court record, or conviction play any part of the reason for the conduct. While an employer may take an adverse employment action if there is misconduct, no where is there any mention about job qualifications.

This rule is also troublesome because liability is created if the arrest, court record or conviction play "any part of the reason for the conduct." This is not the standard used in age discrimination cases in federal court nor is it the standard used by the Hawaii Supreme Court in Hawaii Whistle Blower Protection Act cases. There is no justification for deviating from the traditional standards found in employment law.

This proposed rule is particularly problematic when coupled with the Commission's adoption of the "Treehouse" rule, which places upon the employer the obligation to disprove the absence of discrimination once the basic elements of a discrimination case are established. When the rule and "Treehouse" are combined together,

the Commission or plaintiff has an unusually low burden of proof. Essentially, it becomes the employer's burden to show that knowledge of the arrest, court record or conviction did not play "any part in the reason for the conduct." How is the employer expected to prove the absence of discrimination?

4. Sections 205(e) & (f) require an employer to pay an employee who is barred from the premises or suspended because the employee has been arrested or charged with an offense against the person, and the type of offense indicates that the individual maybe a threat to the safety of employees or customers.

- 378-2 prohibits discrimination based on an arrest and court record, but does not prohibit discrimination based on an employer's belief that the employee engaged in improper conduct. For example, if an employee assaults a co-worker at work, but is not arrested or charged with an offense, the employee may be suspended without pay. However, if an employee assaults a co-worker at work and is arrested for assault, the employer must, pursuant to 12--46-205(e), suspend the employee with pay. This is an absurd result. The employer can suspend without pay as long as no charges are filed. Thus, for example, if an employee is caught stealing from the company, the employee may be suspended as long as no formal charges are filed. Employers are therefore under no incentive to bring criminal charges against employees, and it wrongfully encourages silence by employers.

5. Section 205(h) requires an employer to meet with an individual who has been arrested or charged with an offense against the person, falls within a potential BFOQ or a statutory exemption to determine if the individual should be allowed to return to work. There is no statutory authority for the Commission to impose on employers a duty to engage in a dialogue with those employees accused of criminal behavior by law enforcement officials to determine whether it is safe for them to return to work. This additional and unnecessary burden on business is ill advised and unworkable.

- Section 205(h) also advises employers to seek information from "law enforcement, prosecutorial, or court personnel, or the individual's attorney". None of these entities are authorized by law to disclose information about a pending criminal investigation.

- Section 205(h) further requires that the employer apply the "no acceptable alternative with less discriminatory impact" (NAAWLDI) factors to determine whether there is a BFOQ. There is no statutory authority for the NAAWLDI requirement and it should be eliminated from the rules.

6. Section 205(i) section provides that if an employer has declined to hire or has discharged an employee based on an arrest for an offense which falls within a BFOQ, and the arrest has been "resolved" (defined as no pending investigation, charge or indictment, or the charge is dismissed, or the individual is acquitted), the employee must be hired or reinstated. This section assumes that if charges are dropped and no conviction results, the employee is innocent of the charged offense. This ignores the fact that charges (particularly claims for assault) are often dropped by complainants, or are dropped because witnesses cannot be located. This rule prohibits the employer who nevertheless has a good faith belief that the employee engaged in conduct which is unsafe, or poses a hazard to co-workers or customers, etc. from protecting itself. The law prohibits discrimination on the basis of arrest and court record. The law does not prohibit employers from discriminating because it has a good faith belief that the employee is unfit because of personal characteristics.

Section 205(i) further provides that a non-hired applicant who has not been convicted is not entitled to receive back pay whereas an individual who was suspended with pay, in accordance with the rules, would not be entitled to reinstatement, back pay or benefits. This leaves employers at a disadvantage to recover the payments made pursuant to the rules requiring pay for an employee suspended pending resolution of the criminal proceedings.

7. Section 206(b) and Section 207(b) require employers to establish the specific offenses within a statutory exemption or potential BFOQ before conducting any post-offer of employment inquiry.

- First, this limitation is ultra vires and goes beyond the statutory mandate. For example, 378-3(8) states that nothing in 378-2 shall "prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children." The legislature nowhere indicates that private schools are limited to considering specific offenses.
- Assuming that this section intends that an employer define the specific offenses which would disqualify an applicant prior to making an inquiry, it is objectionable because it would be in each employer's interest to list as many specific offenses as could potentially be justified, in order to avoid a situation where the employer is prevented from disqualifying an applicant because it has neglected to list an offense.
- The use of the term "establishing" is particularly inappropriate, because it implies that the employer must somehow prove the existence of an offense before

conducting an inquiry. The phrase "defining" or "identifying" should be substituted, at minimum.

The no acceptable alternative with less discriminatory impact analysis must be applied if an inquiry determines an offense within the potential BFOQ. The no acceptable alternative obligation apparently is modeled after reasonable accommodation analysis under the disability laws. This is an ill conceived comparison as most individuals with disabilities have not chosen voluntarily to become disabled. An arrest and court record is a condition which an individual brought upon themselves and which society considers contrary to acceptable behavior. Why the Commission would impose similar treatment of those who are disabled as those who have committed criminal offenses is beyond reason.

Imposing a reasonable accommodation obligation under the guise of "no acceptable alternative with less discriminatory impact" analysis leads to time consuming and unworkable efforts at finding employment situations where a person's prior criminal behavior is less of a problem or requires consideration of leave to accommodate an employee's incarceration. Should an employer be obligated to grant an employee vacation leave or unpaid leave of absence in order to serve out a period of incarceration in order to comply with the NAAWLDI obligation?

Those with statutory exemptions may make pre-employment inquiries but those who only have the defense of a potential BFOQ as that term is defined in the proposed rules, must limit their inquiries to a post-offer situation. Both employers must pre-identify those offenses which are related to employment. This imposes an obligation on businesses to think in the negative and document all of the potential criminal behavior which would disqualify a person from employment. This obligation is unwise, unworkable and overly burdensome.

8. Section 207(f). This section should be eliminated, because it conflates "potential BFOQ" with statutory exemptions. The two are not identical. They are defined differently in §12-46-202, and in § 373-3. A statutory exemption is not identical to a potential "BFOQ." The distinction is crucial in terms of burden of proof. If particular conduct is exempted, engaging in that conduct is, by definition, not discrimination. Under Title VII and state law, a party alleging discrimination has the burden of proving discrimination. In contrast, a BFOQ is an affirmative defense -- i.e., it is conceded that discrimination occurred, and the party alleging an affirmative defense has the burden of establishing the defense. Moreover, the HCRC has attached "suitability" factors, as well as a prohibition on pre-employment inquiries, to the potential BFOQ defense, although no such limitations are placed on employers proceeding under statutory exemptions.

9. Section 208(a) prevents employers who are proceeding under a statutory exemption from making an inquiry "unless the inquiry is pursuant to a statutory exemption and seeks information about a conviction for a specific offense within the exemption." This section would prohibit employers relying on the statutory exemption from obtaining data from the Hawaii Criminal Justice Data Center and from state or national data bases which will not

produce conviction data according to specified categories of offenses. Such information is a matter of public record, and employers should not be prohibited from using such information. Essentially, the HCRC is trying to limit the methods by which an employer can inquire into criminal convictions, and wants to restrict employers to simply asking convicted criminals to self-report.

10. Section 208(f) states that employers may make pre-employment inquiries into an individual's ability to perform job functions, but may not use the opportunity to inquire into arrest and court record. This section is unconstitutionally vague, and adds nothing to the foregoing prohibitions on pre-employment inquiries.

11. Section 209(b) states that if an employer has a potential BFOQ, it "shall seek only the information that relates to the potential BFOQ." As noted above, the Hawaii Criminal Justice Data Center and other state data bases will not perform inquiries which limit convictions to specific categories of offenses. Moreover, different states will use different descriptions for the same underlying illegal conduct. Thus employers must be able to pull an employee's entire conviction history.

12. Section 209(d) appears to prohibit any employer from asking or inquiring about an applicant's misconduct at their current or former employment prior to making that individual an offer of hire. This turns the hiring process on its head as it requires businesses to blindly offer employment to individuals without having inquired as to prior work related misconduct. The Commission's rules have unnecessarily inflated the concept of arrest and court record to encompass all kinds of behaviors as opposed to the fact of a court record.

The rules, for example, provide that a written inquiry may be given to applicants who have been offered employment asking them to disclose whether they have been disciplined or discharged by a current or former employer for specified kinds of misconduct such as one might list in their house rules, provided a specific notice advising the employee not to provide any information about arrests, charges or convictions in response to such inquiry as to prior work misconduct. The rules provide as a sample notice that the employer advise the employee you are not being asked to disclose any misconduct not occurring at work and further provide that inquiries about misconduct not occurring at work are prohibited except for inquiry into a person's illegal use of drugs. This is absolutely ludicrous. Misconduct, whether occurring at a prior employer or outside of employment, is just as revealing as to a person's character, including their honesty and proclivities as if it occurred at a prior place of employment. An employee who would embezzle from their relatives or assault their wife is just as likely to engage in similar misconduct with co-workers or clients. There is no valid basis for drawing this distinction and no authority under the statute from imposing this limitation on employers.

Nothing in 378-2 prevents an employer from denying employment or denying promotions, raises, etc. based on an employee's poor work history at another employment or

in current employment. It is unnecessary and misleading to affirmatively state that an employer may ask about misconduct at work, since it implies that such an inquiry would otherwise be prohibited.

In addition, "misconduct at work" is defined in §12-46-202 as conduct which "results in disciplinary action." Because inquiries regarding misconduct which results in disciplinary action are permitted, it may be inferred that an inquiry regarding misconduct which does not result in disciplinary action is prohibited. Certainly, no such prohibition exists under statute, and no such prohibition was intended by the legislature. The HCRC's regulations which prevents employers from inquiring into work-related misconduct extend far beyond the statutory mandate. The relatively minor likelihood that inquiries about workplace misconduct might generate information about arrests or convictions does not justify the HCRC's burdensome limitations on questioning employees about their prior work history.

Finally, nothing in 378-2 indicates that employers are limited in any manner from inquiring about work-related performance or misconduct. Yet the example given in §12-46-209(d) implies that an employer must first give a conditional offer of employment before asking an employee whether they 1) have violated a safety rule; 2) harassed a co-worker or customer; 3) had a prior history of unauthorized absences or tardiness; or 4) engaged in substance abuse in the workplace. In effect, the proposed rules require employers to give a conditional offer of employment before asking an employee about their prior work history !!

13. Section 209(e) states that employers "may not inquire about misconduct not occurring at work where such inquiry could be an indirect inquiry into an arrest record, court record, or conviction record." This is unconstitutionally vague. For example, applicants may be asked to list all employment for the past 10 yrs. Often, applicants have large gaps in their employment history because of incarceration. Under 12-46-209, an employer is arguably prevented from asking about gaps in employment history since such a question could be construed as "an indirect inquiry into conviction record."

14. Section 211 of the proposed regulations draws a distinction between employment agencies who provide services to applicants for referral for hire as opposed to temporary agencies that provide temporary employees. These distinctions seem unnecessary and overly complicated.



Unitek Solvent Services, Inc.

FILE

2889 Mokumoa Street
Honolulu, Hawaii 96819
Phone: (808) 834-1444
Fax: (808) 839-0786

Testimony of UNITEK SOLVENT SERVICES, INC. Regarding Final Arrest & Court Record Rules of the Hawaii Civil Rights Commission (HCRC)

I am the Vice President of Unitek Solvent Services, Inc. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

Unitek Solvent Services, Inc. leases and services petroleum solvent machines to service stations, car and truck dealerships, small engine repair shops, fleet maintenance shops and industrial maintenance departments. Sales and service drivers deliver fresh solvent and remove dirty solvent and waste lube oils. Waste lube oil is then reprocessed into useable fuel oil and refined products are delivered to commercial customers.

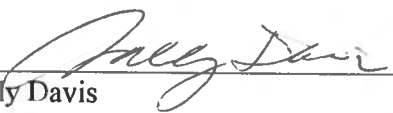
The rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

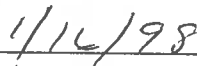
The rules also expose us to potential negligence actions under prevailing Hawaii law which imposed a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a driver. Who is entrusted with driving a vehicle carrying used solvents? How can Unitek Solvent Services ensure the general public's safety while our drivers are out on the roads and highways.

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.

Finally, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules, as is the state. Why are private sector employers the only ones targeted by these rules?

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. Unitek Solvent Services, Inc. would like to retain the ability, if we choose to do so, to obtain arrest and court records as it pertains to ensuring the general public's safety. We support the alternative rules proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw in their entirety, these rules.


Sally Davis


Date



Unitek Insulation, Inc.

FILE
P.O. Box 29177, Honolulu, Hawaii 96820
2234 Hoonee Pl., Honolulu, HI 96819
Telephone: (808) 832-9000
Facsimile: (808) 832-9011

**Testimony of UNITEK INSULATION, INC. Regarding Final Arrest & Court Record
Rules of the Hawaii Civil Rights Commission (HCRC)**

I am the Human Resources Manager of Unitek Insulation, Inc. We employ 45 Hawaii residents in our business. The proposed arrest and court record rules threaten the safety of our employees, customers and the public.

Unitek Insulation, Inc. provides asbestos removal and lead paint removal services. More than 40% of the projects we are contracted to perform are with various government contracting agencies. These include the U.S. Department of Transportation Federal Highway Administration - Airports Division, The Federal Aviation Administration, various military installations, and State of Hawaii Department of Education - Schools.

The changes in the arrest and court record rules would have a negative impact on Unitek Insulation's ability to comply with government contract requirements specifically the federal government. Such contracts require that background checks (as far back as 10 years, in some cases) be performed on all employees or prospective employees before clearance to work on the job may be obtained. The proposed arrest and court record rules would not allow the Company to meet this contractual requirement. Are we to break the proposed law and continue to do background checks in order to meet our contractual obligations or are we to follow the new proposed rules thereby putting the Company at risk of being debarred for non-compliance? If the proposed rules are approved they will have a great impact on Unitek Insulation's ability to do most of its government and certified work.

Furthermore, the rules as drafted are unworkable. We, as a company, agree with the Society of Human Resource Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

The rules also expose us to potential negligence actions under prevailing Hawaii law which imposed a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver. Who is entrusted with driving a vehicle carrying tons of old pipe containing asbestos from a demolished building?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employer's clients, customers or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients or the public.



Finally, the economic burden the proposed rules place on business is unreasonable. The rules will require separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employee's absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules, as is the state. Why are private sector employers the only ones targeted by these rules?

Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We would like to retain the ability, if we choose to do so, to perform background checks so that we may comply with our federal government contractual requirements. We support the alternative rule proposed by the Society of Human Resource Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Tammy L. Nakao
Human Resources Manager
Unitek Insulation, Inc.

FILE

WAHIAWA COMMUNITY AND BUSINESS ASSOCIATION

**TESTIMONY AT PUBLIC HEARING
RE. ARREST AND COURT RECORDS
1/16/98**

THIS TESTIMONY IS SUBMITTED ON BEHALF OF THE MEMBERS OF THE WAHIAWA COMMUNITY AND BUSINESS ASSOCIATION.

THESE UNREALISTIC PROPOSED RULES ARE CONTRARY TO THE BEST INTERESTS OF THE COMMUNITY AND OF HAWAII BUSINESSES.

A JEWELRY STORE OWNER SUSPECTS THAT AN EMPLOYEE IS STEALING EXPENSIVE JEWELS. THE EMPLOYEE IS ARRESTED, BASED ON REASONABLE GROUNDS, FOR "FENCING" STOLEN JEWELS THAT BELONG TO OTHER STORES AND FROM PRIVATE RESIDENTS. BUT NONE OF THE JEWELRY STORE'S JEWELS ARE AMONG THE RECOVERED JEWELRY. THE EMPLOYEE IS SUBSEQUENTLY NOT CONVICTED.

THESE PROPOSED RULES SAY THAT THE INNOCENT JEWELRY STORE OWNER MUST REINSTATE THE EMPLOYEE WITH BACK PAY OR FACE A STATE FUNDED PROSECUTION! IT'S RIDICULOUS.

ONE OF OUR ASSOCIATION MEMBER'S HAD AN EMPLOYEE WHO KILLED ANOTHER EMPLOYEE ABOUT 25 YARDS FROM THE EMPLOYER'S PROPERTY. HIS DEATH WAS WITNESSED BY AT LEAST 10 EMPLOYEES. THE MAN WAS ARRESTED AND JAILED. OTHER EMPLOYEES ARE AFRAID THAT IF THE MAN RETURNS TO WORK THAT THEY WILL BE KILLED.

THE COMPANY TERMINATED THE MAN.

UNDER THESE PROPOSED RULES THE COMPANY WOULD HAVE TO GIVE THE KILLER LEAVE WITH PAY! IT'S RIDICULOUS!

AND IF THE MAN GOT OFF BECAUSE OF A TECHNICAL PROBLEM, LIKE FAILURE TO READ HIM HIS MIRANDA RIGHTS, THE COMPANY WOULD HAVE TO REINSTATE HIM!

ARE WE SAYING THAT JUST BECAUSE A PERSON IS NOT CONVICTED THAT HE HAS TO BE HIRED?

FOR EVERY CONVICTION THERE ARE FAR MORE CRIMINALS WHO ARE NOT ARRESTED, AND MANY CRIMINALS WHO ESCAPE CONVICTION.

COURT CONVICTIONS SHOULD NOT BE THE DETERMINING FACTOR FOR HIRING OR FIRING.

LET THE EMPLOYERS DECIDE.

EMPLOYERS HAVE DEEP COMPELLING REASONS TO ENSURE THAT ITS DECISIONS ARE MADE IN THE BEST INTEREST OF THE COMMUNITY, ITS BUSINESS AND ITS EMPLOYEES.

WE THINK EMPLOYEES, WOULD RATHER THAT THE EMPLOYER MAKE EMPLOYMENT DECISIONS BASED ON THE CONTENT OF THE APPLICANT'S CHARACTER AND PAST BEHAVIOR.

THESE PROPOSED RULES EXCEED UNREASONABLENESS. THESE PROPOSED RULES ARE DEEPLY IMMERSSED IN ABSURDITY.

LET THE EMPLOYER'S DECIDE AND DON'T FORCE OUR SMALL BUSINESS TO HAVE TO GO TO COURT OF THIS SORT OF DECISION..

WE BELIEVE THAT ALL EMPLOYERS SHOULD BE FREE TO SELECT EMPLOYEES BASED ON THE CONTENT OF THEIR CHARACTER AND TO TAKE INTO ACCOUNT PAST BEHAVIORS. UNLIKE RACE, SEX AND MOST OTHER PROTECTED STATUS, "ARREST AND COURT RECORD" IS REALLY A REFLECTION OF CONDUCT NOT THE CIRCUMSTANCES OF ONE'S BIRTH OR PHYSICAL CONDITION .

WE WOULD RATHER THAT THE CITY AND STATE PROVIDE OTHER INCENTIVES, SUCH AS TAX CREDITS. IF WE ELECT TO HIRE A PERSON WITH CONVICTIONS WE WANT IMMUNITY FROM NEGLIGENT HIRING OR NEGLIGENT RETENTION CASES.



WALTER R. BENAUITZ

PRESIDENT

WAHIAWA COMMUNITY AND BUSINESS ASSOCIATION

WAHIAWA COMMUNITY AND BUSINESS ASSOCIATION
830-L California Avenue, Wahiawa Hawaii, 96786
Telephone (808) 621-6531

'98 JAN 14 P12:23

January 12, 1998

CIVIL RIGHTS COMMISSION
HONOLULU

Executive Director
Civil Rights Commission
830 Punchbowl Street
Room 411
Honolulu, HI
96813

Re: Proposed Rules on Arrest and Court Records

Dear Sir or Madam:

On January 16, 1998 I will attend the hearing on the proposed rules. Please put me on the schedule to give a few minutes of testimony any time between 1:00 and 1:30 p.m.

Enclosed are 7 copies of the testimony. I plan to just summarize my testimony before the Commission.

Thank you for your consideration.

Sincerely,



Walter R. Benavitz
President, WCBA

CC. WCBA files



Waikiki Trade Center

January 12, 1998

98 JAN 13 P2:07
HONOLULU, HAWAII

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl St. Room 411
Honolulu, Hawaii 96813

Dear Sir:

I am a member of the Hawaii Visitor Industry Security Association (HVISA) and the American Society for Industrial Security (ASIS). Being a security Professional with the Waikiki Trade Center (7yrs) and the Honolulu Police Department (27yrs).

I am concerned about the proposed rules that deal with arrest and conviction records when hiring personnel. With the mandating of these rules which eliminate using these arrests and conviction records, it will be dangerous as well as not practical.

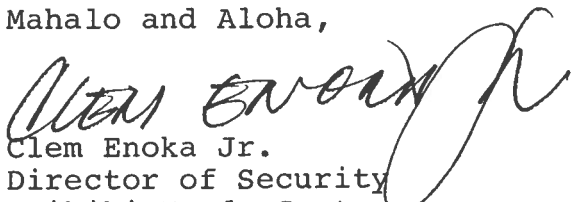
When hiring individuals with certain arrests and/or convictions, the safety and welfare of the tenants, employees, and guests would be put at risk. Individuals with theft or violence convictions would also make it an escalation in liability to the companies that hire these individuals.

Employee misconduct and workplace violence are prevalent in some companies, and mandating hiring of certain individuals with the records and convictions would put all at an increased risk.

In my experience I have found that some individuals may have been rehabilitated and/or changed their lives for the better, but there must be some occupations and/or jobs that they might be afforded which would not cause recedivism.

I strongly urge that these new proposals be reconsidered and deleted.

Mahalo and Aloha,


Clem Enoka Jr.
Director of Security
Waikiki Trade Center

'aikiki Trade Center
Kuhio Avenue, Suite 720 • Honolulu, Hawaii 96815

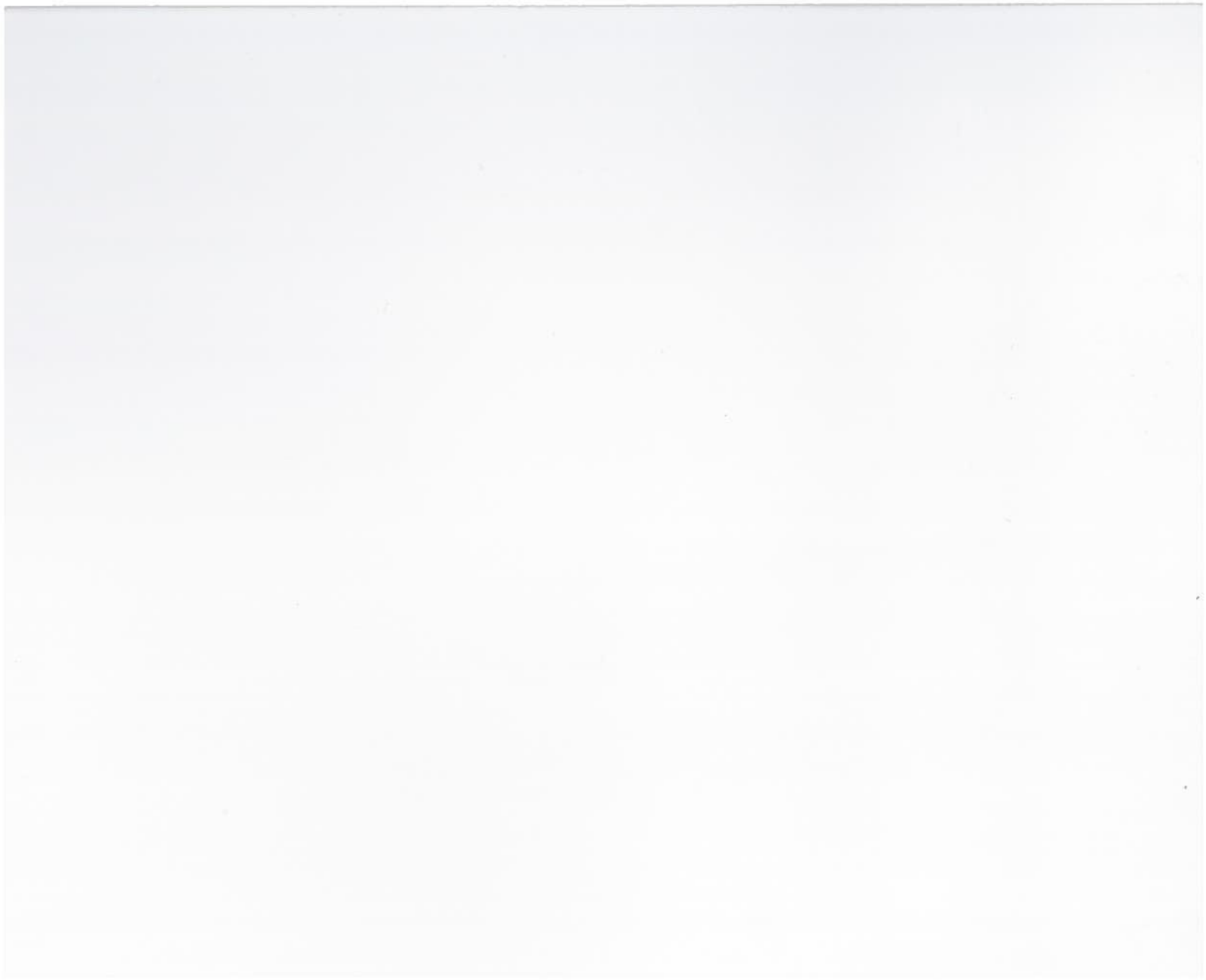
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HIS COMMISSION
HONOLULU, HAWAII

Executive Director
Hawaii Civil Rights Commission
830 Punchbowl St. Room 411
Honolulu, Hawaii 96813

36813-3017 37





Wailea

Wailea Golf Resort, Inc. 161 Wailea Ike Place, Wailea, Kihel, Maui, Hawaii 96753-9599 • (808) 879-4461 • FAX (808) 874-6295

January 16, 1998

Hawaii Civil Rights Commission
830 Punchbowl Street, Room 310
Keelikolani Building
Honolulu, Hawaii 96813

SUBJECT: PROPOSED ARREST AND COURT RECORD RULES

Dear Chairperson Suyat and Members of the Commission:

We would like to express our concern regarding the proposed Arrest and Court Record Rules which are being considered by the Commission at its hearing today.

The proposed rules will make it very difficult for an employer to obtain from an applicant the information necessary to make an informed hiring decision. For example, the rules place restrictions on an employer from making any inquiry, "where such inquiry could be an indirect inquiry" into an arrest and court record. In order to avoid running afoul of this very broad and vaguely written restriction, we will be extremely limited in the information we can request from an applicant.

We are particularly concerned about the proposed rules requiring an employer to pay a suspended employee who is arrested on charges of physical violence, and the requirement of reinstatement if no conviction occurs. If adopted as proposed, these rules will place an added financial burden on an employer in terms of requiring the payment of non-productive wages to a suspended employee, which will make it even more difficult for a business to survive.

More importantly, however, is the impact that these rules could have on the safety and well being of our employees and customers. If faced with a situation involving a violent employee, our company will not subject our other employees and customers to the risk of physical harm. However, in the process, we may very well end up in litigation with a disgruntled employee over the arrest and court record rules.

We understand and agree with the Commission's desire to provide opportunities to persons who are trying to reenter the workforce without the burden of a court record. However, an employer needs to have the ability to take certain measures to ensure a safe and productive work environment.

Your consideration of our comments is sincerely appreciated.

Very truly yours,

ANNE M. TAKABUKI
Vice President/General Counsel

LAW OFFICES OF G. TODD WITHY

Ocean View Center • 707 Richards Street, Ste. 711 • Honolulu, HI 96813
Tel: 808 521-2500 • Fax: 808 536-4474
Email: Withy@WithyLaw.com

TESTIMONY ON THE PROPOSED ARREST AND COURT RECORD RULES January 16, 1998

Good Afternoon Mr. Chairman, Commissioners, and Staff of the Hawaii Civil Rights Commission. My name is G. Todd Withy. As an attorney working in the labor law area for over 25 years, I strongly support these proposed rules under the arrest and court record law. They are essential to protect two groups of workers. The first group are those who are arrested but not convicted. Should 10 or 20 years service with an employer be lost simply because of an arrest? A person is considered innocent until proven guilty and if there is no conviction, there should be no firing based solely on an arrest. The other group are those rehabilitated after a conviction-- they especially need a chance to work if we are to support their successful rehabilitation and reduce the rates of recidivism.

Why is this law so essential in Hawaii? Because of the horribly disproportionate incarceration rates of certain groups, especially Hawaiians and Samoans. A University of Hawaii study found that 53% of the inmates of the Hawaii Youth Correctional Facility were Hawaiians, while they made up 30 % of our youth population. Samoan youth are incarcerated at the rate of 4 times their percentage of the population. Kassebaum, Gene, et al., *Identifying Disproportionate Representation of Ethnic Groups in Hawaii's Juvenile Justice System*, University of Hawaii, 1995. We are not here to explain those figures, or why 40% of our adult inmates are native Hawaiians compared to 16 % of the population, or 5 % are of Samoan heritage compared to 1 % of our population. We are here to say that these important members of our ohana must not be forgotten because their crimes were serious enough to lead to jail, and every effort to rehabilitate them and get them into the mainstream must be a priority. Otherwise, those who erred when they were young will never be able to enjoy life as do others. This is why this law was passed 25 years ago, and this rationale has just as much importance today.

Finally it is very important that these proposed rules parallel our federal and state procedures for disability discrimination, since both involve an employee's condition that requires a review of the status of a person's ability to perform the essential functions of certain jobs. In race or age discrimination, there is never a question whether the victim could do the job or not, just what was the intent of the supervisor. But disability, like a criminal conviction, can be caused by the worker's own choice, yet we protect all disabilities the same. A driver or worker on the job who is injured due to alcohol still gets full protection, and an admitted alcoholic or drug addict gets the same, as long as they are rehabilitated. These rules operate the same for those past criminals who, yes, did choose to commit the crime, but who also made the choice to be rehabilitated and thus now deserve to be considered for a job just as, for example, ex-alcoholic and other disabled persons. It is even more instructive to note that in an article in yesterday's paper, over 80% of the current inmates had an alcohol or drug involvement in their crime. These people need to be rehabilitated whether for drugs, alcohol, or crimes, and a regular job is vital to this process. The rules as proposed are carefully tailored to balance the employer's need for care in filling sensitive job positions, while not closing all the doors automatically to all those who made a mistake in their past.

Identifying Disproportionate Representation of Ethnic Groups in Hawaii's Juvenile Justice System: Phase One

A Report on Disproportionate Minority Confinement to the Juvenile Justice State Advisory Council, the Office of Youth Services, and the Coalition for Ethnic and Cultural Diversity of Youth

by THE CENTER FOR YOUTH RESEARCH
Social Science Research Institute
University of Hawaii at Manoa

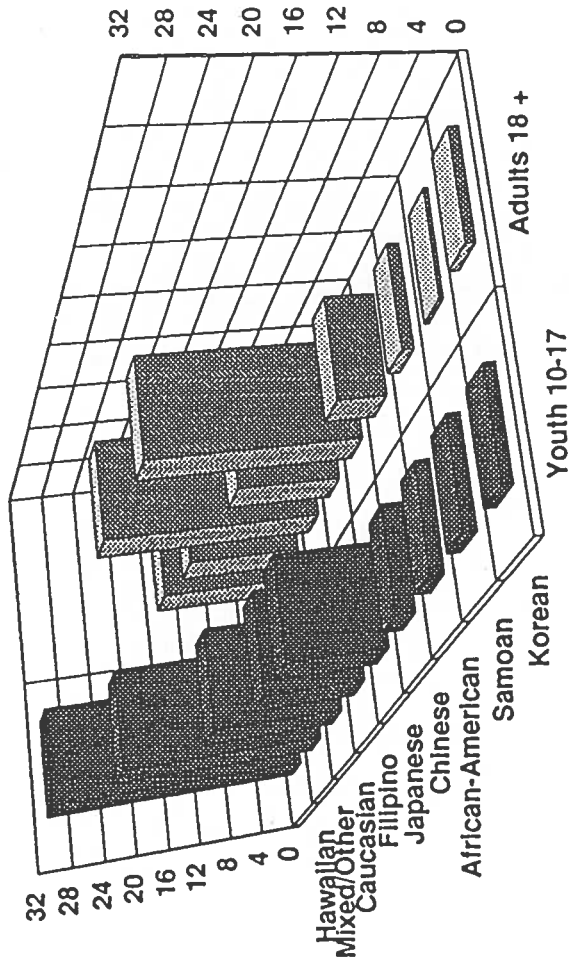
Gene Kassebaum, Principal Investigator

Chui Wai Sarah Lau
Dae-Gyung Kwack
Jeff Leverette
Elizabeth Allingham
Nancy Marker

March, 1995

This Report was supported by Grant #93-JF-CX-0015 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions contained within this document are those of the author (s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Figure 1. Percentage of Ethnicities Among Youth and Adults Statewide
State of Hawaii, Health Surveillance Survey, 1990



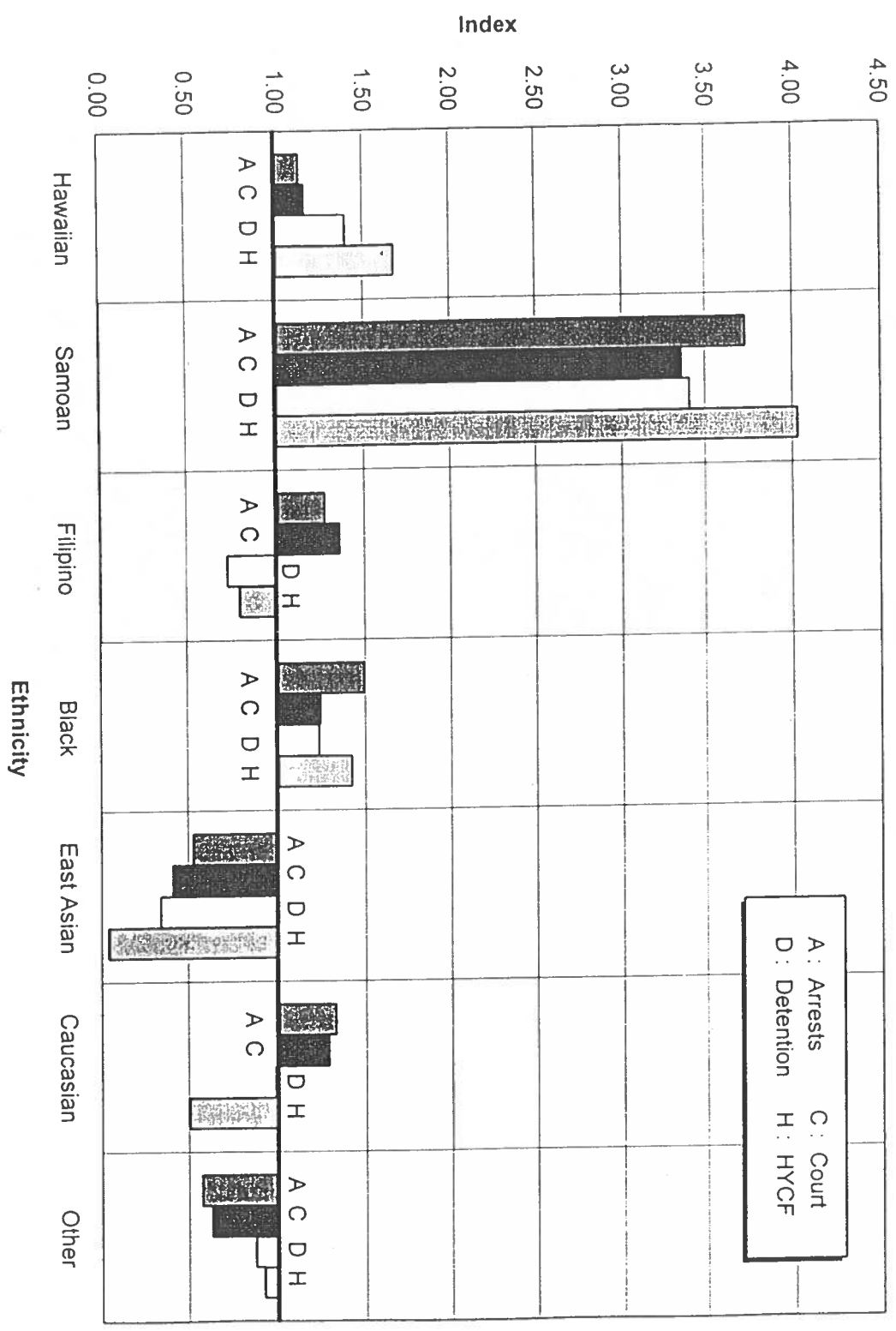
Hawaiian includes part-Hawaiian

Table 1: Percent Ethnicity of Adults and Youth in Hawaii

Department of Health, Health Surveillance Survey Data, 1990		
<i>State of Hawaii</i>		
Ethnicity	Youth 10-17	Adults 18 +
Hawaiian*	30.90	15.11
Mixed/Other	24.00	13.63
Caucasian	15.20	25.74
Filipino	11.70	12.00
Japanese	11.60	24.46
Chinese	2.30	5.70
African-American	1.65	1.42
Samoan	1.50	0.46
Korean	1.20	1.10
*Includes Part-Hawaiian		

Table 15: Juvenile Over- and Under-Representation by Ethnicity					
State of Hawaii, July 1, 1993 - June 30, 1994					
Ethnic Group	Population	Arrests	Court	Detention	HYCF
	%	%	%	%	%
Hawaiian	30.94	35.27	36.23	43.31	52.63
Samoan	1.45	5.42	4.87	4.94	5.85
Filipino	11.71	14.92	15.91	8.58	8.77
Black	1.65	2.46	2.05	2.03	1.75
East Asian	15.06	7.97	6.17	5.09	0.58
Caucasian	15.15	20.10	19.51	14.97	7.02
Other	24.05	13.85	15.25	21.08	23.39
		Arrests	Court	Detention	HYCF
		<i>Index</i>	<i>Index</i>	<i>Index</i>	<i>Index</i>
Hawaiian		1.14	1.17	1.40	1.70
Samoan		3.74	3.36	3.41	4.03
Filipino		1.27	1.36	0.73	0.75
Black		1.50	1.25	1.24	1.07
East Asian		0.53	0.41	0.34	0.04
Caucasian		1.33	1.29	0.99	0.46
Other		0.58	0.63	0.88	0.97
Total of All Youth	118248	4706	6340	688	171
Total Minority	82530	3385	4712	550	158
% Minority	69.79	71.93	74.32	79.94	92.40
Index		1.03	1.06	1.15	1.32

Figure 15: Juvenile Over- and Under-Representation by Ethnicity
 State of Hawaii, July 1, 1993 - June 30, 1994



OAHU MAUI HILO

STEVETIE K. SANTIAGO
Director of Human Resources
Direct Line: (808) 852-6721
Pager: (808) 582-2303
Fax: (808) 852-6779

YHata
& Co.,
LIMITED



285 Sand Island Access Rd., Honolulu, HI 96819

P.O. BOX 4155
HILO, HAWAII 96720
PH: (808) 935-3321
FAX: (808) 935-3268



P.O. BOX 486
KAHULUI, MAUI 96732
PH: (808) 244-7961
FAX: (808) 244-6943

FILE

285 SAND ISLAND ACCESS ROAD, P.O. BOX 3770, HONOLULU, HAWAII 96812
CUSTOMER SERVICE (808) 845-3347 FAX: 852-6782 ADMINISTRATION: 845-4429 FAX: 845-2825

January 16, 1998

TO: Hawaii Civil Rights Commission

FR: Stevette Santiago, Director of Human Resources
Y. Hata & Co., Ltd.

RE: Testimonial Regarding Final Arrest & Court Record Rules

I am the Director of Human Resources for Y. Hata & Co., Ltd. We are locally owned foodservice wholesaler which employs over 150 Hawaii residents on Oahu, Maui, and the Big Island.

The criminal past of an applicant is important because we employ positions which deal with safety and cash handling. We employ only Commercial Driver's Licensed individuals and the thought of being restricted to obtain a traffic abstract prior is unfair and inappropriate.

If Y. Hata offered a driver's position to someone who had repeated DUI's and traffic violations, what type of risk our we putting our employees in and the general public? Who is liable if the driver ends up killing someone while on the job? What kind of risk our we imposing on the company if we hire someone with repeated theft offenses for a cashier position? Who will repay the company back for the loss of revenue?

The proposed arrest and court record rules threaten the safety of our employees, customers and the public for three main reasons:

First the rules as drafted are unworkable. We as a company, agree with the Society for Human Resources Management's comments. The rules are overly complex and foster disrespect for the law and the Commission. The rules will be ignored rather than followed.

Second, the rules expose us to potential negligence actions under prevailing Hawaii Law which imposes a duty on employers to maintain a safe workplace and take reasonable precautions to avoid foreseeable injuries or losses caused by employees. A criminal background check is a reasonable precaution to utilize before hiring any person

in any capacity. Under the draft rules an employer cannot even require a driving abstract before offering employment to a truck driver who is entrusted with driving a vehicle carrying tons of cargo?

Felony convictions for crimes against property should be recognized as rendering a person unqualified for any position involving access to the cash, finances or property of the employer or that of the employers clients, customers, or patrons. Felony convictions for crimes against persons should be recognized as rendering a person unqualified for any position involving unsupervised contact with co-employees, customers, clients, or the public.

Third, the economic burden the proposed rules place on business is unreasonable. The rules will required separate filing of arrest and court record information, burdensome accommodation of criminals to include transfer to less sensitive positions and pay during an employees absence while under indictment or after an arrest. The rules punish employers by forcing them to hire individuals who have committed crimes. The HCRC itself is, of course, exempt from these rules: as is the state. Why are private sector employers the only ones targeted by these rules?

Under these rules, O.J. Simpson could successfully sue his employers for his termination as a sports broadcaster and rental car spokesperson. Our employees have the right to trust their employer to exercise sound discretion in hiring persons who do not pose an elevated risk of danger to them. We support the alternative rules proposed by the Society of Human Resources Management and strongly urge the Commission to withdraw, in their entirety, these rules.

Devens, Nakano, Saito, Lee, Wong & Ching

ATTORNEYS AT LAW

Stanley L. Ching
Lisa-Ann L. Kimura
Bart M. Koza
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James A. Nakano*
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Telephone (808) 521-1456
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Richard C. Lo
1928 - 1996

Of Counsel:
Paul Devans*
Terrance W. H. Tpm
Wilfred H. C. Youmb*

*A Law Corporation

TELECOPIER COVER SHEET

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TO: Hawaii Civil Rights Commission (586-8655)

FROM: Secretary/Sender: Lana

DATE: September 16, 1998

TIME: 9:10 a.m. (Approx. Hawaii time)

CASE/SUBJECT MATTER: Mailing List for Proposed Notices

TOTAL NUMBER OF PAGES INCLUDING THIS COVER LETTER: 1

ORIGINAL TO FOLLOW BY MAIL: No

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL: (808) 521-1456

REMARKS:

Currently, you are mailing notices of proposed rules to Ann S. Isobe, Esq. in care of this office. Ms. Isobe has left this firm, therefore, please continue to mail notices to this office in care of the following:

JAMES A. NAKANO, ESQ.
Devens, Nakano, Saito, Lee, Wong & Ching
220 S. King Street, Suite 1600
Honolulu, Hawaii 96813

In addition, Ms. Isobe would like to continue to receive notices at her new address listed below:

ANN S. ISOBE, ESQ.
Crabtree Hoshibata Hsieh
Suite 2300, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Thank you for your cooperation.

Aaron Cheney
1434 Punahoa Apt 924
Honolulu, HI 96822-4735

HONOLULU HI 968
PM
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1998



SEP 14 11 26 AM '98

Hawai Civil Rights Commission
830 Punchbowl St Lan 411
Honolulu, HI 96813

Att: Mr. Wm. Lee





Hawai Civil Rights Commission
 830 Punchbowl St, Room 411
 Honolulu, HI 96813

Sept 11, 1998
 98 SEP 14 11:26

Attn: Mr. William O. Hojyo
 Executive Director

Subject: Public hearing on proposed
 proposed Rules on Housing Discrimination et al
 on Sept 30, 1998.

Ladies & Gentlemen:

You have sent me your letter of September 4
 1998 regarding the above matter.

I am advised from Chaney Brooks and
 Company as of Jan 31, 1997. While I will address
 your Sept 4, 1998 to Mr. Keith Chong, Senior vice
 president who very active in the firm and for the
 specific matters covered in your letter.

I would suggest your removing of my name
 and address from your files.

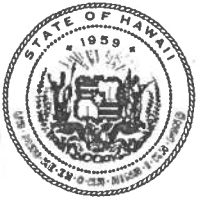
Very truly yours

Aaron Chaney

Res Tel 943-1902

Re: address-

Aaron M. Chaney
 1434 Punahou St - 924
 HM HI 96822



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

~~Aaron M. Chaney~~
Chaney Brooks & Company
P. O. Box 212
Honolulu, HI 96810

Dear Mr. ~~Chaney~~:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures

MODE = MEMORY TRANSMISSION

START=SEP-04 16:05

END=SEP-04 16:10

FILE NO. = 224

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	S	95243450	008/008	00:05'08"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

The information contained in this facsimile message is attorney privileged and confidential information intended for the use of the individual or entity named below. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by collect telephone, and return the original message to us at the above address via the United States Postal Service at our expense. Mahalo.

DATE: September 4, 1998

TO: John Howard

FAX: 524-3450

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=SEP-04 15:47

END=SEP-04 15:50

FILE NO. = 219

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	8	95454309	008/008	00:02'34"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: September 4, 1998

TO: Erik Abe

FAX: 545-4309

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=SEP-04 16:01

END=SEP-04 16:05

FILE NO. = 223

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	2	95866301	008/008	00:03' 15"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: September 4, 1998

TO: Jim Funaki

FAX: 586-6301

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=SEP-04 15:57

END=SEP-04 16:01

FILE NO.= 222

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	8	99569616	008/008	00:03'16"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: September 4, 1998

TO: Meda Chesney-Lind, Ph.D.

FAX: 956-9616

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=SEP-04 15:11

END=SEP-04 15:16

FILE NO.= 210

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001	OK	8	98481987	008/008	00:04'24"

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**HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655**

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DATE: September 4, 1998

TO: Dayton Nakanelua

FAX: 848-1987

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.

MODE = MEMORY TRANSMISSION

START=SEP-04 15:25

END=SEP-04 15:29

FILE NO. = 215

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001	OK	8	95864990	008/008	00:03'50"

***** - ***** - *****

HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

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DATE: September 4, 1998

TO: Melanie, DSSH

FAX: 586-4990

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Terri Montano
Sultan Company
2255 Kuhio Avenue, Suite 2000
Honolulu, HI 96815

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

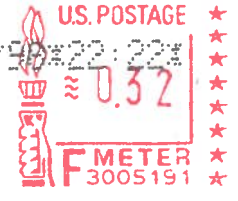
William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

Punchbowl Street, Room 411
Honolulu HI 96813

* HONOLULU P&D CTR * 2 * 09/04/98 * 22:22 *



98 SEP 10 AM 38

**Terri Montano
Sultan Company
2255 Kuhio Avenue, Suite 2000
Honolulu, HI 96815**

SULT255* 968153008 1897 13 09/08/98
FORWARD TIME EXP RTN TO SEND
THE SULTAN COMPANY
3049 WALENA ST #14THFL
HONOLULU HI 96819-1942

96815-2660 11





HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Kirk Cashmere, Esq.
201 Merchant Street
Honolulu, HI 96813

Dear Mr. Cashmere:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

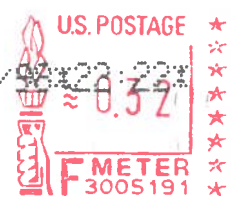
William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

150 BOWL STREET, ROOM 411
HONOLULU, HI 96813

* HONOLULU P&D CTR * 2 *09/04/98*22:23*



'98 SEP 10 11:36

**Kirk Cashmere, Esq.
201 Merchant Street
Honolulu, HI 96813**

CASH201 968134002 1698 13 09/08/98
RETURN TO SENDER
CASHMERE, KIRK
MOVED LEFT NO ADDRESS
UNABLE TO FORWARD
RETURN TO SENDER

96813-2022 23





HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Albert J. Pattison
Vice President Human Resources
Aloha Airlines
P. O. Box 30028
Honolulu, HI 96820

Dear Mr. Pattison:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

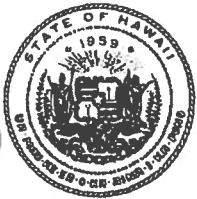
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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Adecco
Pacific Tower
1001 Bishop Street, #2001
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Paul Kosasa, Executive Vice President
ABC Stores
766 Pohukaina Street
Honolulu, HI 96813-5391

Dear Mr. Kosasa:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Lisa Fonseca, President
SHRM Hawaii Chapter
P. O. Box 3175
Honolulu, HI 96801-3175

Dear Ms. Fonseca:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

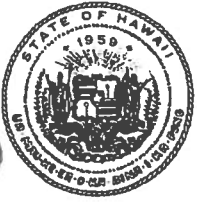
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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Walter R. Benavitz
President, WCBA
830-L California Avenue
Wahiawa, Hawaii 96786

Dear Mr. Benavitz:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Human Resources Director
First American Long &
Melone Tile Co., Ltd.
333 Queen Street, Suite 500
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Michael Ho, General Manager
Eva Airway Corporation-Hawaii Branch
2222 Kalakaua Avenue, Suite 1002
Honolulu, HI 96815

Dear Mr. Ho:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

John F. Howell
President & CEO
Easter Seal Society of Hawaii
710 Green Street
Honolulu, HI 96813

Dear Mr. Howell:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Sybil Saito, Benefits Administrator
Susan Tagawa, Human Resources Specialist
Crazy Shirts Hawaii
99-969 Iwaena Street
Aiea, HI 96701-3249

Dear Ms. Saito and Ms. Tagawa:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Carol Ai, Vice President
City Mill Company, Ltd.
P. O. Box 1559
Honolulu, HI 96806

Dear Ms. Ai:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Ted H.S. Hong
Assistant Corporation Counsel
County of Hawaii
Office of the Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720-4262

Dear Mr. Hong:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

William G. Harris, Executive Director
Association of Test Publishers
1201 Pennsylvania Avenue N.W.
Suite 300
Washington, D.C. 20005

Dear Mr. Harris:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Anco United, Inc.
P. O. Box 381
Honolulu, HI 96809

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Human Resources
Pomare Ltd. dba Hilo Hattie
700 North Nimitz Highway
Honolulu, HI 96817

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

President
Monarch Seafoods
515 Kalihi Street
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Director of Human Resources
Maui Land & Pineapple Company, Inc.
P. O. Box 187
Kahului, Hawaii 96733-6687

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

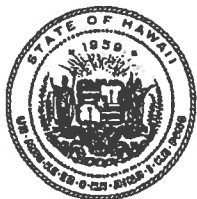
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Hawaii District Manager
Longs Drug Stores
2270 Hoonee Place,
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Kapiolani Health
Human Resources
55 Merchant Street, 23rd Floor
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Security Chief
Kahala Mall Security
Kahala Mall
4211 Waiialae Avenue
Honolulu, HI 96816

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Controller &
General Manager
Honolulu Shipyard
Pier 41
Box 30989
Honolulu, HI 96820

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Human Resources
Administration Manager
Hawaii Newspaper Agency
605 Kapiolani Blvd.
Post Office Box 3350
Honolulu, HI 96801

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Kathleen H. Masunaga, Executive Director
Hawaii Restaurant Association
1188 Bishop Street, Suite 1507
Honolulu, HI 96813

Dear Ms. Masunaga:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Gareth Sakakida, Managing Director
Hawaii Transportation Association
P. O. Box 30166
Honolulu, HI 96820

Dear Mr. Sakakida:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Hawaii Visitor Industry
Security Association
218 Kaiulani Avenue, Office #7
Honolulu, HI 96815

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Robert M. Witt
Executive Director
Hawaii Association of
Independent Schools
Ala Moana Pacific Center
1585 Kapaolani Blvd., #1212
Honolulu, HI 96814

Dear Mr. Witt:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Hawaiian Cruises
P. O. Box 29816
Honolulu, HI 96820

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Human Resources Manager
Goodwill Industries of Honolulu, Inc.
2610 Kilihau Street
Honolulu, HI 96819-2020

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Terry B. Pennington, President
Goodenow Associates, Inc.
1000 Bishop Street, Suite 608
Honolulu, HI 96813-4206

Dear Mr. Pennington:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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

September 10, 1998

Vice-President
Neighbors of the Ala Wai
P. O. Box 75542
Honolulu, HI 96836

Dear Sir or Madam:

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Enclosures



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

September 10, 1998

H. R. Consultant
Prostaffing, Inc.
841 Bishop Street, #420
Honolulu, HI 96813

Dear Sir or Madam:

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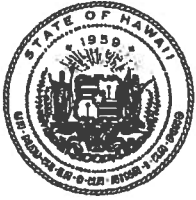
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September 10, 1998

President
Reid Tsychnological Systems
153 W. Ohio Street
Chicago, IL 60610

Dear Sir or Madam:

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

September 10, 1998

President
Sears-Hawaii District Office
98-600 Kamehameha Highway
Pearl City, HI 96782

Dear Sir or Madam:

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

September 10, 1998

Human Resources Manager
Seven-Eleven Hawaii, Inc.
1755 Nuuanu Avenue, 2nd Floor
Honolulu, HI 96817-3293

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 10, 1998

Personnel Manager
Shirokiya, Inc.
2250 Ala Moana Center
Honolulu, HI 96814

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Superintendent of Education
Department of Education
P. O. Box 2360
Honolulu, HI 96804

Dear Sir or Madam:

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

James Takushi, Director
Dept. of Human Resources Development
235 S. Beretania Street
Honolulu, HI 96813-2437

Dear Mr. Takushi:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Wailea Golf Resort, Inc.
161 Wailea Ike Place
Wailea, Kihei, Maui, Hawaii 96753-9599

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

Director of Security
Waikiki Trade Center
2255 Kuhio Avenue, Suite 720
Honolulu, HI 96815

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

Unitek Solvent Services, Inc.
2889 Mokumoa Street
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

President
State Termite
2224 Alahao Place, Bay #205
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

Office of the County Attorney
Mo'ikeha Building
4444 Rice Street, Suite 220
Lihu'e, Kaua'i, Hawai'i 96766

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

Anthony Commendador, Administrator
Hawaii Paroling Authority
250 S. King Street, Room 412
Honolulu, HI 96813

Dear Mr. Commendador:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

Susan Chandler, Director
Dept. of Human Services
P. O. Box 339
Honolulu, HI 96809-0339

Dear Ms. Chandler:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 10, 1998

Y. Hata & Company
P. O. Box 486
Kahului, Maui 96732

Dear Sir or Madam:

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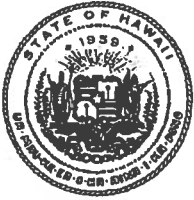
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September 10, 1998

Marianne Hoch
1427 Alexander Street, #308
Honolulu, HI 96822

Dear Ms. Hoch:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

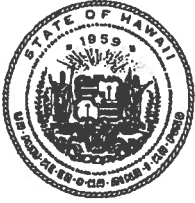
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September 10, 1998

Leif Johnson
91-736 Aikanaka Road
Ewa Beach, HI 96706

Dear Mr. Johnson:

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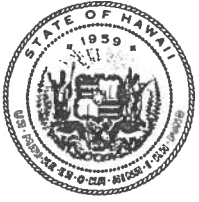
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September 4, 1998

Desmond Byrne
Honolulu Info Service
P. O. Box 2390
Honolulu, HI 96804

Dear Mr. Byrne:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Magoo's Auto Parts
722 Kanoelehua Avenue
Hilo, Hawaii 96720

Dear Sir or Madam:

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September 4, 1998

Paradise Beverages
Human Resource & Payroll
Administrator
94-1450 Moeniani Street
Waipahu, HI 96797

Dear Sir or Madam:

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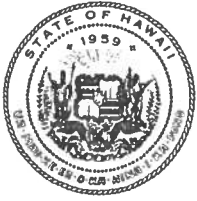
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September 4, 1998

Rich Meiers, President
Health Care Association of Hawaii
932 Ward Avenue Suite 430
Honolulu, HI 96814

Dear Mr. Meiers:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Senator Sam Slom
Hawaii State Capitol Room 208
Honolulu, HI 96813

Dear Senator Slom:

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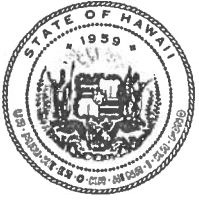
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September 4, 1998

County of Kauai
Dept. of Personnel
4444 Rice Street, Suite 140
Lihue, Kauai 96766

Dear Sir or Madam:

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September 4, 1998

ILWU
451 Atkinson Drive
Honolulu, HI 96814
Attn: Personnel Mgt. Specialist

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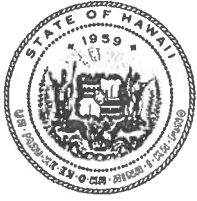
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September 4, 1998

UPW Local 646
1426 N. School Street
Honolulu, HI 96817

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September 4, 1998

AFL-CIO State Federal
320 Ward Avenue, Suite 205
Honolulu, HI 96814

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September 4, 1998

Mark Obatake, Executive Director
Hawaii Center for Independent Living
414 Kuwili Street, #102
Honolulu, HI 96814

Dear Mr. Obatake:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

State Coordinating Council
on Deafness
919 Ala Moana Blvd. Room 101
Honolulu, HI 96814

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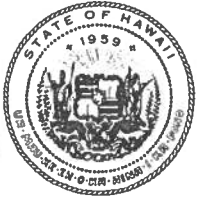
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September 4, 1998

Human Resources Dept.
Bank of Hawaii
P. O. Box 2900
Honolulu, HI 96846

Dear Sir or Madam:

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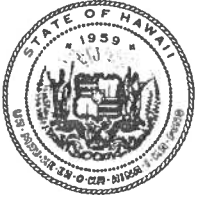
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September 4, 1998

Robert Toyofuku, Esq.
1000 Bishop Street
Suite 902
Honolulu, HI 96813

Dear Mr. Toyofuku:

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September 4, 1998

Wayson Chow, Esq.
Century Square
1188 Bishop Street, Suite 801
Honolulu, HI 96813

Dear Mr. Chow:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Carpenters Union
Local 745
1311 Houghtailing Street
Honolulu, HI 96817

Dear Sir or Madam:

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

September 4, 1998

Teamsters Local 996
904 Kohou Street
Suite 102
Honolulu, HI 96817

Dear Sir or Madam:

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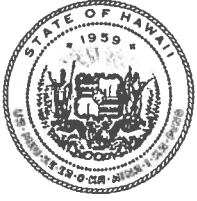
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September 4, 1998

Anthony Gill, Esq.
Gill & Zukeran
547 Halekauwila Street, Suite 202
Honolulu, HI 96813

Dear Mr. Gill:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

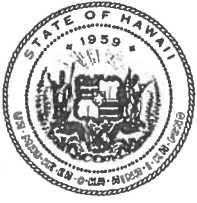
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Enclosures



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September 4, 1998

HERE LOCAL 5--AFL-CIO
1701 Ala Wai Blvd.
Honolulu, HI 96815

Dear Sir or Madam:

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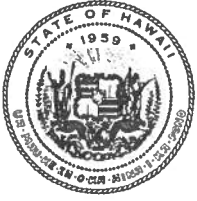
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September 4, 1998

Unity House
444 Hobron Lane, PH 4B
Honolulu, HI 96815

Dear Sir or Madam:

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

September 4, 1998

Clayton Ikei, Esq.
1100 Ward Avenue, Suite 1065
Honolulu, HI 96814

Dear Mr. Ikei:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

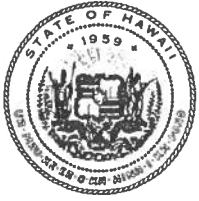
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Executive Director

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September 4, 1998

Herbert R. Takahashi, Esq.
Takahashi Maui & Vasconcellos
547 Halekauwila St., Suite 206
Honolulu, HI 96813

Dear Mr. Takahashi:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

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September 4, 1998

HGEA - Local 152 AFSCME
388 Mililani Street
Honolulu, HI 96813

Dear Sir or Madam:

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Executive Director

Enclosures



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September 4, 1998

Commission on Persons with Disabilities
Attn: Debbie Jackson
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

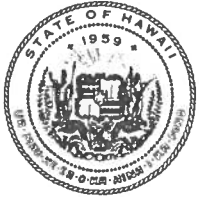
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Executive Director

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September 4, 1998

Lawrence Gregory Carter, Esq.
Koshiha Agena & Kubota
1001 Bishop Street, Suite 2600
Honolulu, HI 96813

Dear Mr. Carter:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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September 4, 1998

Susan Arnett, Esq.
Office of Public Defender
81 N. Market Street, Suite 200
Wailuku, Maui, Hawaii 96793

Dear Ms. Arnett:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

William A. Harrison, Esq.
841 Bishop Street Suite 800
Honolulu, HI 96813

Dear Mr. Harrison:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Kathleen Leahy, Director of Operations
Classic Resort
68-1310 Maunala Drive
Kohala Coast, Hawaii 96743

Dear Ms. Leahy:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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

September 4, 1998

Library-Attn: Debbie
Cades Schutte Fleming & Wright
P. O. Box 939
Honolulu, HI 96808

Dear Sir or Madam:

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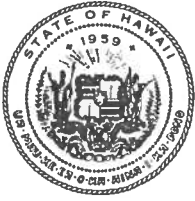
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September 4, 1998

Susan H. Kitsu
Affirmative Action Officer
The Judiciary, State of Hawaii
417 S. King Street, #209
Honolulu, HI 96813-2902

Dear Ms. Kitsu:

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

September 4, 1998

Tom Yamashita
Superintendent Office
Dept. of Education
1319 Miller Street, Room 416
Honolulu, HI 96813

Dear Mr. Yamashita:

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September 4, 1998

Anna M. Elento-Sneed, Esq.
Carlsmith, Ball, et al
P. O. Box 656
Honolulu, HI 96809

Dear Ms. Elento-Sneed:

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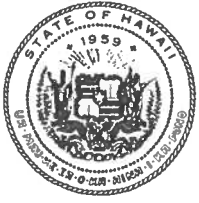
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September 4, 1998

Holly Bachini
233 Keawe Street #625
Honolulu, HI 96813

Dear Ms. Bachini:

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

September 4, 1998

Director of Human Resources
Honolulu Mortgage
201 Merchant Street, Suite 1700
Honolulu, HI 96813

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September 4, 1998

Richard Hashimoto
Sr. VP & Dir Prsnl Inds. Relations
ITT Sheraton Corporation
2155 Kalakaua Avenue
Honolulu, HI 96815

Dear Mr. Hashimoto:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

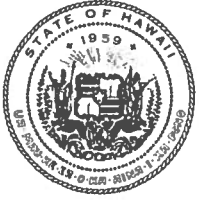
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September 4, 1998

Tim Lyons, Executive VP
HI Business League
677 Ala Moana Blvd., #815
Honolulu, HI 96813

Dear Mr. Lyons:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

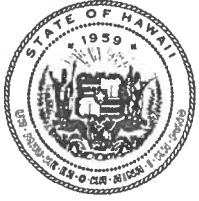
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Human Resources Dept.
Servco Pacific
89 S. King Street, 4th Floor
Honolulu, HI 96813

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September 4, 1998

Human Resources Director
Hotel Hana Maui
P. O. Box 9
Hana, Maui, Hawaii 96713

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

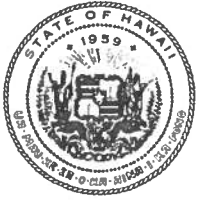
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If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Elizabeth J. Fujiwara, Esq.
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 1655
Honolulu, HI 96813

Dear Ms. Fujiwara:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

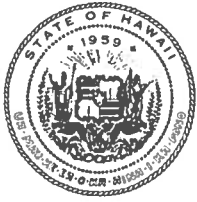
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Ann Isobe, Esq.
Devens Lo Nakano Saito Lee & Wong
220 S. King Street, Suite 1600
Honolulu, HI 96813

Dear Ms. Isobe:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAII CIVIL RIGHTS COMMISSION

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September 4, 1998

Connie Hastert
Hawaii Employer's Council
2682 Waiwai Loop
Honolulu, HI 96819

Dear Ms. Hastert:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

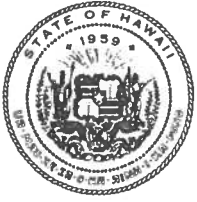
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

State Planning Council on
Developmental Disabilities
919 Ala Moana Blvd., Room 113
Honolulu, HI 96814

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

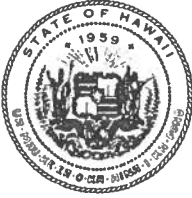
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September 4, 1998

Vanessa Chong
American Civil Liberties Union
P. O. Box 3410
Honolulu, HI 96801

Dear Ms. Chong:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



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

September 4, 1998

Pat Hawkins, Esq.
USARPAC - Ft. Shafter
Office of the Staff Judge Advocate
Bldg. T-102 Stop 111
Honolulu, HI 96858-5100

Dear Ms. Hawkins:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



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

September 4, 1998

Marr Jones & Pepper
Attn: Wendy Vonderburgn
1001 Bishop Street #1550
Pauahi Tower
Honolulu, HI 96813

Dear Sir or Madam:

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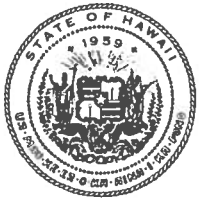
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Enclosures



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September 4, 1998

William Tagupa
3425 Loulu Street
Honolulu, HI 96822

Dear Mr. Tagupa:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

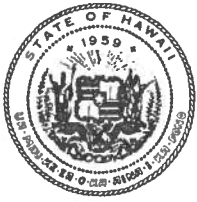
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Managing Director
County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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

September 4, 1998

American Friends Service
Committee/Hawaii Area Program Office
2426 Oahu Avenue
Honolulu, HI 96822

Dear Sir or Madam:

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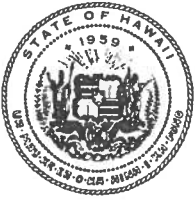
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September 4, 1998

GTE Hawaiian Telephone
1177 Bishop Street
Honolulu, HI 96813

Dear Sir or Madam:

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

September 4, 1998

Honolulu Community Action Program, Inc.
1120 Maunakea Street, Suite 280
Honolulu, HI 96817

Dear Sir or Madam:

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

September 4, 1998

Risk Manager
Fletcher Pacific Construction
707 Richards Street, Suite 400
Honolulu, HI 96813

Dear Sir or Madam:

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Dr. William Puette
UH Center for Labor,
Education & Research
1420 Lower Campus Drive
Honolulu, HI 96822

Dear Doctor Puette:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

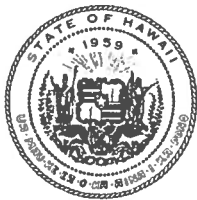
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September 4, 1998

State Director
National Federation of
Independent Businesses
1588 Piikea
Honolulu, HI 96818

Dear Sir or Madam:

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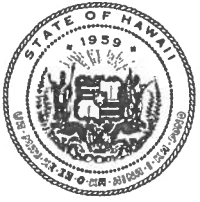
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

City & County Personnel Dept.
550 S. King Street
Honolulu, HI 96813

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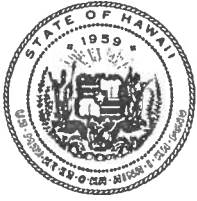
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September 4, 1998

Jackie Mahi Erickson
P. O. Box 2750
Honolulu, HI 96840-0001

Dear Ms. Erickson:

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September 4, 1998

Office of the Prosecuting Attorney
1060 Richards Street
Honolulu, HI 96813

Dear Sir or Madam:

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September 4, 1998

Richard J. Port
1600 Ala Moana Blvd. #3100
Honolulu, HI 96815

Dear Mr. Port:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

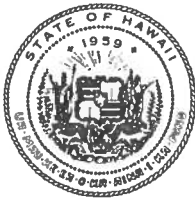
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September 4, 1998

Lynette Jee
1710 Punahou Street, Apt. 903
Honolulu, HI 96822

Dear Ms. Jee:

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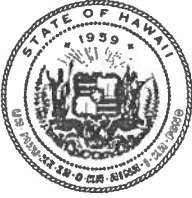
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September 4, 1998

Ellen Godbey Carson, Esq.
Alston Hunt Floyd & Ing
1001 Bishop Street, 18th Floor
Pacific Tower
Honolulu, HI 96813

Dear Ms. Godbey Carson:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Frederick R. Troncone, Esq.
Case Myrdal Bigelow & Lombardi
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 2600
Honolulu, HI 96813

Dear Mr. Troncone:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

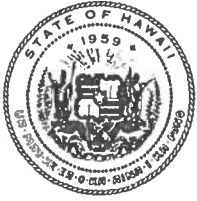
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If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

G. Todd Withy, Esq.
707 Richards Street Suite #711
Honolulu, HI 96813

Dear Mr. Withy:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Public Defender
1130 North Nimitz Highway Suite A-135
Honolulu, HI 96817

Dear Sir or Madam:

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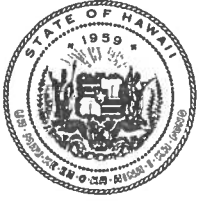
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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Simons & Ichinose
Penthouse One
Ocean View Center
707 Richards Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Choy & Nauyokas
Grosvenor Center, Makai Tower
733 Bishop Street, Suite 2300
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

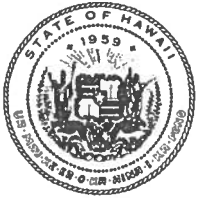
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Ruth I. Tsujimura, Esq.
Dept. of the Attorney General
Employment Relations Division
465 S. King Street, Room B-2
Honolulu, HI 96813

Dear Ms. Tsujimura:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

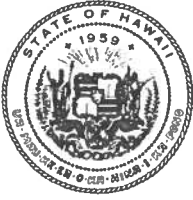
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Dept. of Human Resources Dept.
235 S. Beretania Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Honolulu Police Department
801 S. Beretania Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Amefil "Amy" Agbayani
3432-1 Kalihi Street
Honolulu, HI 96819

Dear Ms. Agbayani:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Signe Godfrey
Olsten Staffing Services
900 Fort Street Mall
Pioneer Plaza, Suite 1202
Honolulu, HI 96813

Dear Ms. Godfrey:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Personnel & Benefits Manager
VIP Foodservice
P. O. Box 517
Kahului, Hawaii 96733

Dear Sir or Madam:

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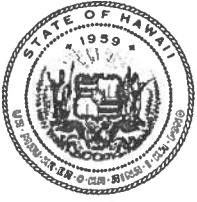
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September 4, 1998

Center Scale Automation Hawaii
2632-A Kilihau Street
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Clinical Laboratories of Hawaii
1831 Wilipa Loop
Wailuku, Maui 96793

Dear Sir or Madam:

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September 4, 1998

Madilyn Silverman
Program Specialist
Dept. of Human Resources
820 Mililani Street #710
Honolulu, HI 96813

Dear Ms. Silverman:

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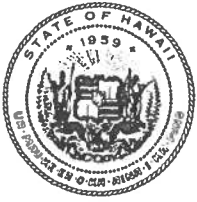
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Jared H. Jossem
Verner Lippfert Bernhard
McPherson Hand
745 Fort Street, 6th Floor
Honolulu, HI 96813

Dear Mr. Jossem:

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September 4, 1998

Brian Kagihara
DOH Certification &
Monitoring Unit
2827 Waimano Home Road
Pearl City, HI 96782

Dear Mr. Kagihara:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

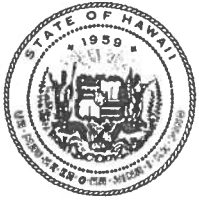
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Amy McAngus
Golden State Foods
94-554 Ukee Street
Waipahu, HI 96797

Dear Ms. McAngus:

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September 4, 1998

Hawaii State Commission on
the Status of Women
Office of the Lt. Governor
Hawaii State Capitol
Honolulu, HI 96813

Dear Sir or Madam:

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Director of Human Resources
Straub Clinic
888 S. King Street
Honolulu, HI 96814

Dear Sir or Madam:

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September 4, 1998

Richard S. Ekimoto, Esq.
1132 Bishop Street Suite 902
Honolulu, HI 96813

Dear Mr. Ekimoto:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Firm Administrator
Shigeji Sato & Company
1299 S. Beretania Street, Suite 200
Honolulu, HI 96814

Dear Sir or Madam:

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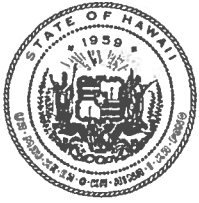
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September 4, 1998

State of Hawaii
Department of Public Safety
919 Ala Moana Blvd., 4th Floor
Honolulu, HI 96814

Dear Sir or Madam:

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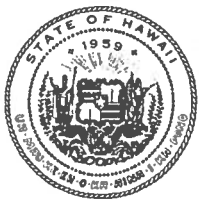
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September 4, 1998

Executive Director
AOAO The Whaler
2481 Kaanapali Parkway
Lahaina, Hawaii 96761-1994

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September 4, 1998

Alu Like
Ex Offender Project
567 S. King Street, Suite 105
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Frances E. H. Lum, Esq.
Dept. of the Attorney General
425 Queen Street
Honolulu, HI 96813

Dear Ms. Lum:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Business Manager
Office of Prosecuting Attorney
34 Rainbow Drive
Hilo, Hawaii 96720

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Hawaii Island Chamber of Commerce
202 Kamehameha Avenue
Hilo, Hawaii 96720

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Police Chief
County of Hawaii Police Department
349 Kapiolani Street
Hilo, Hawaii 96720-3998

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Director of Human Resources
ITT Sheraton Hotels in Waikiki
2255 Kalakaua Avenue
Honolulu, HI 96815

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

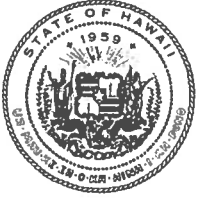
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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

President
KTA Super Stores
50 E. Puainako Street
Hilo, Hawaii 96720

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

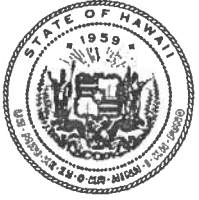
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Jan Berman, President
Retail Merchants of Hawaii
539 Cooke Street, Suite 203
Honolulu, HI 96813

Dear Ms. Berman:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

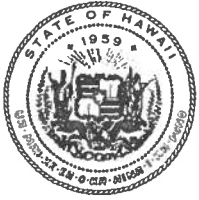
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Employee Relations Director
Liberty House
P. O. Box 2690
Honolulu, HI 96845

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

AOAO The Greenwood Condominium
1128 Ala Napunani Street
Honolulu, HI 96818

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Andre S. Wooten, Esq.
Daphne E. Barbee-Wooten, Esq.
1188 Bishop Street, Suite 1909
Honolulu, HI 96813

Dear Mr. Wooten and Ms. Barbee-Wooten:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAI'I CIVIL RIGHTS COMMISSION

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

September 4, 1998

American Linen Company
2771 Wai Wai Loop
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Sr. VP of Human Resources
American Savings
915 Fort Street Mall
Honolulu, HI 96813

Dear Sir or Madam:

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Medford G. Dyer, President
M. Dyer & Sons, Inc.
98-054 Kuleana Road
Pearl City, HI 96782

Dear Mr. Dyer:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

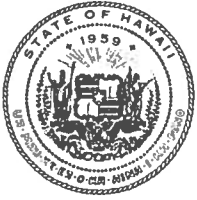
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Jane Sugimura, President
Hawaii Council of AOA
677 Ala Moana, Suite 701
Honolulu, HI 96813

Dear Ms. Sugimura:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Murray Towill, President
Hawaii Hotel Association
2270 Kalakaua Avenue Suite 1103
Honolulu, HI 96815-2564

Dear Mr. Towill:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

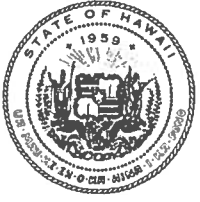
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Enclosures



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

September 4, 1998

Young Brothers, Ltd.
P. O. Box 3288
Honolulu, HI 96801

Dear Sir or Madam:

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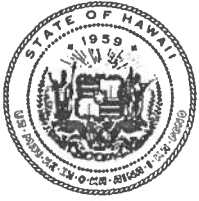
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Area General Manager
Hilton Resorts Hawaii
2005 Kalia Road
Honolulu, HI 96815-1999

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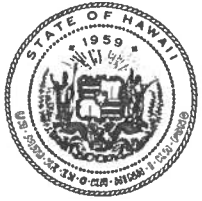
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Hawaii Electric Company, Inc.
P. O. Box 2750
Honolulu, HI 96840

Dear Sir or Madam:

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

September 4, 1998

President, Board of Directors
Fairway Villa, AOA
2345 Ala Wai Blvd., #2301
Honolulu, HI 96815

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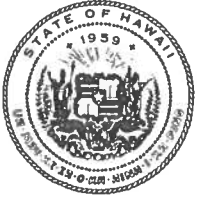
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Maui Electric Company, Ltd.
P. O. Box 398
Kahului, Hawaii 96733

Dear Sir or Madam:

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September 4, 1998

Hawaii Electric Light
P. O. Box 1027
Hilo, Hawaii 96721

Dear Sir or Madam:

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

September 4, 1998

Director-Human Resources Services
GTE Hawaiian Tel
P. O. Box 2200
Honolulu, HI 96841

Dear Sir or Madam:

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Enclosures



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

September 4, 1998

Assistant Housing Administrator
50 Wailuku Drive
Hilo, Hawaii 96720-2484

Dear Sir or Madam:

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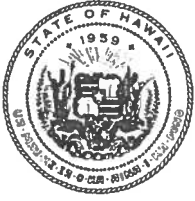
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If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Stanley G. Yates
P. O. Box 417
Ele'ele, Hawaii 96705

Dear Mr. Yates:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

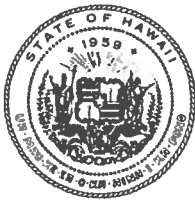
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Peter Fritz, Esq.
1142 Auahi Street, #3316
Honolulu, HI 96814

Dear Mr. Fritz:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

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September 4, 1998

Shelley Tanaka, Human Resources
Pacific Transfer & Warehouse, Inc.
P. O. Box 30329
Honolulu, HI 96820-0329

Dear Ms. Tanaka:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

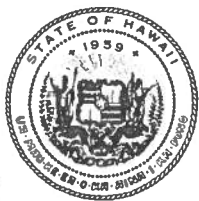
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September 4, 1998

Claudia Simpson
Director of Human Resources
Aloha Nursing & Rehab Center
45-545 Kam Highway
Kaneohe, HI 96744

Dear Mr. Simpson:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

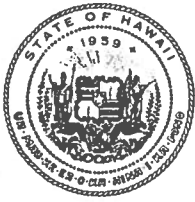
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September 4, 1998

Valerie Lam, Esq.
1001 Bishop Street, Suite 8081
Honolulu, HI 96813

Dear Ms. Lam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

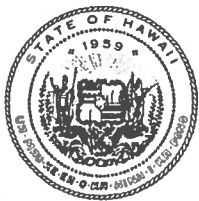
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September 4, 1998

Linn Koga
Catholic Charities
250 Vineyard Street
Honolulu, HI 96813-2495

Dear Ms. Koga:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Representative Terrance Tom
Hawaii State Capitol
Room 302
Honolulu, HI 96813

Dear Representative Tom:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Ellen Torigoe
Michael McGuire, Inc.
700 Richards Street #705
Honolulu, HI 96813

Dear Ms. Torigoe:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Sherri Higa
Dept. of Public Safety
Personnel Dept.
919 Ala Moana Blvd. Room 110
Honolulu, HI 96814

Dear Ms. Higa:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Senator Randy Iwase
Hawaii State Capitol Room 201
Honolulu, HI 96813

Dear Senator Iwase:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Carl Varady
1164 Bishop Street, Suite 1205
Honolulu, HI 96813

Dear Mr. Varady:

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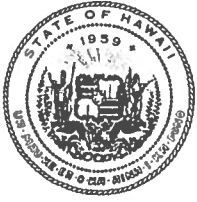
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September 4, 1998

P. Dendle
Kaiser Permanente
1411 Kapiolani Blvd. 17th Floor
Honolulu, HI 96814

Dear Sir or Madam:

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September 4, 1998

Elbridge Smith
841 Bishop Street
Honolulu, HI 96819

Dear Mr. Smith:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Michael K. Kaneshiro
Chief Counsel
SHOPO
1717 Hoe Street
Honolulu, HI 96819

Dear Mr. Kaneshiro:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Ray Domingo
P. O. Box 4595
Honolulu, HI 96813

Dear Mr. Domingo:

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September 4, 1998

Carolyn E. Hayashi, Esq.
Davies Pacific Center
841 Bishop Street Suite 850
Honolulu, HI 96813

Dear Ms. Hayashi:

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September 4, 1998

Albert Dennis, President
Safeguard Services
1000 Bishop Street Suite 608
Honolulu, HI 96813

Dear Mr. Dennis:

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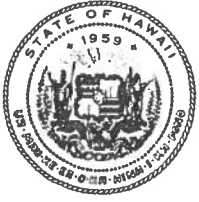
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September 4, 1998

Martin & McArthur
1815 Kahai Street
Honolulu, HI 96819

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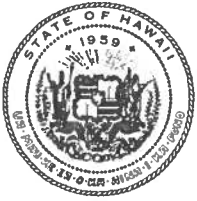
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September 4, 1998

Commercial Savings
First Hawaiian Tower
1132 Bishop Street
Honolulu, HI 96813

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September 4, 1998

Turtle Bay Hilton & Country Club
P. O. Box 187
Kahuku, Hawaii 96731

Dear Sir or Madam:

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September 4, 1998

Protection & Advocacy Agency Hawaii
1580 Makaloa Street, Suite 1060
Honolulu, HI 96814

Dear Sir or Madam:

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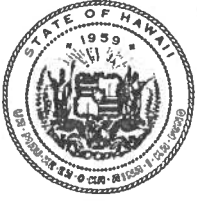
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September 4, 1998

Employee Relations Manager
Outrigger Hotels Hawaii
2375 Kuhio Avenue
Honolulu, HI 96815-2939

Dear Sir or Madam:

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September 4, 1998

Reynold Shishido
P. O. Box 166
Wailuku, Hawaii 96793

Dear Mr. Shishido:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

American Civil Liberties
Union of Hawaii
P. O. Box 3410
Honolulu, HI 96801

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Department of Health
Affirmative Action Office
P. O. Box 3378
Honolulu, HI 96801-3378

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

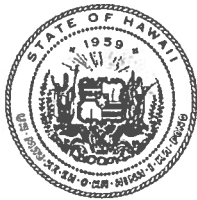
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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

McDonald's Restaurant of Hawaii
237 Queen Emma Square
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

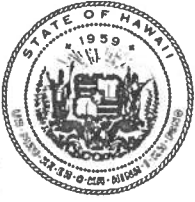
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Naomi Tsujioka
Oliver Lee Lawn
707 Richards Street, Suite 600
Honolulu, HI 96813

Dear Ms. Tsujoka and Mr. Lawn:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Office of Consumer Protection
DCCA
P. O. Box 3767
Honolulu, HI 96812

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

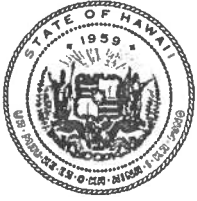
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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Vice President
Title Guaranty Escrow Services, Inc.
235 Queen Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

City & County of Honolulu
Dept. of Personnel
550 S. King Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Hawaii Women Lawyers
P. O. Box 2072
Honolulu, HI 96805

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Robert Keller
1001 North School Street
Honolulu, HI 96817

Dear Mr. Keller:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Dept. of Civil Services
101 Aupuni Street, #133
Hilo, Hawaii 96720

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAI'I CIVIL RIGHTS COMMISSION

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

September 4, 1998

Chamber of Commerce of Hawaii
1132 Bishop Street, Suite 200
Honolulu, HI 96813

Dear Sir or Madam:

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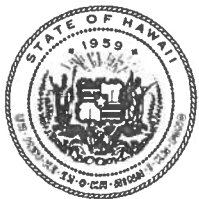
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

American Association of
University of Women-Honolulu Branch
1802 Keeaumoku Street
Honolulu, HI 96822

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

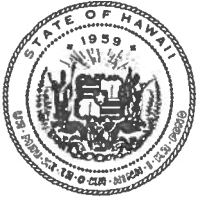
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Executive Office
Hilton Hawaiian Village
4331 Kauai Beach Drive
Lihue, Kauai, Hawaii 96766-9158

Dear Sir or Madam:

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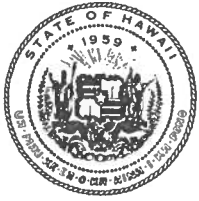
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Barbara A. Petrus, Esq.
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, HI 96813

Dear Ms. Petrus:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Director of Operations
Eagle Distributors, Inc.
99-877 Iwaena Street
Aiea, HI 96701

Dear Sir or Madam:

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Human Resources Director
Meadow Gold Dairies, Inc.
P. O. Box 1880
Honolulu, HI 96805

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Director of Human Resources
Royal Kona Resort
75-5852 Alii Drive
Kailua-Kona, Hawaii 96740

Dear Sir or Madam:

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Personnel Manager
Hilton Hawaiian Village
2005 Kalia Road
Honolulu, HI 96815-1999

Dear Sir or Manager:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

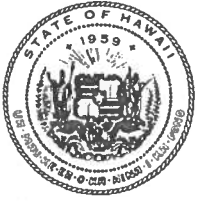
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Handicapped Rights Project
1108 Nuuanu Avenue
Honolulu, HI 96817

Dear Sir or Madam:

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Enclosures



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

September 4, 1998

Daniel R. Foley, Esq.
Partington & Foley
2450 Pacific Tower
1001 Bishop Street
Honolulu, HI 96813-3608

Dear Mr. Foley:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

D. Yogi
C. Brewer & Company
827 Fort Street
Honolulu, HI 96813

Dear Mr. Yogi:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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September 4, 1998

Y.W.C.A.
Public Policy Committee
P. O. Box 337
Honolulu, HI 96809

Dear Sir or Madam:

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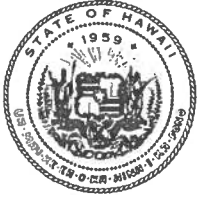
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Richard Botti
Legislative Information Services
677 Ala Moana Blvd., Suite 815
Honolulu, HI 96813

Dear Mr. Botti:

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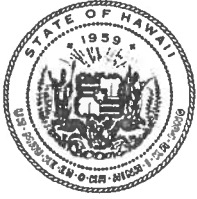
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If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAI' CIVIL RIGHTS COMMISSION

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

September 4, 1998

Alexander & Baldwin
822 Bishop Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Gerry Ikuta, Personnel Specialist
Ala Moana Hotel
410 Atkinson Drive
Honolulu, HI 96814

Dear Mr. Ikuta:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Personnel Manager
ADT Automotive-Aloha Auto Auction
P. O. Box 17160
Honolulu, HI 96817

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Operations Manager
Select Temporary Services
550 Paiea Street, Suite 222
Honolulu, HI 96819-1837

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Director of Employment
Hawaiian Electric
P. O. Box 2750
Honolulu, HI 96840

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Becky Dixon
East-West Center
1777 East West Road
Honolulu, HI 96848

Dear Ms. Dixon:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Deborah Pratt
P. O. Box 1449
Kailua-Kona, Hawaii 96748

Dear Mr. Pratt:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Financial Manager
Boys & Girls Club of Honolulu
1704 Waiola Street
Honolulu, HI 96826

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Director of Government Affairs
Hawaii Association of Realtors
1136 12th Avenue, Suite 220
Honolulu, HI 96816

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures



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

September 4, 1998

Librarian
745 Fort Street Mall, 5th Floor
Honolulu, HI 96813

Dear Sir or Madam:

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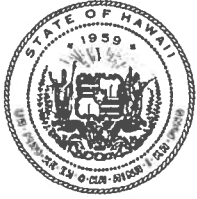
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Committee on Welfare Concerns
c/o 810 North Vineyard Blvd.
Honolulu, HI 96817

Dear Sir or Madam:

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September 4, 1998

Carlsmith, Ball Wichman
Case & Ichiki
1001 Bishop Street, Suite 2200
Honolulu, HI 96813

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September 4, 1998

Employee Relations Manager
Zippy's Inc.
1765 S. King Street
Honolulu, HI 96826

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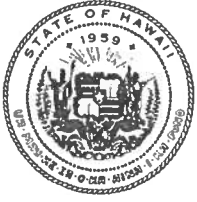
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Scott I. Batterman, Esq.
Davies Pacific Center
841 Bishop Street, Suite 1500
Honolulu, HI 96813

Dear Mr. Batterman:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

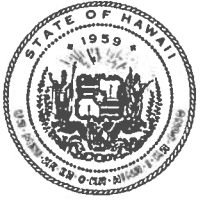
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September 4, 1998

Personal & Labor Relations
Hawaiian Tug & Barge
P. O. Box 3288
Honolulu, HI 96801

Dear Sir or Madam:

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September 4, 1998

Dennis W. S. Chang, Esq.
735 Bishop Street, Suite 320
Honolulu, HI 96813

Dear Mr. Chang:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Haleakala Dairy
55 S. Wakea Avenue
Kahului, Hawaii 96732

Dear Sir or Madam:

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September 4, 1998

Agnes Ringle
Pacific Village
98-134 Ualo Street, #G-1
Aiea, Hawaii 96701

Dear Ms. Ringle:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

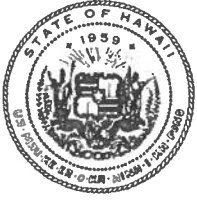
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830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

September 4, 1998

Mark Skirmstad, Librarian
Torkildson & Katz, et al.
700 Bishop Street, 15th Floor
Honolulu, HI 96813

Dear Mr. Skirmstad:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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

September 4, 1998

Oahu Filipino Community Council
1270 Queen Emma Street, Suite 606
Honolulu, HI 96813

Dear Sir or Madam:

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September 4, 1998

Honolulu Star Bulletin
Attn: Ben Seto
P. O. Box 3080
Honolulu, HI 96802

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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September 4, 1998

Personnel Manager
Hawaiian Cement
1100 Alakea Street #2300
Honolulu, HI 96813-2833

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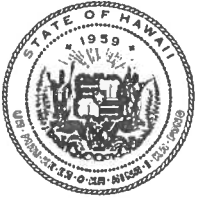
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September 4, 1998

Director of Recruitment/
Public Relations - Zippy's
1765 S. King Street
Honolulu, HI 96828

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September 4, 1998

Wesley M. Fujimoto, Esq.
Pioneer Plaza
900 Fort Street Mall, #1800
Honolulu, HI 96813

Dear Mr. Fujimoto:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Lowell K.Y. Chun-Hoon, Esq.
King Nakamura & Chun-Hoon
220 S. King Street, Suite 980
Honolulu, HI 96813

Dear Mr. Chun-Hoon:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

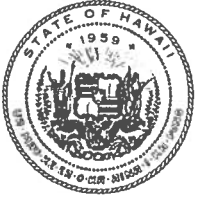
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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Wilfredo Tunglo, Esq.
Filipino Chamber of Commerce
2512 Komo Mai Drive
Pearl City, HI 96782

Dear Mr. Tunglo:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Director
Governor's Committee on Aids
591 Ala Moana Blvd., Room #118
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

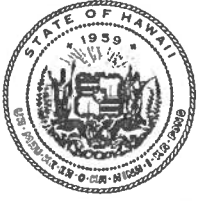
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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Resources Director
Food Pantry, Ltd.
3536 Harding Avenue, Suite 401
Honolulu, HI 96816

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

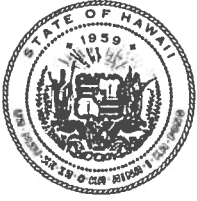
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Executive Director

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Alfred G. Evangelista, Esq.
Ocean View Center
707 Richards Street, Suite 710
Honolulu, HI 96813

Dear Mr. Evangelista:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Denice Vongnechren
Goodsill Anderson Quinn & Stifel
1800 Alii Place
1099 Alakea Street
Honolulu, HI 96813

Dear Ms. Vongnechren:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Allicyn Hikida-Tasaka
1334 Kaihee Street #101
Honolulu, HI 96822

Dear Ms. Hikida-Tasaka:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Claudio R. Suyat
45-596 Apuakea Street
Kaneohe, HI 96744

Dear Mr. Suyat:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

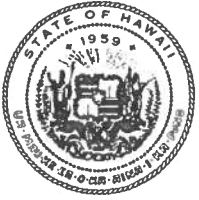
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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAI'I CIVIL RIGHTS COMMISSION

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

September 4, 1998

Jack Law
1877 Kalakaua Avenue
Honolulu, HI 96815

Dear Mr. Law:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Faye Kennedy
3071 Felix Street
Honolulu, HI 96816

Dear Ms. Kennedy:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Harry Yee, Esq.
P. O. Box 2294
Honolulu, Hawaii 96804

Dear Mr. Yee:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

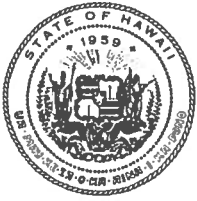
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Stan Yates
P. O. Box 417
Ele'ele, Kauai, Hawaii 96705

Dear Mr. Yates:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Department of Corporation Counsel
530 S. King Street
Honolulu, HI 96813

Dear Sir or Madam:

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Na Loio No Na Kanaka
810 North Vineyard Blvd.
Honolulu, HI 96817

Dear Sir or Madam:

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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

William W. Watkins, Esq.
1001 Bishop Street Suite 2010
Honolulu, HI 96813

Dear Mr. Watkins:

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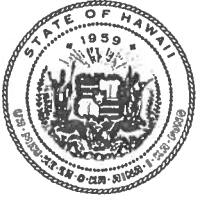
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Enclosures



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

September 4, 1998

Lunsford D. Phillips, Esq.
Pioneer Plaza
900 Fort Street Mall, #1620
Honolulu, HI 96813

Dear Mr. Phillips:

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Executive Director

Enclosures

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MAIL



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Peter Labrador, Esq.
President-Hawaii Filipino
Lawyers Association
550 Halekauwila Street, Suite 102
Honolulu, HI 96813

Dear Mr. Labrador:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Enclosures

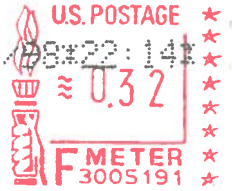
CIVIL RIGHTS COMMISSION

NI STREET, 4TH FLOOR
HONOLULU, HI 96813
550 Kalia Street, Room 411
HI 96813

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UNABLE TO FORWARD

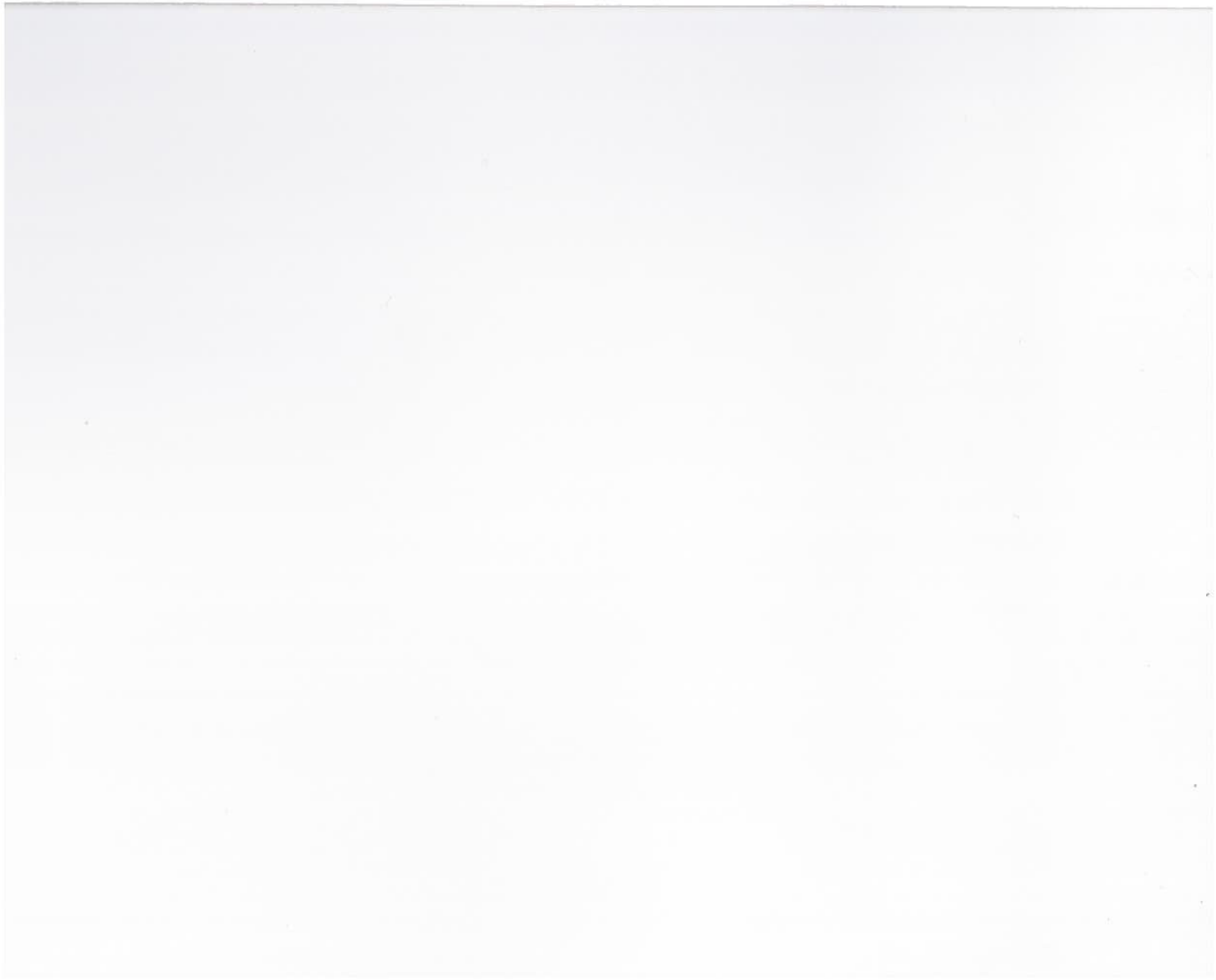


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Peter Labrador, Esq.
President-Hawaii Filipino
Lawyers Association
550 Halekiauila Street, Suite 102
Honolulu, HI 96813

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

*PWT CARA MEI KAM
CANE*

Coralie Matayoshi, Esq.
Hawaii State Bar Association
1136 Union Mall, PH 1
Honolulu, HI 96813

Dear Ms. Matayoshi:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

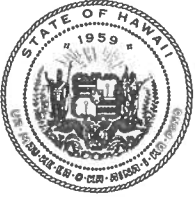
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Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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September 4, 1998

Y.W.C.A.
Public Policy Committee
P. O. Box 337
Honolulu, HI 96809

Dear Sir or Madam:

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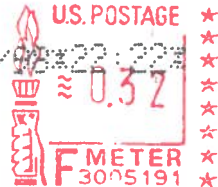
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William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

1500 Ala. Street, Room 411
Honolulu, HI 96813



NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

Y.W.C.A.
Public Policy Committee
P. O. Box 337
Honolulu, HI 96809

96809-0337



SEP 06
CIVIL RIGHTS COMMISSION
HONOLULU, HI

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII CIVIL RIGHTS COMMISSION

Amendments to Chapters 12-46 Hawaii Administrative Rules

1. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "service dog".

["Service dog" means any dog individually trained and certified by a nationally recognized service dog organization to assist a person with a disability in performing essential activities of daily living.]

2. Section 12-46-302, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Service animal" means any animal that is trained to provide those life activities limited by the disability of the person."

3. Section 12-46-302, Hawaii Administrative Rules, is amended by amending the definition of "signal dog" to read as follows:

"Signal dog" means any dog that is [individually] trained [and certified by a nationally recognized signal dog organization] to alert a deaf person to intruders or sounds."

4. Section 12-46-306(a), Hawaii Administrative Rules, is amended to read as follows:

"§12-46-306 Discrimination on the basis of disability. (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson:

- (1) To refuse to engage in a real estate transaction or to deny equal opportunity to use and enjoy a housing accommodation with a person with a disability because the person uses the services of a [certified] guide[,], dog, or signal dog, or service [dog] animal,

provided that reasonable restrictions may be imposed upon the person with a disability regarding excessive noise or other problems caused by those animals including:

- [(A)] Providing proof that the animal is a service, guide, or signal dog;
 - [(B)] (A) Observing applicable laws, including leash laws and pick-up laws;
 - [(C)] (B) Assuming responsibility for damage caused by the dog or animal;
 - [(D)] (C) Cleaning the housing unit upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other appropriate methods; or
 - [(E)] (D) Any other reasonable restriction that would leave the housing accommodation in the condition it was in prior to the occupancy of the tenant with a disability, except for reasonable wear and tear;
- (2) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus (HIV) infection;
- (3) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a housing accommodation, including public and common use areas; or

Example:

Kanoa Gardens is a three hundred unit apartment complex with four hundred fifty parking spaces which are available to tenants and guests on a "first come first served" basis. Paul applies for housing in Kanoa Gardens. Paul is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of the law for the owner or manager of Kanoa Gardens to refuse to make this requested accommodation.

Without a reserved space Paul may not be able to live in Kanoa Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford Paul an equal opportunity to use and enjoy a housing accommodation. The requested accommodation is reasonable because it is feasible and practical because of the number of unassigned parking spaces available.

- (4) To refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises, occupied or to be occupied by the person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises.

Example:

A disabled tenant asks an owner or manager for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the owner or manager to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars.

An owner, any other person engaging in a real estate transaction, real estate broker, or salesperson may grant permission for a modification on the condition that the disabled person give:

- (A) A reasonable description of the proposed modifications;
- (B) Reasonable assurances that the modifications will be done in a workmanlike manner and that any required building permits will be obtained; and
- (C) Reasonable assurances that the disabled person will restore the interior of the premises to the condition that existed before the modification, reasonable wear

and tear excepted, however, restoration will not be necessary of those modifications which do not interfere with the owner's or next tenant's use and enjoyment of the premises.

Example:

An owner or manager may require the creation of an escrow fund and the payment of money into the fund to cover the costs of restoring the premises. Any portion of the fund, including interest, that is not required for the restoration of the premises will be reimbursed to the disabled person, who paid into the fund, within a reasonable time.

Example:

If a disabled person receives permission to put in grab bars and widen the doorway, it is not necessary to remove the blocking or narrow the doorway to restore the premises because the reinforced walls and wider doorway will not interfere with the owner's or next tenant's use and enjoyment of the premises. However, the tenant can be required to remove the grab bars and restore the wall to the condition that existed before the modification, reasonable wear and tear excepted."

[Eff 10/15/93; am] (Auth: HRS §§368-3;
515-9(7)) (Imp: HRS § 515-3)

5. Section 12-46-11(d), Hawaii Administrative Rules, is amended to read as follows:

"(d) The dismissal of a complaint may be reconsidered [by the commission] on the executive director's [its] own initiative at any time or upon the complainant's written request filed within thirty days

after the date of the receipt of the notice of disposition. Written notice of the reconsideration shall be provided by the [commission] executive director to the parties." [Eff 12/31/90; am 5/1/92; am 11/4/93] (Auth: HRS §368-3) (Imp: HRS §§ 368-11, 368-12, 368-13, 515-9)

6. Material, except source notes, to be repealed is bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments are not underscored.

8. These amendments to chapter 12-46, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of Lieutenant Governor.

NOTICE OF PUBLIC HEARING

Pursuant to provisions of Chapter 91, Hawaii Revised Statutes (HRS), and all other laws applicable thereto, the Department of Labor and Industrial Relations, Civil Rights Commission, will hold a public hearing to consider amendments to Subchapter 1 (Procedure on Complaints) and Subchapter 20 (Real Property Transaction Discrimination) of the existing administrative rules.

The hearing will be held at 1:30 p.m. on Wednesday, September 30, 1998, in room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii.

The purposes to be achieved by these proposed rules are to conform them to Act 311, L.1997, and to clarify the authority to reconsider complaint dismissals.

The proposed amendment to Subchapter 1 of the administrative rules is:

§ 12-46-11(d) is amended to provide that the executive director, rather than the commission, is authorized to reconsider dismissals of complaints.

The proposed amendments to Subchapter 20 of the administrative rules include:

§ 12-46-302 is amended to delete the definition of "service dog" and to add the definition of "service animal."

§ 12-46-302 is amended to change the definition of "signal dog" by deleting the requirements of individual training and certification by a nationally recognized signal dog institution.

§ 12-46-306(a)(1) is amended to: 1) add a new discriminatory practice "to deny equal opportunity to use and enjoy a housing accommodation"; 2) delete the certification requirement; 3) delete the requirement of providing proof of an animal's status; and 4) make other grammatical changes to reflect the replacement of the term "service dog" with "service animal."

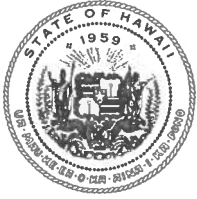
Interested persons are urged to present their oral and written testimony at the public hearing or to submit written testimony before the date of the public hearing. Such testimonies may be sent to the Executive Director, Civil Rights Commission, 830 Punchbowl Street, Room 411, Honolulu, Hawaii 96813. Copies of the proposed amendments will be mailed at no cost to interested parties by calling 586-8636. Neighbor islands may call 1-800-486-4644 ext. 6-8636. Special accommodations (i.e. sign language interpreter, large print or taped materials) can be made if requested one week in advance of the public hearing by calling the Commission at the above numbers.

LORRAINE AKIBA

Director of Labor and Industrial Relations

(Hon. Adv.: Aug. 19, 1998)

(A-49488)



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

John Manion
1580 Makaloa Street #1060
Honolulu, HI 96814

Dear Mr. Manion:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

John Manion
1580 Makaloa Street #1060
Honolulu, HI 96814

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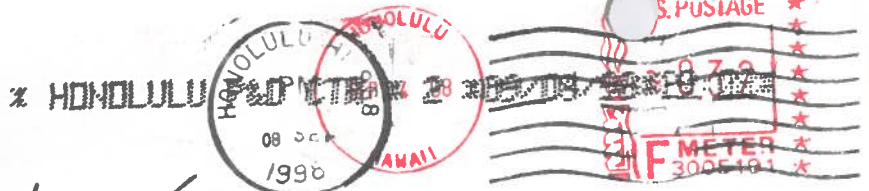
Sincerely,

William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

1501 Kalia Street, Room 411
Honolulu HI 96813



Return To SENDER

No LONGER AT THIS ADDRESS.

John Manion
1580 Makaloa St
#1060
Honolulu, HI



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- Moved, Left No Address
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 - Attempted - Not Known
 - Unclaimed
 - No Such Street
 - Insufficient Address
 - Refused
 - No Such Number
- Rt. _____ Init. _____

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Barbara Date, PhD Case Manager
Big Island Aids Project
P. O. Box 11510
Hilo, Hawaii 96720

Dear Ms. Date:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Pancho Alcon
P. O. Box 586
Kaunakakai, Hawaii 96748

Dear Mr. Alcon:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures

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HAWAII CIVIL RIGHTS COMMISSION
ADJUDICATION SECTION
830 Punchbowl Street Room 411
Honolulu, Hawaii 96813
Phone: 586-8659; Fax: 586-8655

The information contained in this facsimile message is attorney privileged and confidential information intended for the use of the individual or entity named below. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by collect telephone, and return the original message to us at the above address via the United States Postal Service at our expense. Mahalo.

DATE: September 4, 1998

TO: Dana Matlin

FAX: 592-4708

FROM: John Ishihara, Chief Counsel

SUBJECT: Notice of Public Hearing

MESSAGE: I am faxing over correspondence along with information concerning the Public Hearing.

NO. OF PAGES INCLUDING THIS COVERSHEET: eight

If you do not receive all of the pages or have problems, please call (808) 586-8659 as soon as possible and ask for Cathy Simmons.



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Mary Jossem
Special Education
708 Palekaua Street
Honolulu, HI 96816

Dear Ms. Jossem:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

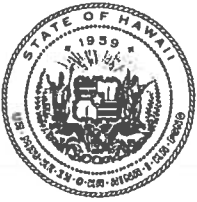
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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Adult Probation Office
777 Punchbowl Street
Honolulu, HI 96813

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

DMR
360 B Mokauea Street
Honolulu, HI 96819

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 10, 1998

CEO
Louis Vuitton
2255 Kuhio Avenue, #1400
Honolulu, HI 96815

Dear Sir or Madam:

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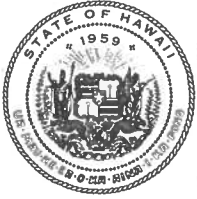
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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Fuku Construction, Inc.
Attn: Nick
P. O. Box 1455
Wailuku, Maui 96793

Dear Sir or Madam:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

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Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

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William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

hbowl Street, Room 411
HI 96813

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P. O. Box 1455
Wailuku, Maui 96793~~

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Hawaii Women's Political Caucus
P. O. Box 61659
Honolulu, HI 96822

Dear Sir or Madam:

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Hawaii Women's Political Caucus
P. O. Box 61659
Honolulu, HI 96822

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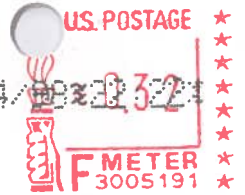
William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

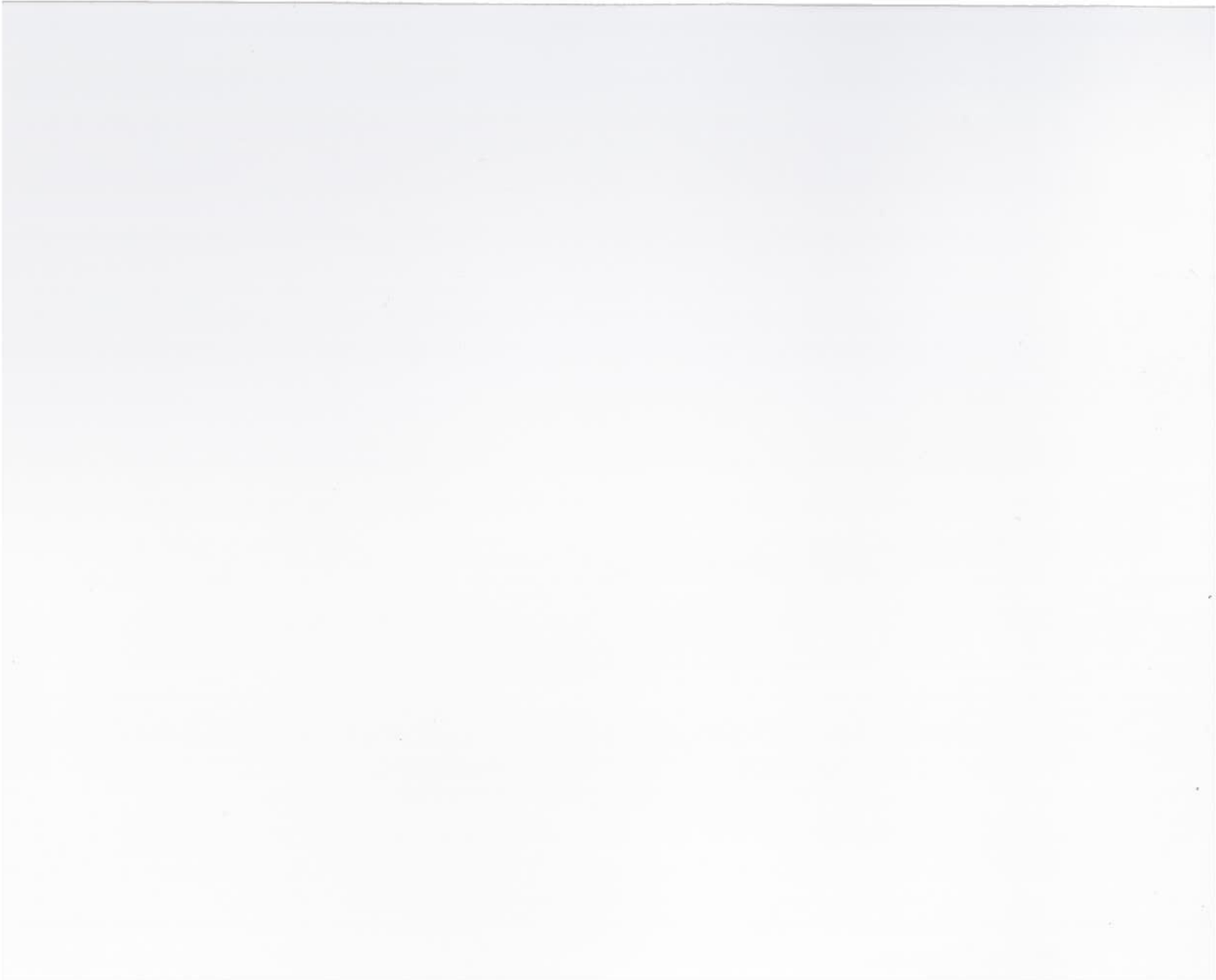
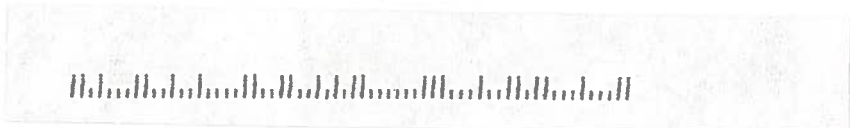
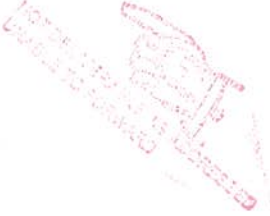
hbowl Street, Room 411
HI 96813

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98 SEP -8 P1:17

Hawaii Women's Political Caucus
P. O. Box 61659
Honolulu, HI [REDACTED]





HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Richard Chong
1155 Fort Street Mall
Honolulu, HI 96813

Dear Mr. Chong:

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures



HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

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William D. Hoshijo
Executive Director

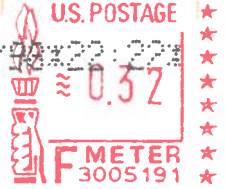
Enclosures

CIVIL RIGHTS COMMISSION

1155 Fort Street, Room 411

Honolulu, HI 96813

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Richard Chong
1155 Fort Street Mall
Honolulu, HI 96813

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RETURN TO SENDER



96813-2706-13





HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Helen Sadorra
Kobayashi Watanabe
Hawaii Building
745 Fort Street, 8th Floor
Honolulu, HI 96813

Dear Ms. Sadoora:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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Sincerely,

William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

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14 P 1:10
Kobayashi Street, Room 411
Honolulu HI 96813
HI 96813

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Helen Sadorra
Kobayashi Watanabe
Hawaii Building
745 Fort Street 8th Floor
Honolulu

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UNABLE TO FORWARD
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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Robert Hall
P. O. Box 4124
Honolulu, HI 96812

Dear Mr. Hall:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

This letter is to also inform you that a public hearing will be held to take testimony on proposed rules on housing discrimination and reconsideration of dismissed cases. The hearing is scheduled for September 30, 1998, at 1:30 p.m., in Room 310, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii. A copy of the announcement and the proposed rules are enclosed.

If you do not wish to be on the mailing list for future proposed rules, please call the Commission at 586-8636 and ask that your name be taken off the mailing list for notices of proposed rule making.

Sincerely,

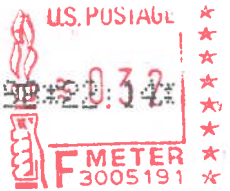
William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

1555 Kalia Street, Room 411
Honolulu, HI 96813

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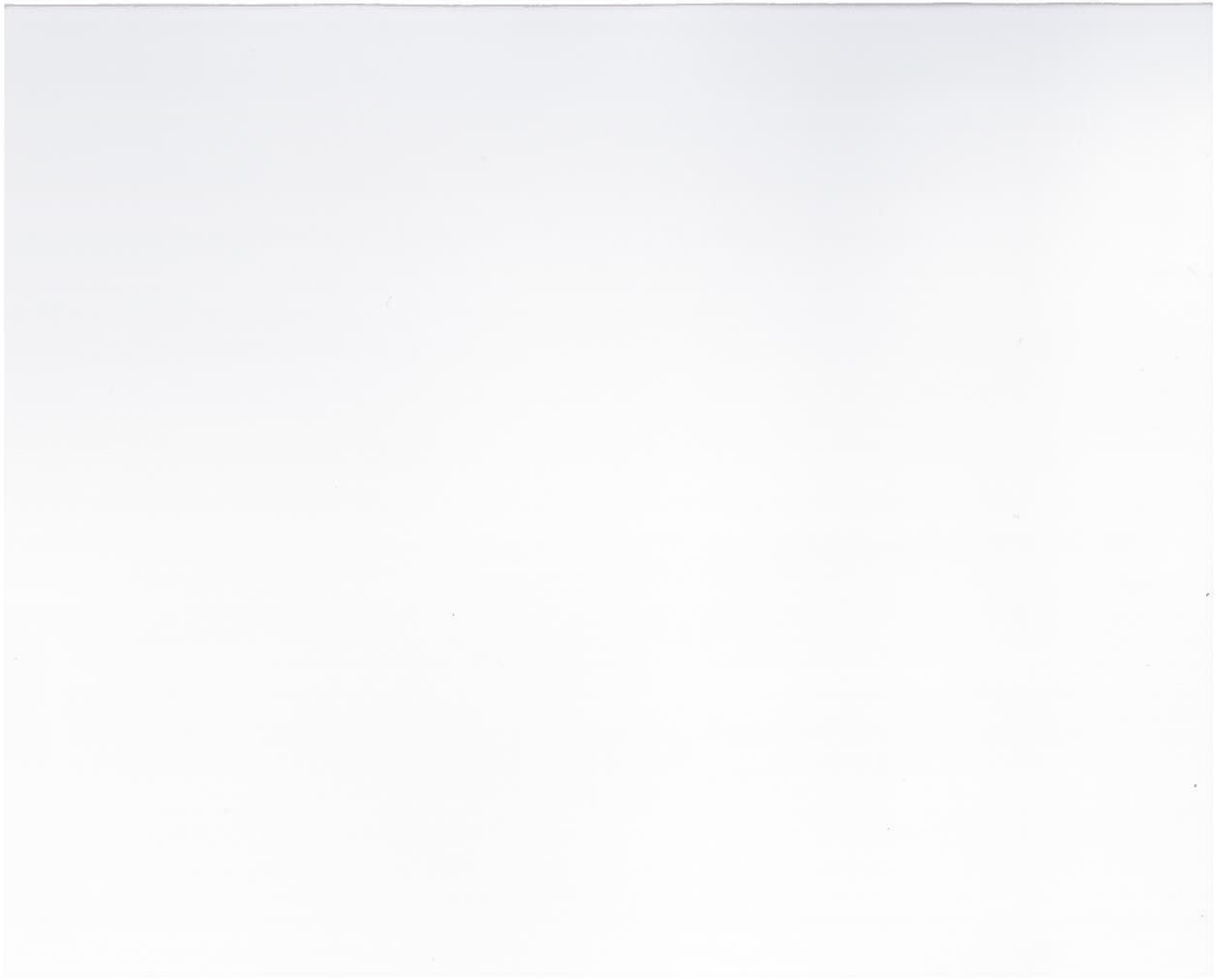
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MOVED-NOT FORWARDABLE
Order Expired

Robert Hall
P. O. Box 4124
Honolulu, HI 96812

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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

State of Hawaii
Public Safety Department
RFD-1 Kawiki Road
Hilo, Hawaii 96720-98001

Dear Sir or Madam:

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Enclosures



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September 4, 1998

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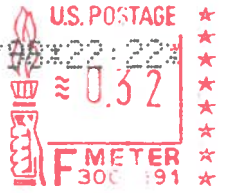
William D. Hoshijo
Executive Director

Enclosures

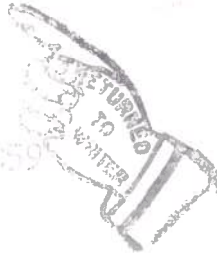
CIVIL RIGHTS COMMISSION

1101 Kalia Street, Room 411
Honolulu, HI 96813
HI 96813

* HONOLULU P&D CTR * 2 *09/04/98*22:22*

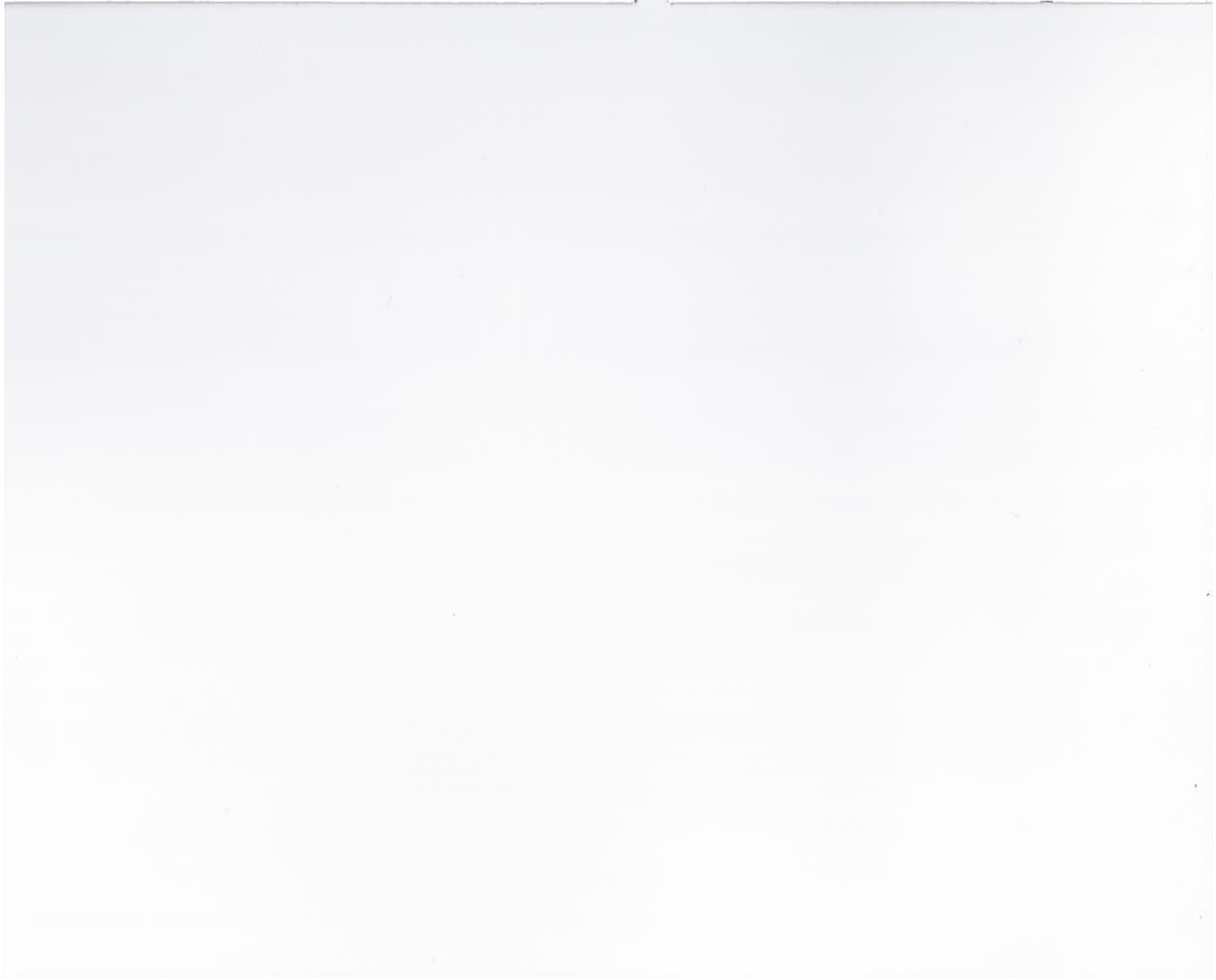


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State of Hawaii
Public Safety Department
RFD-1 Kawiki Road
Hilo, Hawaii 96720-98001

NOT DELIVERABLE AS ADDRESSED
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HAWAII CIVIL RIGHTS COMMISSION

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

September 4, 1998

Roy King Jr., Sr. Vice President
First Hawaiian Bank
P. O. Box 3200
Honolulu, HI 96847

Dear Mr. King:

This letter is to inform you that the Commission is withdrawing its proposed rules on Arrest and Court Record Discrimination because the proposed rules are inconsistent with the law after the passage of Act 175. The Commission held a hearing to take public testimony on the proposed rules on January 16, 1998.

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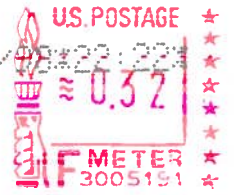
William D. Hoshijo
Executive Director

Enclosures

CIVIL RIGHTS COMMISSION

1515 Ala Street, Room 411
96813

* HONOLULU P&D CTR * 2 * 09/04/98 * 22:22 *



SEP 14 11:10

RETURN TO SENDER
From
FIRST HAWAIIAN BANK
Return
Addressee no longer with us.
No Record

Roy King Jr., Sr. Vice President
First Hawaiian Bank
P. O. Box 3200
Honolulu, HI 96847

NOT DELIVERABLE TO ADDRESSEE
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7103/21898

