

S.B. NO. 2742

JAN 24 2018

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD INFORMATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii criminal justice data center is
2 responsible for the collection, storage, and dissemination of
3 criminal history record information in such a manner as to
4 balance the right of the public and press to be informed, the
5 right of privacy of individual citizens, and the necessity for
6 law enforcement agencies to prevent crimes and detect criminals
7 in support of the right of the public to be free from crime and
8 the fear of crime.

9 As it relates to these responsibilities, the purpose of
10 this bill is to clear up inconsistencies relating to cases in
11 which the defendant was acquitted or the charges were dismissed
12 due to a physical or mental disease, disorder, or defect,
13 pursuant to chapter 704, Hawaii Revised Statutes, and to include
14 cases in which the defendant was involuntarily hospitalized
15 pursuant to section 706-607, Hawaii Revised Statutes.

16 SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

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1 "(a) The attorney general, or the attorney general's duly
2 authorized representative within the department of the attorney
3 general, upon written application from a person arrested for, or
4 charged with but not convicted of a crime, or found eligible for
5 redress under chapter 661B, shall issue an expungement order
6 annulling, canceling, and rescinding the record of arrest;
7 provided that an expungement order shall not be issued:

8 (1) In the case of an arrest for a felony or misdemeanor
9 where conviction has not been obtained because of bail
10 forfeiture;

11 (2) For a period of five years after arrest or citation in
12 the case of a petty misdemeanor or violation where
13 conviction has not been obtained because of a bail
14 forfeiture;

15 (3) In the case of an arrest of any person for any offense
16 where conviction has not been obtained because the
17 person has rendered prosecution impossible by
18 absenting oneself from the jurisdiction;

19 (4) In the case of a person [~~acquitted by reason of a~~
20 ~~mental or physical defect under chapter 704;~~] who was
21 involuntarily hospitalized pursuant to section 706-
22 607, or who was acquitted or had charges dismissed

1 pursuant to chapter 704 due to a physical or mental
2 disease, disorder, or defect; and

3 (5) For a period of one year upon discharge of the
4 defendant and dismissal of the charge against the
5 defendant in the case of a deferred acceptance of
6 guilty plea or nolo contendere plea, in accordance
7 with chapter 853.

8 Any person entitled to an expungement order under this
9 section may by written application also request return of all
10 fingerprints or photographs taken in connection with the
11 person's arrest. The attorney general or the attorney general's
12 duly authorized representative within the department of the
13 attorney general, within one hundred twenty days after receipt
14 of the written application, shall, when requested, deliver, or
15 cause to be delivered, all fingerprints or photographs of the
16 person, unless the person has a record of conviction or is a
17 fugitive from justice, in which case the photographs or
18 fingerprints may be retained by the agencies holding the
19 records."

20 SECTION 3. Section 846-9, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "§846-9 Limitations on dissemination. Dissemination of
2 nonconviction data shall be limited, whether directly or through
3 any intermediary, only to:

4 (1) Criminal justice agencies, for purposes of the
5 administration of criminal justice and criminal
6 justice agency employment;

7 (2) Individuals and agencies specified in section 846-10;

8 (3) Individuals and agencies pursuant to a specific
9 agreement with a criminal justice agency to provide
10 services required for the administration of criminal
11 justice pursuant to that agreement; provided that such
12 agreement shall specifically authorize access to data,
13 limit the use of data to purposes for which given, and
14 insure the security and confidentiality of the data
15 consistent with the provisions of this chapter;

16 (4) Individuals and agencies for the express purpose of
17 research, evaluative, or statistical activities
18 pursuant to an agreement with a criminal justice
19 agency; provided that such agreement shall
20 specifically authorize access to data, limit the use
21 of data to research, evaluative, or statistical
22 purposes, and insure the confidentiality and security

1 of the data consistent with the purposes of this
2 chapter;

3 (5) Individuals and agencies for any purpose authorized by
4 statute, ordinance, executive order, or court rule,
5 decision, or order, as construed by appropriate state
6 or local officials or agencies; and

7 (6) Agencies of state or federal government which are
8 authorized by statute or executive order to conduct
9 investigations determining employment suitability or
10 eligibility for security clearances allowing access to
11 classified information.

12 These dissemination limitations do not apply to conviction
13 data. These dissemination limitations also do not apply to data
14 relating to cases in which the defendant is acquitted[7] or
15 charges are dismissed[7] by reason of physical or mental
16 disease, disorder, or defect under chapter 704[7], or in which
17 the defendant is involuntarily hospitalized under section 706-
18 607.

19 Criminal history record information disseminated to
20 noncriminal justice agencies shall be used only for the purposes
21 for which it was given.

22 No agency or individual shall confirm the existence or
23 nonexistence of criminal history record information to any

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1 person or agency that would not be eligible to receive the
2 information itself."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

8

BY REQUEST

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Report Title:

Criminal History Record Information

Description:

Clears up inconsistencies in the processing of expungements and public dissemination of criminal history record information relating to cases in which the defendant is acquitted or charges are dismissed by reason of physical or mental disease, disorder, or defect under chapter 704, Hawaii Revised Statutes, or is involuntarily hospitalized under section 706-607, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD INFORMATION.

PURPOSE: To clear up inconsistencies in the expungement process and dissemination of criminal history record information relating to cases in which the defendant was acquitted or the charges were dismissed due to a physical or mental disease, disorder, or defect, pursuant to chapter 704, Hawaii Revised Statutes (HRS), and to include cases in which the defendant was involuntarily hospitalized pursuant to section 706-607, HRS.

MEANS: Amend sections 831-3.2(a) and 846-9, HRS.

JUSTIFICATION: Section 846-9, HRS, currently allows for cases in which the defendant was acquitted or the charges were dismissed due to a physical or mental disease, disorder or defect, pursuant to chapter 704, HRS, to be disseminated to the public. Section 831-3.2, HRS, does not allow an expungement to be done on charges for which the defendant was acquitted due to a physical or mental disease, disorder or defect, pursuant to chapter 704, HRS. However, it is silent regarding charges against the defendant that were dismissed due to a physical or mental disease, disorder, or defect, pursuant to chapter 704. This bill, therefore, adds that wording to section 831-3.2, HRS.

In addition, both sections do not address those who were involuntarily hospitalized pursuant to section 706-607, HRS. Wording regarding these cases has been added to both sections, thereby providing consistency to

situations where the defendant is found to have diminished mental capacities.

Impact on the public: The public will benefit from this bill because more complete criminal history record information will be available for dissemination to the general public when conducting background checks on individuals.

Impact on the department and other agencies: There will be minimal impact as the Hawaii Criminal Justice Data Center manages both the expungement program as well as the dissemination of criminal history information to the public.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	ATG-231/BC
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.