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## A BILL FOR AN ACT

RELATING TO EXPUNGEMENT.

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

1 SECTION 1. Section 291E-64, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:  
3 "(e) Notwithstanding section 831-3.2 or any other law to  
4 the contrary, the court shall automatically issue an expungement  
5 order for a person convicted of a first-time violation under  
6 subsection (b)(1), who had no prior alcohol enforcement  
7 contacts, [~~may apply to the court for an expungement order~~] upon  
8 [~~attaining~~] the person's attainment of the age of twenty-one[  
9 or thereafter, if]; provided that the person has fulfilled the  
10 terms of the sentence imposed by the court and has had no  
11 subsequent alcohol or drug related enforcement contacts."

12 SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is  
13 amended by amending subsections (4) and (5) to read as follows:  
14 "(4) Upon [~~written application from a person sentenced~~  
15 ~~under this part or a probation officer,~~] the successful  
16 completion of the substance abuse treatment program and  
17 compliance with all other terms and conditions of probation, the



1 court shall automatically issue a court order to expunge the  
2 record of conviction for that particular offense[~~; provided that~~  
3 ~~a person has successfully completed the substance abuse~~  
4 ~~treatment program and complied with other terms and conditions~~  
5 ~~of probation.~~—A] for every person convicted under this part;  
6 provided that a person sentenced to probation under this section  
7 who has not previously been sentenced under this section shall  
8 be eligible for one time only for expungement under this  
9 subsection.

10 (5) [~~Upon motion from a~~] The court shall automatically  
11 issue an expungement order pertaining to the conviction for the  
12 possession of marijuana under section 712-1249 for every person  
13 convicted for the possession of marijuana under section 712-1249  
14 arising from a set of facts and circumstances that resulted in  
15 no other criminal charge[~~, the court shall grant an expungement~~  
16 order pertaining to the conviction for the offense]; provided  
17 that the amount of marijuana for which the person was convicted  
18 of possessing was three grams or less."

19 SECTION 3. Section 706-622.8, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "~~[+]§706-622.8[+]~~ **First-time drug offender prior to 2004;**  
2 **probation; expungement.** [A] The court shall issue a court order  
3 to expunge the record for the drug offense of a person sentenced  
4 prior to July 1, 2004, for a first-time drug offense, pursuant  
5 to section 706-622.5, and who otherwise meets all the  
6 requirements of section 706-622.5~~[, may apply to the court for~~  
7 ~~expungement of the record of conviction for the drug offense.~~  
8 ~~The court shall issue a court order to expunge the record of~~  
9 ~~conviction for the drug offense]; provided that the person has~~  
10 successfully completed a substance abuse treatment program and  
11 has complied with the other terms and conditions set by the  
12 court. A person granted an expungement of conviction under this  
13 section or section 706-622.5(4) shall not be eligible for  
14 another expungement of conviction under this section or section  
15 706-622.5."

16           SECTION 4. Section 706-622.9, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "(3) Upon ~~[written application from a person sentenced~~  
19 ~~under this part or a probation officer,]~~ the successful  
20 completion of the substance abuse treatment program and  
21 compliance with all other terms and conditions of probation, the



1 court shall automatically issue a court order to expunge the  
2 record of conviction for that particular offense[~~;~~ ~~provided that~~  
3 ~~a person has successfully completed the substance abuse~~  
4 ~~treatment program and complied with other terms and conditions~~  
5 ~~of probation.~~ A] for every person convicted under this part;  
6 provided that a person sentenced to probation under this section  
7 shall be eligible for expungement under this subsection only if  
8 the person has not been previously convicted of a felony offense  
9 in this or another jurisdiction."

10 SECTION 5. Section 831-3.2, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsections (a) and (b) to read:

13 "(a) The attorney general, or the attorney general's duly  
14 authorized representative within the department of the attorney  
15 general, [~~upon written application from a person arrested for,~~  
16 ~~or charged with but not convicted of a crime, or found eligible~~  
17 ~~for redress under chapter 661B,~~] shall automatically issue an  
18 expungement order annulling, canceling, and rescinding the  
19 record of arrest[~~;~~] for every person arrested for, or charged  
20 with but not convicted of a crime, or found eligible for redress



1 under chapter 661B; provided that an expungement order shall not  
2 be issued:

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

6 (2) For a period of five years after arrest or citation in  
7 the case of a petty misdemeanor or violation where  
8 conviction has not been obtained because of a bail  
9 forfeiture;

10 (3) In the case of an arrest of any person for any offense  
11 where conviction has not been obtained because the  
12 person has rendered prosecution impossible by  
13 absenting oneself from the jurisdiction;

14 (4) In the case of a person who was involuntarily  
15 hospitalized pursuant to section 706-607, or who was  
16 acquitted or had charges dismissed pursuant to chapter  
17 704 due to a physical or mental disease, disorder, or  
18 defect; and

19 (5) For a period of one year upon discharge of the  
20 defendant and dismissal of the charge against the  
21 defendant in the case of a deferred acceptance of



1 guilty plea or nolo contendere plea, in accordance  
2 with chapter 853.

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

15 (b) Upon the issuance of the expungement certificate, the  
16 person [~~applying for the order~~] for whom an expungement order  
17 has been entered shall be treated as not having been arrested in  
18 all respects not otherwise provided for in this section."

19 2. By amending subsection (f) to read:

20 "(f) [~~Any person for whom an expungement order has been~~  
21 ~~entered may request in writing that~~] Upon the issuance of an



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1 expungement order, the attorney general or the attorney  
2 general's duly authorized representative within the department  
3 of the attorney general, shall transmit a copy of the  
4 expungement order to the court. Upon receipt of the expungement  
5 order, the court shall automatically seal or otherwise remove  
6 all judiciary files and other information pertaining to the  
7 applicable arrest or case from the judiciary's publicly  
8 accessible electronic databases. The court shall make good  
9 faith diligent efforts to seal or otherwise remove the  
10 applicable files and information within a reasonable time."

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2022.

14

INTRODUCED BY:



JAN 21 2022



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**Report Title:**

Automatic Expungement; Arrests; Convictions; Records

**Description:**

Amends the existing expungement process to an automatic process, rather than requiring persons to petition the court or attorney general.

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

