
A BILL FOR AN ACT

RELATING TO EXPUNGEMENT.

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

1 PART I

2 SECTION 1. The legislature finds that a person's criminal
3 record may affect that person long after the person has served
4 their sentence. Persons under the age of twenty-one who engaged
5 in driving under the influence of an intoxicant, and persons who
6 committed first-time property offenses, may have criminal
7 records that make it difficult to obtain housing, a job, or an
8 education. The legislature believes that, in certain
9 circumstances, convicted persons who have served their sentences
10 and fulfilled all legal requirements should be given the
11 opportunity to start over again.

12 Accordingly, the purpose of this Act is to allow persons
13 convicted of certain criminal violations to apply to the court
14 for an expungement order under certain circumstances.

15 PART II

16 SECTION 2. Section 291E-64, Hawaii Revised Statutes, is
17 amended by amending subsection (e) to read as follows:



1 "(e) Notwithstanding section 831-3.2 or any other law to
2 the contrary, a person convicted of a first-time violation under
3 subsection (b)(1) [~~7~~] or section 291-4.3, as it existed prior to
4 Act 189, Session Laws of Hawaii 2000, who had no prior alcohol
5 enforcement contacts, may apply to the court for an expungement
6 order upon attaining the age of twenty-one, or thereafter, if
7 the person has fulfilled the terms of the sentence imposed by
8 the court and has had no subsequent alcohol or drug related
9 enforcement contacts."

PART III

11 SECTION 3. Section 706-622.9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§706-622.9 Sentencing for first-time property offenders;**
14 **expungement.** (1) Notwithstanding section 706-620(3), a person
15 convicted for the first time of any class C felony property
16 offense under chapter 708 who has not previously been sentenced
17 under section 706-606.5, section 706-622.5, or this section is
18 eligible to be sentenced to probation under subsection (2) if
19 the person meets the following criteria:

20 (a) The court has determined that the person is nonviolent
21 after reviewing the person's criminal history, the



1 factual circumstances of the offense for which the
2 person is being sentenced, and any other relevant
3 information;

4 (b) The person has been assessed by a certified substance
5 abuse counselor to be in need of substance abuse
6 treatment due to dependency or abuse under the
7 applicable Diagnostic and Statistical Manual and
8 Addiction Severity Index;

9 (c) The court has determined that the offense for which
10 the person is being sentenced is related to the
11 person's substance abuse dependency or addiction;

12 (d) The court has determined that the person is genuinely
13 motivated to obtain and maintain substance abuse
14 treatment, based upon consideration of the person's
15 history, including whether substance abuse treatment
16 has previously been afforded to the person, and an
17 appraisal of the person's current circumstances and
18 attitude; and

19 (e) Except for those persons directed to substance abuse
20 treatment under the supervision of the drug court, the
21 person presents a proposal to receive substance abuse



1 treatment in accordance with the treatment plan
2 prepared by a certified substance abuse counselor
3 through a substance abuse treatment program that
4 includes an identified source of payment for the
5 treatment program.

6 (2) A person eligible under subsection (1) may be
7 sentenced to probation to undergo and complete a substance abuse
8 treatment program if the court determines that the person can
9 benefit from substance abuse treatment and, notwithstanding that
10 the person would be subject to sentencing as a repeat offender
11 under section 706-606.5, the person should not be incarcerated
12 to protect the public. If the person fails to complete the
13 substance abuse treatment program and the court determines that
14 the person cannot benefit from any other suitable substance
15 abuse treatment program, the person shall be sentenced as
16 provided in this part. As a condition of probation under this
17 subsection, the court may direct the person to undergo and
18 complete substance abuse treatment under the supervision of the
19 drug court if the person has a history or relapse in treatment
20 programs. The court may require other terms and conditions of
21 probation, including requiring that the person contribute to the



1 cost of the substance abuse treatment program, comply with
2 deadlines for entering into the substance abuse treatment
3 program, and reside in a secure drug treatment facility.

4 (3) Upon written application from a person sentenced under
5 this part or a probation officer, the court shall issue a court
6 order to expunge the record of conviction for that particular
7 offense; provided that a person has successfully completed the
8 substance abuse treatment program and complied with other terms
9 and conditions of probation. A person sentenced to probation
10 under this section shall be eligible for expungement under this
11 subsection only if the person has not been previously convicted
12 of a felony offense in this or another jurisdiction.

13 (4) A person sentenced before June 22, 2006, for any class
14 C felony property offense under chapter 708, and who would have
15 qualified for sentencing pursuant to this section had that
16 person been sentenced after the enactment of this section, and
17 who otherwise meets all the requirements of this section for
18 expungement, may apply to a court for expungement of the record
19 of conviction for the property offense.



1 The court, upon written application from the person, shall
2 issue a court order to expunge the record of conviction for the
3 property offense; provided that:

4 (a) The person has complied with the terms of the sentence
5 imposed by the court;

6 (b) The court finds that the person would in fact have
7 qualified for expungement pursuant to this section;

8 (c) The person has not been convicted of a felony offense
9 in this or another jurisdiction prior to or after the
10 conviction for which the person is applying for
11 expungement; and

12 (d) The court makes the finding that the person is
13 currently nonviolent, based upon the court's review of
14 the person's current criminal history, the factual
15 circumstances of the offense for which the person is
16 seeking expungement, and any other relevant
17 information.

18 If the court cannot make the finding that the person
19 fulfilled the criteria required in paragraph (b) at the time of
20 sentencing, the court may nevertheless issue an order to expunge
21 the record of conviction for the property offense; provided that



1 the court finds that the person has successfully completed a
2 substance abuse treatment program.

3 A person granted an expungement of conviction under this
4 subsection shall not be eligible for another expungement of
5 conviction under this section.

6 [~~4~~] (5) Nothing in this section shall be construed to
7 give rise to a cause of action against the State, a state
8 employee, or a treatment provider.

9 [~~5~~] (6) For the purposes of this section, "substance
10 abuse treatment program" means drug or substance abuse treatment
11 services provided outside a correctional facility by a public,
12 private, or nonprofit entity that specializes in treating
13 persons who are diagnosed with having substance abuse or
14 dependency and preferably employs licensed professionals or
15 certified substance abuse counselors."

16 PART IV

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

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



Report Title:

Driving Under the Influence; Property Offenses; Minors;
Expungement

Description:

Allows persons convicted of certain criminal violations to apply to the court for an expungement order under certain circumstances. (SD1)

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