

JAN 19 2024

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 approximately
3 seventy million persons in the United States have a criminal
4 record. In some instances, the person was arrested but
5 ultimately not convicted of a crime. The legislature recognizes
6 that arrest and conviction records can adversely affect a
7 person's financial security and limit their ability to obtain
8 housing, employment, or a professional license.

9 The legislature also recognizes that many persons in the
10 United States have been arrested or convicted of a
11 marijuana-related offense that has since been decriminalized by
12 the state. In 2019, the legislature passed Act 273,
13 decriminalizing the possession of three grams or less of
14 marijuana. Despite the decriminalization, some persons still
15 have prior arrest records or conviction records for related
16 charges that affect their employment and housing options.



1 rescinding all criminal records, including records of arrest and
2 any records of conviction, for offenses pursuant to section
3 712-1249, including any:

- 4 (1) Civil violation;
- 5 (2) Misdemeanor conviction;
- 6 (3) Juvenile conviction;
- 7 (4) Arrest record for persons charged with an offense
8 pursuant to 712-1249 but not convicted of a crime; or
- 9 (5) Conviction pursuant to section 712-1249 that is
10 eligible for redress pursuant to chapter 661B.

11 (b) In eligible cases, an expungement order shall be
12 issued pursuant to this section notwithstanding the existence of
13 any:

- 14 (1) Prior arrests, convictions, or civil adjudications;
- 15 (2) Other pending criminal charges;
- 16 (3) Convictions for other counts within the same case that
17 are not eligible for expungement pursuant to this
18 section or other applicable laws; or
- 19 (4) Outstanding court-imposed or court-related fees,
20 finances, costs, assessments, or charges.



1 (c) Any outstanding fees, fines, costs, assessments, or
2 charges related to a case eligible for expungement pursuant to
3 this section shall be waived.

4 (d) Upon the issuance of an expungement order, a person
5 whose criminal record has been expunged shall be treated as not
6 having been arrested or convicted in all respects and for any
7 purposes, including for purposes of sentencing or the imposition
8 of any penalty for any subsequent crime or civil violation.

9 (e) Upon the issuance of the expungement order, all
10 records pertaining to the arrest or conviction that are in the
11 custody or control of any law enforcement agency of the State or
12 any county government shall be sealed or destroyed.

13 (f) Records sealed or destroyed pursuant to subsection (e)
14 shall not be divulged pursuant to section 831-3.2(d).

15 (g) Any person with an arrest or conviction eligible for
16 expungement pursuant to this section may request a copy of the
17 person's criminal history to verify that the record has been
18 updated.

19 (h) Any person for whom an expungement order has been
20 issued may obtain from the department of the attorney general,
21 for a reasonable fee, an expungement certificate stating that



1 the expungement order has been issued and that its effect is to
2 annul the record of a specific arrest or conviction.

3 (i) Nothing in this section shall be construed to restrict
4 or modify a person's rights to have a record expunged pursuant
5 to section 831-3.2 or to diminish or abrogate any other rights
6 or remedies available to the person.

7 (j) The department of the attorney general may adopt rules
8 pursuant to chapter 91 necessary for the purpose of this
9 section.

10 (k) For purposes of this section:

11 "Arrest record" shall have the same meaning as defined in
12 section 831-3.2.

13 "Conviction" shall have the same meaning as defined in
14 section 831-3.2."

15 PART III

16 SECTION 3. (a) Within thirty days of the effective date
17 of this Act, the Hawaii criminal justice data center shall
18 identify all available records that qualify for expungement
19 pursuant to section 831- , Hawaii Revised Statutes, and shall
20 provide a list of these records to:

21 (1) The office of the attorney general;



1 (2) The office of the prosecuting attorney for each
2 county;

3 (3) Each county police department; and

4 (4) Each state court.

5 (b) The Hawaii criminal justice data center shall submit a
6 report to the legislature no later than June 30 and December 31
7 of each year until an order of expungement has been issued for
8 each record eligible for expungement pursuant to section
9 831- , Hawaii Revised Statutes, as of the effective date of
10 this Act. The report shall include:

11 (1) The total number of records initially identified as
12 eligible for expungement pursuant to section 831- ,
13 Hawaii Revised Statutes;

14 (2) The total number of past convictions remaining in the
15 statewide central repository of adult criminal history
16 that are potentially eligible for expungement;

17 (3) The total number of expungement orders granted by the
18 department of the attorney general, disaggregated by
19 county;

20 (4) The total number of records sealed or otherwise
21 removed by each county police department, office of



1 attorney general shall clearly state in the expungement order
2 which counts are expunged and which counts are not expunged. In
3 these circumstances, any expungement pursuant to section
4 831- , Hawaii Revised Statutes, shall not affect the records
5 related to any count or conviction in the same case that is not
6 eligible for expungement.

7 (c) The department of the attorney general and its
8 employees and agents shall be immune from any civil liability
9 for any act or omission, taken in good faith, arising out of and
10 in the course of participating in or assisting with the
11 expungement procedures set forth in this Act. The immunity
12 shall be in addition to, and not in limitation of, any other
13 immunity provided by law.

14 PART V

15 SECTION 5. (a) No later than one year after receiving
16 from the Hawaii criminal justice data center the list of records
17 eligible for expungement pursuant to section 831- , Hawaii
18 Revised Statutes, the office of the prosecuting attorney for
19 each county and each county police department shall seal all
20 records relating to each eligible case, including, where



1 applicable, any records of arrest, indictment, trial, verdict,
2 dismissal, or discharge.

3 (b) Each office of the prosecuting attorney and county
4 police department shall update the Hawaii criminal justice data
5 center on a monthly basis until all eligible records are sealed
6 or otherwise removed pursuant to this Act.

7 (c) Each office of the prosecuting attorney, county police
8 department, and each office or department's employees and agents
9 shall be immune from any civil liability for any act or
10 omission, taken in good faith, arising out of and in the course
11 of participating in or assisting with the expungement procedures
12 set forth in this Act. The immunity shall be in addition to,
13 and not in limitation of, any other immunity provided by law.

14 PART VI

15 SECTION 6. (a) No later than one year after receiving
16 notice of the records eligible for expungement pursuant to this
17 Act, the judiciary shall seal or otherwise remove from its
18 publicly accessible electronic databases all judiciary files and
19 other information pertaining to each eligible case, including,
20 where applicable, any records of arrest, indictment, trial,
21 verdict, dismissal, or discharge.



1 (b) The judiciary shall update the Hawaii criminal justice
2 data center on a monthly basis until all eligible records are
3 sealed or otherwise removed pursuant to this Act.

4 (c) Each employee and agent of the judiciary shall be
5 immune from any civil liability for any act or omission, taken
6 in good faith, arising out of and in the course of participating
7 in or assisting with the expungement procedures set forth in
8 this Act. The immunity shall be in addition to, and not in
9 limitation of, any other immunity provided by law.

10 PART VII

11 SECTION 7. The judiciary and department of the attorney
12 general may seek assistance from the university of Hawaii William
13 S. Richardson school of law or Hawaii innocence project's beyond
14 guilt clinic to carry out the purpose of this Act.

15 PART VIII

16 SECTION 8. New statutory material is underscored.

17 SECTION 9. This Act shall take effect upon its approval.

18 INTRODUCED BY: _____

Kul Thoo



S.B. NO. 2689

Report Title:

Marijuana Possession; Expungement; Reports

Description:

Creates a state-initiated process to expunge records of arrests and convictions pursuant to section 712-1249, Hawaii Revised Statutes, at no cost to the record holder. Requires the Hawaii Criminal Justice Data Center to submit biannual reports to the legislature until all eligible records are expunged.

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

