
A BILL FOR AN ACT

RELATING TO EXPUNGEMENT ORDERS.

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

1 SECTION 1. The legislature finds that in *Barker v. Young*,
2 153 Hawaii 144 (2023), the Hawaii supreme court clarified that a
3 person who is arrested for or charged with a crime as a felony,
4 misdemeanor, or petty misdemeanor, but is later convicted of a
5 violation for that incident, is eligible for an expungement of
6 that person's arrest record.

7 The Hawaii supreme court held that "[a]pplying rules of
8 statutory interpretation, we hold that under the plain language
9 of HRS §§ 831-3.2(a) and 701-107(7), a person arrested for or
10 charged with a crime (including a petty misdemeanor), but
11 convicted of a violation, is eligible for arrest record
12 expungement because a 'violation' is not a 'crime'".

13 The presence of an arrest on an individual's record may
14 interfere with the individual's ability to receive housing,
15 employment, or other opportunities. The expungement of that
16 record is an appropriate action when the arrest led to a
17 conviction for a "violation", which is not considered a "crime".



1 The purpose of this Act is to amend the expungement orders
2 law to clarify that a person who is arrested for or charged with
3 a crime but convicted of a violation is eligible for expungement
4 of their arrest record for that incident.

5 SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) The attorney general, or the attorney general's duly
9 authorized representative within the department of the attorney
10 general, upon written application from a person arrested for, or
11 charged with but not convicted of a crime, arrested for or
12 charged with a crime but convicted of a violation, or found
13 eligible for redress under chapter 661B, shall issue an
14 expungement order annulling, canceling, and rescinding the
15 record of arrest; provided that an expungement order shall not
16 be issued:

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

20 (2) For a period of five years after arrest or citation in
21 the case of a petty misdemeanor or violation where



1 conviction has not been obtained because of a bail
2 forfeiture;

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

7 (4) In the case of a person who was involuntarily
8 hospitalized pursuant to section 706-607, or who was
9 acquitted or had charges dismissed pursuant to chapter
10 704 due to a physical or mental disease, disorder, or
11 defect; and

12 (5) For a period of one year upon discharge of the
13 defendant and dismissal of the charge against the
14 defendant in the case of a deferred acceptance of
15 guilty plea or nolo contendere plea, in accordance
16 with chapter 853.

17 Any person entitled to an expungement order under this
18 section may by written application also request return of all
19 fingerprints or photographs taken in connection with the
20 person's arrest. The attorney general or the attorney general's
21 duly authorized representative within the department of the



1 attorney general, within one hundred twenty days after receipt
2 of the written application, shall, when requested, deliver, or
3 cause to be delivered, all fingerprints or photographs of the
4 person, unless the person has a record of conviction or is a
5 fugitive from justice, in which case the photographs or
6 fingerprints may be retained by the agencies holding the
7 records."

8 2. By amending subsection (g) to read:

9 "(g) The meaning of the following terms as used in this
10 section shall be as indicated:

11 "Arrest record" means any existing photographic and
12 fingerprint cards relating to the arrest.

13 "Conviction" means a final determination of guilt, whether
14 by plea of the accused in open court, by verdict of the jury, or
15 by decision of the court.

16 "Crime" means a felony, misdemeanor, or petty misdemeanor
17 as specified in section 701-107.

18 "Violation" means an offense that does not constitute a
19 crime as specified in section 701-107."

20 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Expungement Orders; Violations

Description:

Amends the expungement orders law to reflect that a person who is arrested for or charged with a crime but convicted of a violation is eligible for an expungement of their arrest record for that incident. (CD1)

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