

ACT 322

H.B. NO. 1252

A Bill for an Act Relating to Criminal Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 831,¹ Hawaii Revised Statutes, is amended as follows:

“§831-3.2 Expungement orders. (a) The attorney general, or his duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture; (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; [and] (3) in the case of an arrest of any person for any offense where conviction has not been obtained because he has rendered prosecution impossible by absenting himself from the jurisdiction[.]; and¹ (4) in the case of a person acquitted by reason of a mental or physical defect under chapter 704.

Any person entitled to an expungement order hereunder may be¹ written application also request return of all fingerprints or photographs

taken in connection with his arrest. The attorney general or his duly authorized representative within the department of the attorney general, within 120 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement order, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all arrest records pertaining to the arrest which are in the custody or control of any law enforcement agency of the state or any county government, and which are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file, [or, if the records are on magnetic tape or in a computer memory bank, shall be erased.]

(d) Records filed under subsection (c) shall not be divulged except upon inquiry by:

- (1) A court of law or an agency thereof which is preparing a presentence investigation for the court; [or]
- (2) An agency of the federal or state government which is considering the subject person for a position immediately and directly affecting the national or state security[.]; or
- (3) A law enforcement agency acting within the scope of their duties.

Response to any other inquiry shall not be different from responses made about persons who have no arrest records.

(e) The attorney general or his duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that he has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) The meaning of the following terms as used in this section shall be as indicated:

- (1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.
- (2) "Arrest record" means the [document, magnetic tape or computer memory bank, produced under authority of law, which contains the data or legal proceedings against a person beginning with his arrest for the alleged commission of a crime and ending with final disposition of the charges against the person by non-conviction.] photographic and fingerprint cards relating to the arrest.

(g) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

(h) Nothing in this section shall affect the compilation of crime statistics or information stored or disseminated as provided in chapter 846."

SECTION 2. Statutory material to be repealed is bracketed. New, statutory material is underscored.

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SECTION 3. This Act shall take effect upon its approval.

(Approved June 26, 1987.)

Note

1. So in original.