

## ACT 26

H.B. NO. 1804

A Bill for an Act Relating to Expungement.

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

SECTION 1. Section 571-88, Hawaii Revised Statutes, is amended to read as follows:

**“§571-88<sup>1</sup> ~~[Expungement orders.]~~ Orders expunging juvenile arrest records.** (a) The court may issue an order expunging [an] a juvenile arrest record of a ~~[minor] person~~ upon written application by the ~~[minor] person~~ or, if the person is a minor, the minor’s parent or guardian~~[, where]~~; provided the arrest was made pursuant to section 571-11(1) or (2) and the arrest record meets the following criteria:

- (1) The matter was not referred to the prosecuting attorney or the family court and the person ~~[arrested]~~ was not counseled and released by the police; or
- (2) The matter was referred to the prosecuting attorney or family court and:
  - (A) The person ~~[arrested]~~ was not adjudicated responsible~~[:]~~ by the court; or
  - (B) The matter was dismissed with prejudice.

(b) Before issuing an order to expunge an arrest record ~~[that falls under subsection (a)(1);]~~ of a matter that was never referred to the court, the court shall consult with ~~[appropriate law enforcement agencies to determine if there is any reason to retain the arrest record.]~~<sup>1</sup>

~~(c) The court shall issue an order expunging the arrest record of an adult, which was incurred while the adult was a minor, upon written application of the adult where:~~

- ~~(1) The arrest was made pursuant to section 571-11(1) or (2); and~~
- ~~(2) The arrest record meets the criteria under subsection (a).~~

~~Upon issuance of the order of expungement, the court shall forward copies and issue a certificate pursuant to subsection (d). Subsection (b) shall not apply to expungement orders under this subsection.]~~ the prosecuting attorney in the appropriate circuit.

~~[(d)]~~ (c) Upon issuance of an expungement order under this section, the court shall:

- (1) Forward copies of the expungement order to the police department and the department of the attorney general for expungement of the arrest record; and
- (2) Issue to the person for whom the expungement order was issued, a certificate stating that an expungement order was issued and that its effect is to annul the record of one or more specific arrests. The certificate shall:
  - (A) Authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest; and
  - (B) State that the person shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for making any statement authorized by the certificate.

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~~[(e)]~~ (d) A person whose arrest record has been expunged ~~[pursuant to subsection (a) or (e)]~~ under this section shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for responding to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest expunged.

~~[(f)]~~ (e) As used in this section:

“Arrest record” means any record maintained by a county police department or the department of the attorney general ~~[section 846-2.5(b) and]~~ chapters 846 and 846D, relating to the arrest of the minor for a specific offense, including fingerprints taken during the arrest and maintained under section 846-2.5(b).

“Expunge” means a process defined by agency policy in which records are segregated and kept confidential, or destroyed.”

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

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

(Approved April 23, 2002.)

**Note**

1. So in original.