

ACT 97

S.B. NO. 2742

A Bill for an Act Relating to Criminal History Record Information.

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

SECTION 1. The legislature finds that the Hawaii criminal justice data center is responsible for the collection, storage, and dissemination of criminal history record information in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

As it relates to these responsibilities, the purpose of this Act is to resolve inconsistencies relating to cases in which the defendant was acquitted or the charges were dismissed due to a physical or mental disease, disorder, or defect, pursuant to Hawaii's penal responsibility and fitness to proceed law, and cases in which the defendant was involuntarily hospitalized in lieu of prosecution or of sentence.

SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The attorney general, or the attorney general's 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, or found eligible for redress under chapter 661B, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not be issued:

- (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;
- (3) In the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absenting oneself from the jurisdiction;
- (4) In the case of a person [acquitted by reason of a mental or physical defect under chapter 704:] who was involuntarily hospitalized pursuant to section 706-607, or who was acquitted or had charges dismissed pursuant to chapter 704 due to a physical or mental disease, disorder, or defect; and
- (5) For a period of one year upon discharge of the defendant and dismissal of the charge against the defendant in the case of a deferred acceptance of guilty plea or nolo contendere plea, in accordance with chapter 853.

Any person entitled to an expungement order under this section may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general or the attorney general's duly authorized representative within the department of the attorney general, within one hundred twenty days after receipt of the written application, shall, when requested, deliver, or cause to be delivered, all fingerprints or photographs of the person, unless the person has a record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding the records."

SECTION 3. Section 846-9, Hawaii Revised Statutes, is amended to read as follows:

"§846-9 Limitations on dissemination. Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) Individuals and agencies specified in section 846-10;
- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement; provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data. These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted[;] or charges are dismissed[;] by reason of physical or mental disease, disorder, or defect under chapter 704[-], or in which the defendant is involuntarily hospitalized under section 706-607.

Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."

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

SECTION 5. This Act shall take effect on July 1, 2018.

(Approved June 29, 2018.)