

ACT 5

H.B. NO. 132

A Bill for an Act Relating to Expungement.

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

SECTION 1. The legislature finds that Act 62, Session Laws of Hawaii 2024 (Act 62), is a vital pilot project that provides needed relief to hundreds of Hawaii residents with criminal records related to possession of small amounts of cannabis. Since the implementation of Act 62, the legislature finds that the efficiency and effectiveness of the law will be greatly improved through modification.

The purpose of this Act is to amend Act 62 to include possession of a schedule V substance in any amount to the charges that are eligible for expungement under the pilot project.

SECTION 2. Act 62, Session Laws of Hawaii 2024, is amended as follows:

1. By amending section 1 to read:

“SECTION 1. The legislature finds that approximately seventy-seven million persons in the United States have a criminal record. In some instances, the person was arrested but ultimately not convicted of a crime. The legislature recognizes that arrest records can adversely affect a person’s financial security and limit their ability to obtain housing, employment, or a professional license.

The legislature also finds that in 2019, the legislature passed Act 273, Session Laws of Hawaii 2019, which decriminalized the possession of three grams or less of marijuana. Despite the decriminalization, some persons still have prior arrest records for related charges that affect their employment and housing options. The legislature further recognizes that many states, including Hawai‘i, allow arrest records to be expunged under certain circumstances. However, these processes generally require an eligible person to navigate the court system and pay court fees. According to the National Conference of State Legislatures, at least twenty states have developed state-initiated processes to expunge certain

criminal records at no cost to the record holder to ease the logistical and financial barriers to receiving an expungement.

The legislature further finds that the Hawai'i criminal justice data center is a division of the department of the attorney general and is responsible for the statewide criminal history record information system and for processing expungement orders pursuant to section 831-3.2, Hawaii Revised Statutes. To expunge records relating to any offense, manual examination of those records is required. As of March 10, 2024, there are over fifty-thousand records with a charge code of section 712-1249, Hawaii Revised Statutes, for promoting a detrimental drug in a third degree, which involves possession of less than one ounce of marijuana or less than one-eighth ounce (or less than fifty tablets or capsules, as applicable) of any Schedule V substance.

Recognizing the limited resources of the Hawai'i criminal justice data center, the purpose of this Act is to establish a pilot project, to be administered by the department of the attorney general, to expunge certain arrest records and other records pertaining to prior arrests made under section 712-1249, Hawaii Revised Statutes~~[, concerning the possession of less than one ounce of marijuana]~~. For purposes of this pilot project, the Hawai'i criminal justice data center will use existing resources, without any additional appropriations, and will report to the legislature on progress and lessons learned, which can better inform future legislation concerning state-initiated expungement."

2. By amending subsections (a) and (b) of section 2 to read:

"(a) The department of the attorney general shall establish and administer a pilot project beginning on the effective date of this Act and ending on October 1, 2025, for a state-initiated project to expunge certain arrest records relating to the offense under section 712-1249, Hawaii Revised Statutes~~[, for possessing marijuana]~~. For purposes of this pilot project, the department of the attorney general shall utilize the existing funding and resources of the Hawai'i criminal justice data center.

(b) Notwithstanding section 831-3.2, Hawaii Revised Statutes, or any other law to the contrary, the department of the attorney general shall issue, without any written application by the holder of an arrest record and on the department's own initiative, an expungement order annulling, cancelling, and rescinding the arrest record where:

- (1) The arrest occurred before January 11, 2020;
- (2) The arrest resulted in a single charge of violating section 712-1249, Hawaii Revised Statutes~~[, for possessing marijuana]~~;
- (3) The arrest occurred in a county having a population greater than two hundred thousand and less than five hundred thousand persons;
- (4) The criminal case terminated with a final disposition other than a conviction; and
- (5) An expungement order is not otherwise prohibited from being issued by law, including section 831-3.2(a), Hawaii Revised Statutes.

The department shall not charge the holder of the arrest record any fee for the issuance of an expungement order pursuant to the pilot project established by this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken.

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

(Approved April 10, 2025.)