



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

GOV. MSG. NO. 844

July 11, 2006

The Honorable Robert Bunda, President  
and Members of the Senate  
Twenty-Third State Legislature  
State Capitol, Room 003  
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith SB2244 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2244 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO  
EXPUNGEMENTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

# VETO

THE SENATE  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

S.B. NO. 2244  
S.D. 1  
H.D. 1  
C.D. 1

## A BILL FOR AN ACT

RELATING TO EXPUNGEMENTS.

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

1 SECTION 1. Chapter 831, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§831- Expungement orders for violations. (a) The  
5 attorney general, or the attorney general's duly authorized  
6 representative within the department of the attorney general,  
7 upon written application of a person convicted of a violation,  
8 may issue an expungement order annulling, canceling, or  
9 rescinding the record of violation.

10 (b) The attorney general, or the attorney general's duly  
11 authorized representative within the department of the attorney  
12 general, shall issue to the person for whom an expungement order  
13 has been entered, a certificate stating that the order has been  
14 issued and that its effect is to annul the record of violation,  
15 and return any photographs or fingerprints within 120 days of  
16 the issuance of the order.

17 (c) Upon the issuance of the expungement certificate, the  
18 person applying for the order shall be treated as not having



1 committed the violation in all respects not otherwise provided  
2 for in this section.

3 (d) Upon the issuance of the expungement order, all  
4 records pertaining to the violation that are in the custody or  
5 control of any law enforcement agency of the State or any  
6 county, and that are capable of being forwarded to the attorney  
7 general without affecting other records not pertaining to the  
8 arrest, shall be so forwarded for placement of the arrest  
9 records in a confidential file.

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

12 (1) A court of law or an agency thereof that is preparing  
13 a presentence investigation for the court;

14 (2) An agency of the federal or state government that is  
15 considering the subject person for a position  
16 immediately and directly affecting the national or  
17 state security; or

18 (3) A law enforcement agency acting within the scope of  
19 their duties.

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



1        (f) For purposes of this section, "violation" shall have  
2 the same meaning as in section 701-107."

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

5        1. By amending subsection (a) to read as follows:

6        "(a) The attorney general, or the attorney general's duly  
7 authorized representative within the department of the attorney  
8 general, upon written application from a person arrested for, or  
9 charged with but not convicted of a crime, shall issue an  
10 expungement order annulling, canceling, and rescinding the  
11 record of arrest; provided that an expungement order shall not  
12 be issued:

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

16        (2) For a period of five years after arrest or citation in  
17 the case of a petty misdemeanor or violation where  
18 conviction has not been obtained because of a bail  
19 forfeiture;

20        (3) In the case of an arrest of any person for any offense  
21 where conviction has not been obtained because the



1 person has rendered prosecution impossible by  
2 absenting oneself from the jurisdiction;

3 (4) In the case of a person acquitted by reason of a  
4 mental or physical defect under chapter 704; and

5 (5) For a period of one year upon discharge of the  
6 defendant and dismissal of the charge against the  
7 defendant in the case of a deferred acceptance of  
8 guilty plea or nolo contendere plea, in accordance  
9 with chapter 853.

10 Any person entitled to an expungement order hereunder may  
11 by written application also request return of all fingerprints  
12 or photographs taken in connection with the person's arrest.  
13 The attorney general or the attorney general's duly authorized  
14 representative within the department of the attorney general,  
15 within [~~120~~] one hundred twenty days after receipt of the  
16 written application, [~~shall,~~] when so requested, shall deliver,  
17 or cause to be delivered, or cause to be deleted in the case of  
18 digitized images, all fingerprints or photographs of the person,  
19 unless the person [~~has a record of conviction or~~] is a fugitive  
20 from justice, in which case the photographs or fingerprints may  
21 be retained by the agencies holding such records."

22 2. By amending subsection (f) to read as follows:



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

3           "Arrest record" means any existing photographic images and  
4 fingerprint cards relating to the arrest.

5           ~~[(1)]~~ "Conviction" means a final determination of guilt  
6 whether by plea of the accused in open court, by verdict of the  
7 jury or by decision of the court.

8           ~~[(2) "Arrest record" means any existing photographic and~~  
9 ~~fingerprint cards relating to the arrest.]"~~

10           SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

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



**THE SENATE OF THE STATE OF HAWAII**

Date: May 2, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



President of the Senate



Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF HAWAII**

Date: May 2, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



Speaker, House of Representatives



Clerk, House of Representatives

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 2244, entitled "A Bill for an Act Relating to Expungements," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2244 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2244 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 26th  
day of June, 2006.



---

LINDA LINGLE  
Governor of Hawaii



EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2244

Honorable Members  
Twenty-Third Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2244, entitled "A Bill for an Act Relating to Expungements."

This bill permits the expungement of convictions for violations upon written application to the Attorney General. This bill will require the deletion of digitized arrest records rather than the return of hard copy materials, if applicable. This bill would also require the return of fingerprints and photographs, or the deletion of digitized images to a person entitled to an expungement, except when the person is a fugitive from justice.

This bill is objectionable because it will allow for the expungement of convictions of violations, including simple trespass, disorderly conduct, and loitering for prostitution. If the expungement of violations is permitted, charges such as these would be unavailable to criminal justice agencies, such as the state and county prosecuting agencies, as they are not "law enforcement agencies" that are authorized to have access to these records if acting in the scope of their duties. This information would also be unavailable to employers or agencies authorized by the Legislature to conduct suitability determinations on prospective employees who have direct contact with Hawaii's designated vulnerable population, namely children, the elderly, and the developmentally challenged.

This bill will also lead to court challenges as there are no guidelines or standards that can be used to determine when

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 2244  
Page 2

the Department of the Attorney General should deny or process an application to expunge the record of a conviction for a violation. As a result, any denial of an application will be open to a challenge that the decision was arbitrarily made. Therefore, the Department will be unable to deny any application for expungement of a conviction for a violation, even in cases where an individual continues to be convicted of violations such as simple trespass, disorderly conduct, and loitering for prostitution. An individual could be convicted for committing a violation every single day and still be entitled to file for an expungement of the conviction for the violation and have it granted each time.

If this bill becomes law, the Department of the Attorney General anticipates that there would be an additional 3,000 - 100,000 offenders that would become eligible for an expungement. The Hawaii Criminal Justice Data Center would require additional positions to process these requests. The police departments and Sheriff's Office would also require additional personnel to expunge the requested charges from their files. However, this bill does not provide any additional funding or resources to the affected agencies to handle the additional workload.

This bill will also mandate the return of all fingerprint cards and photographs of a person entitled to an expungement order unless the applicant is a fugitive from justice. This will erode the accountability and integrity of our fingerprint records in the State Automated Fingerprint Identification System. This is especially true in the case of an arrest with two or more charges. If one of the charges is expunged, the fingerprints and photographs would have to be

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 2244  
Page 3

returned to the eligible applicant. Law enforcement agencies would then have no fingerprints or photographs associated with the charges remaining from that arrest. This could lead to a problem in the future, as law enforcement agencies would be unable to correctly identify the convicted individual.

For the foregoing reasons, I am returning Senate Bill No. 2244 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'Linda Lingle', written in a cursive style.

LINDA LINGLE  
Governor of Hawaii