
A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY.

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

1 SECTION 1. Section 831-3.2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsections (a), (b), and (c) to read:

4 "(a) The attorney general, or the attorney general's duly
5 authorized representative within the department of the attorney
6 general, upon written application from a person who was arrested
7 for[~~r~~] or charged with, but not convicted of, a crime, or who
8 was convicted of a crime for which the governor has pardoned the
9 person, shall issue an expungement order annulling, canceling,
10 and rescinding the record of arrest[~~r~~] and, in the case of a
11 pardon, conviction; 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



1 conviction has not been obtained because of a bail
2 forfeiture;

3 (3) In the case of an arrest of any person for any offense
4 where conviction has not been obtained because the
5 person has rendered prosecution impossible by
6 absenting oneself from the jurisdiction;

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

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

14 Any person entitled to an expungement order [~~hereunder~~]
15 under this section may request by written application [~~also~~
16 ~~request~~] return of all fingerprints or photographs taken in
17 connection with the person's arrest. [~~The~~] Upon request,
18 attorney general or the attorney general's duly authorized
19 representative within the department of the attorney general,
20 within [~~120~~] one hundred twenty days after receipt of the
21 written application, shall [~~when so requested,~~] deliver, or
22 cause to be delivered, all fingerprints or photographs of the



1 person, unless the person has a record of conviction for a
2 separate offense or is a fugitive from justice, in which case
3 the photographs or fingerprints may be retained by the agencies
4 holding such records.

5 (b) Upon the issuance of the expungement certificate, the
6 person applying for the order shall be treated as not having
7 been arrested or, in the case of a person who was pardoned by
8 the governor, convicted in all respects not otherwise provided
9 for in this section.

10 (c) Upon the issuance of the expungement order, all
11 [~~arrest~~] records pertaining to the arrest [~~which~~] that and, in
12 the case of a person who was pardoned by the governor,
13 conviction are in the custody or control of any law enforcement
14 agency of the state or any county government, and [~~which~~] that
15 are capable of being forwarded to the attorney general without
16 affecting other records not pertaining to the arrest[~~r~~] and, in
17 the case of a person who was pardoned by the governor,
18 conviction shall be so forwarded for placement of the [~~arrest~~]
19 records in a confidential file."

20 2. By amending subsection (e) to read:

21 "(e) The attorney general or the attorney general's duly
22 authorized representative within the department of the attorney



1 general shall issue, to the person for whom an expungement order
2 has been entered, a certificate stating that the order has been
3 issued and that its effect is to annul the record of a specific
4 arrest[-] and, in the case of a person who was pardoned by the
5 governor, conviction. The certificate shall authorize the
6 person to state, in response to any question or inquiry, whether
7 or not under oath, that the person has no record regarding the
8 specific arrest. Such a statement shall not make the person
9 subject to any action for perjury, civil suit, discharge from
10 employment, or any other adverse action."

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

13 SECTION 3. This Act shall take effect upon its approval.
14

INTRODUCED BY:

Tony Waters
BY REQUEST

JAN 20 2005



HB 1962

Report Title:

Criminal History; Pardons and Expungements

Description:

Requires expungement of records relating to criminal offenses for which the defendant has been convicted but pardoned by the governor.

