

JAN 25 2006

S.B. NO. 2244

A BILL FOR AN ACT

RELATING TO EXPUNGEMENTS.

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 subsection (a) to read as follows:

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 arrested for, or
7 charged with but not convicted of a crime, shall issue an
8 expungement order annulling, canceling, and rescinding the
9 record of arrest; provided that an expungement order shall not
10 be issued:

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

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

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

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

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

12 (6) In the case of a person with any conviction on the
13 person's criminal history record.

14 Any person entitled to an expungement order hereunder may
15 by written application also request return of all fingerprints
16 or photographs taken in connection with the person's arrest.
17 The attorney general or the attorney general's duly authorized
18 representative within the department of the attorney general,
19 within 120 days after receipt of the written application, shall,
20 when so requested, deliver, or cause to be delivered, or cause
21 to be deleted in the case of digitized images, all fingerprints
22 or photographs of the person, unless the person [~~has a record of~~

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1 ~~conviction or~~ is a fugitive from justice, in which case the
2 photographs or fingerprints may be retained by the agencies
3 holding such records."

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

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

7 (1) "Conviction" means a final determination of guilt
8 whether by plea of the accused in open court, by
9 verdict of the jury or by decision of the court.

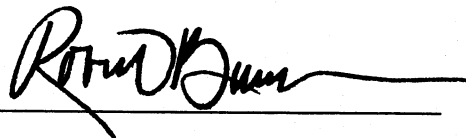
10 (2) "Arrest record" means any existing photographic images
11 and fingerprint cards relating to the arrest.

12 (3) "Crime" means any act in violation of state law,
13 including felonies, misdemeanors, petty misdemeanors,
14 and violations."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

18
19 INTRODUCED BY:



20 BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO EXPUNGEMENTS.

PURPOSE: To require the deletion of digitized arrest records, rather than the return of hard copy materials, if applicable, to clarify the definition of "crime" as it relates to expungeable offenses and to limit expungements to only applicants that have no convictions on their criminal record.

MEANS: Amend section 831-3.2(a) and (f), Hawaii Revised Statutes.

JUSTIFICATION: Section 831-3.2, as it reads currently, allows for the return of photographs and fingerprints related to an expunged arrest. Technological advances in recent years have resulted in arrest agencies being able to digitally photograph and fingerprint offenders, and store the images and associated paperwork electronically, making the return of arrest records impossible. This bill addresses this dilemma by amending section 831-3.2 to allow for the deletion, rather than return, of digitized photographs and fingerprints.

This bill attempts to clarify the term "crime" as it relates to expungements. Requests to expunge arrests classified as violations that have resulted in convictions have been submitted because it is believed that a violation is not a "crime." The purpose of section 831-3.2 is for the expungement of arrest records where such arrests do not lead to convictions. Adding a definition of the term "crime" to include all grades and classes of offenses, including violations, will clarify that violations that result in convictions are not expungeable.

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In addition, the language of section 831-3.2 allows a person to apply for an expungement no matter how many convictions may appear on that person's criminal record. By limiting expungements to only applicants that have no convictions on their criminal record, the language will reflect the original intent of the expungement statute which was to allow first-time offenders to clear their record and give them a second chance.

Impact on the Public: This should have a minimum impact on the public as non-convictions are not public record, and the number of persons who apply for expungements who would no longer be eligible is a very small percentage of the population.

Impact on the department and other agencies: This bill should positively affect agencies that hold arrest records as it clarifies terminology and limits who can get their arrest records expunged.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESTINATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.