

**CHAPTER 831**  
**UNIFORM ACT ON STATUS OF CONVICTED PERSONS**

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" **§831-1 Definition.** In this chapter, "felony" means an offense that is punishable with imprisonment for a term which is in excess of one year. [L 1969, c 250, pt of §1; HRS §716-1; ren L 1972, c 9, pt of §1; am L 1975, c 14, §1]

" **§831-2 Rights lost.** (a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not:

(1) Vote in an election, but if the defendant is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the probation or parole; or

(2) Become a candidate for or hold public office.

(b) A public office held at the time of conviction is forfeited as of the date of the conviction, if the conviction is in this State, or, if the conviction is in another state or in a federal court, as of the date a certification of the conviction from the trial court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section.

For purposes of this section:

"Public office" means an office held by an elected official, department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor, chief justice, office of Hawaiian affairs, or the judicial selection commission, or are required by law to be confirmed by the senate.

"Time of conviction" means the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court.

(c) Subsections (a) and (b) of this section and any other laws to the contrary notwithstanding, any person convicted of any act, attempt, or conspiracy to overthrow the state or the federal government by force or violence shall not hold any public office or employment. [L 1969, c 250, pt of §1; HRS §716-2; ren L 1972, c 9, pt of §1; am L 1979, c 53, §2; gen ch 1985; am L 2002, c 171, §2; am L 2003, c 150, §3; am L 2006, c 253, §3]

### **Attorney General Opinions**

OHA trustees are holders of "public office". Att. Gen. Op. 84-3.

" **§831-3 Rights retained by convicted person.** Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law. [L 1969, c 250, pt of §1; HRS §716-3; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1986, c 155, §2; am L 2003, c 95, §16(1)]

### Case Notes

Felon can be employed as a state correction officer and can carry a gun. 402 F. Supp. 84 (1975).

" **§831-3.1 Prior convictions; criminal records; noncriminal standards.** (a) A person shall not be disqualified from public office or employment by the State or any of its branches, political subdivisions, or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its branches, political subdivisions, or agencies, solely by reason of a prior conviction of a crime; provided that:

- (1) With respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission; and
- (2) A person who within the past ten years, excluding any period of incarceration, has been convicted of a crime that bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business may be denied employment, a permit, license, registration, or certificate. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(b) The State or any of its branches, political subdivisions, or agencies may consider as a justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of any crime, except those which have been expunged, occurring within the past ten years, excluding any period of incarceration, when that crime bears a rational relationship to the duties and responsibilities of the job, occupation, trade,

vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

(c) The State or any of its branches, political subdivisions, or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a crime, not occurring within the past ten years, excluding any period of incarceration, except those which have been expunged, when the offense directly relates to:

- (1) The applicant's possible performance in the job applied for;
- (2) The employee's possible performance in the job that the employee holds; or
- (3) The applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

(d) When considering noncriminal standards in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the State or any of its branches, political subdivisions, or agencies shall not take into consideration the conviction of any crime except as provided by subsections (b) and (c).

(e) A person who applies for a position in the civil service and is denied employment in that position on the basis of a criminal conviction pursuant to this section, may appeal the adverse decision to the civil service commission or merit appeals board, as appropriate, within twenty days after the notice of action has been sent to the person.

(f) Notwithstanding any law to the contrary, this section shall not apply to:

- (1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapters 321, 333F, and 346;

- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33;
- (4) Denials of employment as a staff member of a correctional facility pursuant to chapter 353, or as a staff member that requires the exercise of police powers, including the power to arrest, in the performance of the staff member's duties pursuant to chapter 353C; and
- (5) Denials of employment of applicants or employees pursuant to section 78-2.7. [L 1974, c 205, §2; am L 1975, c 54, §1; am L 1976, c 113, §2; am L 1979, c 53, §3; am L 1985, c 155, §3 and c 209, §8; gen ch 1985; am L 1987, c 339, §4; am L 1989, c 74, §2 and c 116, §1; am L 1993, c 40, §2; am L 2003, c 95, §16(2)]

#### **Cross References**

Employer inquiries into conviction record, see §378-2.5.

#### **Attorney General Opinions**

Discussion of types of questions which may be asked by various boards and commissions of persons applying for a new or renewed license or certificate. Att. Gen. Op. 89-1.

#### **Case Notes**

Cited: 10 H. App. 220, 864 P.2d 1109 (1993).

" **§831-3.2 Expungement orders.** (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; 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.

(b) Upon the issuance of the expungement certificate, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all arrest records pertaining to the arrest that are in the custody or control of any law enforcement agency of the state or any county government, and that are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file.

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

- (1) A court of law or an agency thereof which is preparing a presentence investigation for the court;
- (2) An agency of the federal or state government which is considering the subject person for a position immediately and directly affecting the national or state security; or
- (3) A law enforcement agency acting within the scope of their duties.

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

(e) The attorney general or the attorney general's duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary's publicly accessible electronic databases. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.

(g) The meaning of the following terms as used in this section shall be as indicated:

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

"Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.

(h) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

(i) Nothing in this section shall affect the compilation of crime statistics or information stored or disseminated as provided in chapter 846. [L 1974, c 92, §2; am L 1975, c 103, §1; am L 1976, c 116, §§1, 2; am L 1980, c 12, §1; am L 1983, c 78, §4; gen ch 1985; am L 1987, c 322, §1; am L 1993, c 7, §§1, 2; am L 2016, c 156, §3 and c 231, §66]

### **Revision Note**

In subsection (f), numeric designations deleted and definitions rearranged pursuant to §23G-15.

### **Case Notes**

In federal prosecution, error in admitting evidence of expunged prior arrest for interfering with local police officers did not justify reversal of conviction where there was overwhelming evidence of guilt. 614 F.2d 214 (1980).

" **§831-4 Saving provisions.** (a) This chapter does not affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the Hawaii paroling authority to impose conditions of parole.

(b) This chapter does not deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.

(c) This chapter does not affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.

(d) This chapter does not affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.

(e) This chapter does not affect laws governing rights of inheritance of a murderer from the murderer's victim. [L 1969, c 250, pt of §1; HRS §716-4; ren L 1972, c 9, pt of §1; am L 1976, c 92, §8; gen ch 1985]

#### **Cross References**

For rights of inheritance of a murderer from the murderer's victim, see §560:2-803.

" **§831-5 Certificate of discharge.** (a) If the sentence was in this State, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon the person's discharge after completion of service of the person's sentence or after service under probation or parole, shall state that the defendant's rights to vote and to hold any future public office, of which the defendant was deprived by this chapter, are thereby restored and that the defendant suffers no other disability by virtue of the defendant's conviction and sentence except as otherwise provided by this chapter. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.

(b) If the sentence was in another state or in a federal court and the convicted person has similarly been discharged by



the appropriate authorities, the director of social services of this State, upon application and proof of the discharge in such form as the director of social services may require, shall issue a certificate stating that such rights have been restored to the convicted person under the laws of this State.

(c) If another state having an act similar to this chapter issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which the defendant was deprived in this State under this chapter are restored to the defendant in this State. [L 1969, c 250, pt of §1; HRS §716-5; ren L 1972, c 9, pt of §1; gen ch 1985]

#### **Note**

Director of social services renamed. L 1987, c 339, §2.

" **§831-6 Uniformity of interpretation.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L 1969, c 250, pt of §1; HRS §716-6; ren L 1972, c 9, pt of §1]

" **§831-7 Short title.** This chapter may be cited as the Uniform Act on Status of Convicted Persons. [L 1969, c 250, pt of §1; HRS §716-7; ren L 1972, c 9, pt of §1]