

JAN 26 2022

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# A BILL FOR AN ACT

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RELATING TO THE EXPUNGEMENT OF CRIMINAL RECORDS.

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

1       SECTION 1. The legislature finds that approximately  
2       seventy million people living in the United States, or one in  
3       three adults, have a criminal record. In some instances, the  
4       person was arrested but ultimately not convicted of any crime.  
5       The legislature recognizes that arrest and conviction records  
6       often adversely affect a person's financial and housing security  
7       by limiting the person's access to employment, housing, or a  
8       professional license.

9       The legislature also finds that many states, including  
10      Hawaii, have laws that allow persons who meet certain  
11      eligibility criteria to petition or apply for the removal of a  
12      criminal record. However, making the procedure automatic would  
13      eliminate the need for an eligible person to navigate this  
14      process and pay any required processing fees. According to  
15      research compiled by the National Conference of State  
16      Legislatures, twenty states have at least one statutory  
17      automatic record-clearing provision as of July 2021. Michigan,



1 New Jersey, Pennsylvania, and Utah are examples of states having  
2 laws that automate the record-clearing process; these laws are  
3 sometimes known as "clean slate laws".

4 The purpose of this Act is to expand eligibility for, and  
5 automate, the expungement of arrest and conviction records if  
6 certain criteria are met, including the lack of a conviction  
7 record for a specified time period following the date of an  
8 arrest or conviction.

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

12 **"§831- Automatic expungement orders; records of arrest**  
13 **and conviction.** (a) Notwithstanding the provisions of sections  
14 291E-64(e), 706-622.5(4), 706-622.9(3), 712-1200(4)(c), 853-  
15 1(e), and any other law having more restrictive eligibility  
16 requirements for expungement than those set forth in this  
17 subsection, a person who is eligible to apply for expungement of  
18 an arrest record under section 831-3.2 shall be eligible for  
19 automatic expungement of an arrest record and records of any  
20 court proceedings stemming from the same arrest, including a



1 record of conviction; provided that the person meets the  
2 following criteria:

3 (1) If the person has an arrest or conviction record for a  
4 petty misdemeanor or misdemeanor offense:

5 (A) Five years or more have elapsed from the date of  
6 conviction for the offense, or the date of  
7 release from incarceration if sentenced to a term  
8 of incarceration, whichever is later; or from the  
9 date of arrest if there was no resulting  
10 conviction; and

11 (B) The person has not subsequently been convicted of  
12 any petty misdemeanor, misdemeanor, or felony  
13 offense; and

14 (2) If the person has an arrest or conviction record for a  
15 felony offense:

16 (A) Seven years or more have elapsed from the date of  
17 conviction for the offense, or the date of  
18 release from incarceration if sentenced to a term  
19 of incarceration, whichever is later; or from the  
20 date of arrest if there was no resulting  
21 conviction; and



1           (B) The person has not subsequently been convicted of  
2           any petty misdemeanor, misdemeanor, or felony  
3           offense.

4           (b) Beginning on January 1, 2023, the department of the  
5           attorney general, on a monthly basis, shall:

6           (1) Identify arrest records that meet the criteria for  
7           issuance of an expungement order under section  
8           831-3.2(a); provided that the person whose arrest is  
9           reflected in the arrest record also meets the criteria  
10           specified in subsection (a); and

11           (2) Automatically issue an expungement order annulling,  
12           canceling, and rescinding the record of arrest, and,  
13           accordingly, issue the affected person an expungement  
14           certificate as required by section 831-3.2(e).

15           (c) Any state or county law enforcement agency that is  
16           required to take certain actions in response to the expungement  
17           of an arrest record under section 831-3.2 shall do so with  
18           respect to any automatic expungement of an arrest record that  
19           occurs under this section.

20           (d) A person associated with arrest or conviction records  
21           that are eligible for automatic expungement under this section



1 shall not be required to file a written application seeking  
2 expungement in order for the expungement process to occur as  
3 prescribed by this section; provided that nothing in this  
4 section shall preclude a person who is eligible for automatic  
5 expungement under this section from filing a written application  
6 for expungement of records under section 831-3.2 if the  
7 automatic expungement required by subsection (b) has not timely  
8 occurred.

9 (e) Beginning on January 1, 2023, the judiciary, on a  
10 monthly basis, shall automatically seal or otherwise remove from  
11 the judiciary's publicly accessible electronic databases all  
12 judiciary files and other information pertaining to the  
13 applicable arrest, court proceeding, or conviction, with respect  
14 to any person for whom an expungement order has been issued  
15 pursuant to subsection (b). The court shall make good faith  
16 diligent efforts to seal or otherwise remove the applicable  
17 files and information within a reasonable time after issuance of  
18 the expungement order. The court shall provide written notice  
19 to an affected person that the person's records are scheduled to  
20 be sealed on a given date, and shall provide the person with a



1 reasonable opportunity to obtain a copy of the records prior to  
2 the date that the records are scheduled to be sealed.

3 (f) As used in this section:

4 "Arrest record" has the same meaning as in section 831-3.2.

5 "Conviction" has the same meaning as in section 831-3.2.

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

8 (h) Nothing in this section shall affect the compilation  
9 of crime statistics or information stored or disseminated as  
10 provided in chapter 846."

11 SECTION 3. Section 831-3.2, Hawaii Revised Statutes, is  
12 amended by amending its title to read as follows:

13 **"§831-3.2 Expungement orders[-]; records of arrest."**

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17  
INTRODUCED BY: 



# S.B. NO. 3159

**Report Title:**

Criminal Records; Arrest; Conviction; Automatic Expungement

**Description:**

Expands eligibility for, and automates, the expungement of arrest and conviction records if certain criteria are met, including the lack of a conviction record for a specified time period following the date of an arrest, conviction, or release from incarceration.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

