
A BILL FOR AN ACT

RELATING TO EXPUNGEMENT.

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

1 PART I

2 SECTION 1. The legislature finds that a person's criminal
3 record may affect that person long after the person has served
4 their sentence. Persons who engaged in driving under the
5 influence of an intoxicant as minors, and persons who committed
6 first-time property offenses, may have criminal records that
7 make it difficult to obtain housing, a job, or an education.
8 The legislature believes that, in certain circumstances,
9 convicted persons who have served their sentences and fulfilled
10 all legal requirements should be given the opportunity to start
11 over again.

12 Accordingly, the purpose of this Act is to expand
13 expungement eligibility to persons whose convictions for
14 consuming a measurable amount of alcohol while underage or
15 first-time property offenses predated current expungement
16 provisions.

17 PART II



1 SECTION 2. Section 291E-64, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) Notwithstanding section 831-3.2 or any other law to
4 the contrary, a person convicted of a first-time violation under
5 subsection (b) (1) or section 291-4.3, as it existed before
6 Act 189, Session Laws of Hawaii 2000, who had no prior alcohol
7 enforcement contacts, may apply to the court for an expungement
8 order upon attaining the age of twenty-one, or thereafter, if
9 the person has fulfilled the terms of the sentence imposed by
10 the court and has had no subsequent alcohol or drug related
11 enforcement contacts[-]; provided that this subsection shall not
12 apply to persons in possession of a commercial learner's permit
13 or commercial driver's license or convicted in a commercial
14 motor vehicle or while transporting hazardous materials."

15 PART III

16 SECTION 3. Section 706-622.9, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§706-622.9 Sentencing for first-time property offenders;**
19 **expungement.** (1) Notwithstanding section 706-620(3), a person
20 convicted for the first time of any class C felony property
21 offense under chapter 708 who has not previously been sentenced



1 under section 706-606.5, section 706-622.5, or this section [~~is~~]
2 shall be eligible to be sentenced to probation under subsection
3 (2) if the person meets the following criteria:

4 (a) The court has determined that the person is nonviolent
5 after reviewing the person's criminal history, the
6 factual circumstances of the offense for which the
7 person is being sentenced, and any other relevant
8 information;

9 (b) The person has been assessed by a certified substance
10 abuse counselor to be in need of substance abuse
11 treatment due to dependency or abuse under the
12 applicable Diagnostic and Statistical Manual and
13 Addiction Severity Index;

14 (c) The court has determined that the offense for which
15 the person is being sentenced is related to the
16 person's substance abuse dependency or addiction;

17 (d) The court has determined that the person is genuinely
18 motivated to obtain and maintain substance abuse
19 treatment, based upon consideration of the person's
20 history, including whether substance abuse treatment
21 has previously been afforded to the person, and an



1 appraisal of the person's current circumstances and
2 attitude; and
3 (e) Except for those persons directed to substance abuse
4 treatment under the supervision of the drug court, the
5 person presents a proposal to receive substance abuse
6 treatment in accordance with the treatment plan
7 prepared by a certified substance abuse counselor
8 through a substance abuse treatment program that
9 includes an identified source of payment for the
10 treatment program.
11 (2) A person eligible under subsection (1) may be
12 sentenced to probation to undergo and complete a substance abuse
13 treatment program if the court determines that the person can
14 benefit from substance abuse treatment and, notwithstanding that
15 the person would be subject to sentencing as a repeat offender
16 under section 706-606.5, the person should not be incarcerated
17 to protect the public. If the person fails to complete the
18 substance abuse treatment program and the court determines that
19 the person cannot benefit from any other suitable substance
20 abuse treatment program, the person shall be sentenced as
21 provided in this part. As a condition of probation under this



1 subsection, the court may direct the person to undergo and
2 complete substance abuse treatment under the supervision of the
3 drug court if the person has a history or relapse in treatment
4 programs. The court may require other terms and conditions of
5 probation, including requiring that the person contribute to the
6 cost of the substance abuse treatment program, comply with
7 deadlines for entering into the substance abuse treatment
8 program, and reside in a secure drug treatment facility.

9 (3) Upon written application from a person sentenced under
10 this part or a probation officer, the court shall issue a court
11 order to expunge the record of conviction for that particular
12 offense; provided that a person has successfully completed the
13 substance abuse treatment program and complied with other terms
14 and conditions of probation. A person sentenced to probation
15 under this section shall be eligible for expungement under this
16 subsection only if the person has not been previously convicted
17 of a felony offense in this or another jurisdiction.

18 (4) A person sentenced before June 22, 2006, for any class
19 C felony property offense under chapter 708, and who would have
20 qualified for sentencing pursuant to this section had that
21 person been sentenced after the enactment of this section, and



1 who otherwise meets all the requirements of this section for
2 expungement, may apply to a court for expungement of the record
3 of conviction for the property offense.

4 The court, upon written application from the person, shall
5 issue a court order to expunge the record of conviction for the
6 property offense; provided that:

7 (a) The person has complied with the terms of the sentence
8 imposed by the court;

9 (b) The court finds that the person would in fact have
10 qualified for expungement pursuant to this section;

11 (c) The person has not been convicted of a felony offense
12 in this or another jurisdiction before or after the
13 conviction for which the person is applying for
14 expungement; and

15 (d) The court makes the finding that the person is
16 currently nonviolent, based upon the court's review of
17 the person's current criminal history, the factual
18 circumstances of the offense for which the person is
19 seeking expungement, and any other relevant
20 information.



1 If the court cannot make the finding that the person
 2 fulfilled the criteria required in paragraph (b) at the time of
 3 sentencing, the court may nevertheless issue an order to expunge
 4 the record of conviction for the property offense; provided that
 5 the court finds that the person has successfully completed a
 6 substance abuse treatment program.

7 A person granted an expungement of conviction under this
 8 subsection shall not be eligible for another expungement of
 9 conviction under this section.

10 [~~4~~] (5) Nothing in this section shall be construed to
 11 give rise to a cause of action against the State, a state
 12 employee, or a treatment provider.

13 [~~5~~] (6) For the purposes of this section, "substance
 14 abuse treatment program" means drug or substance abuse treatment
 15 services provided outside a correctional facility by a public,
 16 private, or nonprofit entity that specializes in treating
 17 persons who are diagnosed with having substance abuse or
 18 dependency and preferably employs licensed professionals or
 19 certified substance abuse counselors."

20 PART IV



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Driving Under the Influence; Underage; First-time Property Offenses; Expungement

Description:

Expands expungement eligibility to persons whose convictions for consuming a measurable amount of alcohol while underage or first-time property offenses predated current expungement provisions. Effective 7/1/3000. (HD1)

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

