

ACT 92

S.B. NO. 1913-74

A Bill for an Act Relating to Expungement of Arrest Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to minimize or abolish extrajudicial penalties which may confront a person who has a record of arrest, even though such arrest did not lead to conviction. The expungement of such arrest record is necessary if the person is not to continue life under a cloud of doubt placed over him by prospective employers, fraternal organizations, and the public in general. At the same time, it is realized as a practical matter, that all records pertaining to an arrest are not separable from other court, police, and public records. Pending the day when technological advances in record-keeping are adopted by state and county agencies and permit a complete expungement of records pertaining to a person, this Act intends to accomplish at least a partial expungement coupled with a certificate issued to authorize declarations that as to a specific arrest, it did not occur.

SECTION 2. Chapter 731, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 731- Expungement orders. (a) The attorney general, upon application from a person arrested for, but not convicted of, a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest.

(b) Upon the issuance of the expungement order, 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 records pertaining to the arrest which are in the custody or control of the State or any county government, and which are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement in a confidential file or if on magnetic tape or in a computer memory bank, shall be erased.

(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; or
- (2) An agency of the federal government which is considering the subject person for a position immediately and directly affecting the national security.

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

(e) 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 he 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) Nothing in this section shall affect the compilation of crime statistics as provided in part IV of chapter 28.”

SECTION 3. This Act shall apply to records of arrest made prior to its effective date, as well as to those made subsequent to its effective date.

SECTION 4. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

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

(Approved May 31, 1974.)

*Edited accordingly.