

ACT 103

H.B. NO. 1852

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

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

SECTION 1. Section 731-3.2, Hawaii Revised Statutes, is amended to read:

“Sec. 731-3.2 Expungement orders. (a) The attorney general, or his duly authorized representative within the department of the attorney general, upon written application from a person arrested for, but not charged or convicted of, a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest and, within 60 days after receipt of such written application shall, when so requested, deliver, or cause to be delivered, all fingerprints or photographs of such person, unless such person has a record of prior conviction or is a fugitive from justice, in which case the fingerprints or photographs may be retained by the agencies holding such records; provided that an expungement order shall not issue, (1) in the case of an arrest of 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; and (3) in the case of an arrest for any offense where conviction has not been obtained because he has rendered prosecution impossible by absenting himself from the jurisdiction.

(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, photographs and fingerprints 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 return of the photo-

graphs and fingerprints to the person requesting them, and for placement of the records in a confidential file or, if the records are 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 or his 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 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) The meaning of the following terms as used in this section shall be as indicated:

- (1) "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.
- (2) "Arrest record" means the document, magnetic tape or computer memory bank, produced under authority of law, which contains the data of legal proceedings against a person beginning with his arrest for the alleged commission of a crime and ending with final disposition of the charges against the person by nonconviction.

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

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

SECTION 2. This Act shall apply to fingerprints, photographs and records of arrest made prior to its effective date, as well as to those made subsequent to its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

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

(Approved May 16, 1975.)

*Edited accordingly.