

ACT 233

H.B. NO. 1255

A Bill for an Act Relating to Minors.

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

SECTION 1. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Expungement orders. (a) The court may issue an order expunging an arrest record of a minor upon written application by the minor or the minor’s parent or guardian, where the arrest was made pursuant to section 571-11(1) or (2) and the arrest record meets the following criteria:

- (1) The matter was not referred to the prosecuting attorney or the family court and the person arrested was not counseled and released by the police; or
- (2) The matter was referred to the prosecuting attorney or family court and:
 - (A) The person arrested was not adjudicated responsible; or
 - (B) The matter was dismissed with prejudice.

(b) Before issuing an order to expunge an arrest record that falls under subsection (a)(1), the court shall consult with appropriate law enforcement agencies to determine if there is any reason to retain the arrest record.

(c) The court shall issue an order expunging the arrest record of an adult, which was incurred while the adult was a minor, upon written application of the adult where:

(1) The arrest was made pursuant to section 571-11(1) or (2); and

(2) The arrest record meets the criteria under subsection (a).

Upon issuance of the order of expungement, the court shall forward copies and issue a certificate pursuant to subsection (d). Subsection (b) shall not apply to expungement orders under this subsection.

(d) Upon issuance of an expungement order under this section, the court shall:

(1) Forward copies of the expungement order to the police department and the department of the attorney general for expungement of the arrest record; and

(2) Issue to the person for whom the expungement order was issued, a certificate stating that an expungement order was issued and that its effect is to annul the record of one or more specific arrests. The certificate shall:

(A) 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; and

(B) State that the person shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for making any statement authorized by the certificate.

(e) A person whose arrest record has been expunged pursuant to subsection (a) or (c) shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for responding to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest expunged.

(f) As used in this section:

“Arrest record” means any record maintained by a county police department or the department of the attorney general under section 846-2.5(b) and chapters 846 and 846D, relating to the arrest of the minor for a specific offense, including fingerprints taken during the arrest and maintained under section 846-2.5(b).

“Expunge” means a process defined by agency policy in which records are segregated and kept confidential, or destroyed.”

SECTION 2. Section 571-72, Hawaii Revised Statutes, is amended to read as follows:

“§571-72 Duties and powers; reports[-]; expungement of juvenile arrest records.¹ (a) The juvenile [~~crime prevention bureau~~] division or section shall direct its attention specifically to the suppression, prevention, and investigation of crimes committed by children under the age of eighteen years, and any police officer shall have the power and authority to take and detain any minor coming under² section 571-11 at the [~~bureau~~] division or section or other suitable places for questioning and investigation. If it appears upon conclusion of the investigation that the minor does come within such provisions, the minor may be counseled and released, and follow-up counseling provided or the minor may be referred to the family court or to a proper agency for treatment, and a written report of the findings of the officer shall be submitted to the court or³ agency.

(b) Upon receipt of an expungement order issued by the family court under section 571- , the police shall expunge the arrest record of the minor.”

SECTION 3. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The records of any police department[;] and of any juvenile [~~crime prevention bureau~~] division or section thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection and use only by persons whose official duties are concerned with this chapter, except as provided in subsections (d) and (f), sections 571- and 571-72(b), or as otherwise ordered by the court.”

SECTION 4. Section 846D-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§846D-1]]~~ **Responsibility for system.** (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all juvenile justice custodial, adjudicative, and program data from all agencies [~~which~~] that have primary investigative, action, or program responsibility for minors, including the county police departments, the county prosecutors, the family courts, and the Hawaii youth correctional facilities, in such a manner as to balance the right of the public and press to be informed and the right of privacy and confidentiality of minors and their families, and to provide accurate, comprehensive, and timely information to government agencies concerned with juvenile offenders to carry out their responsibilities.

(b) The information collected and stored in the juvenile justice information system shall not include any fingerprints, psychiatric reports, or social and clinical studies or examinations, but may contain information indicating the availability of reports and the procedures for requesting such information.

(c) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information and obtaining the agreement of agencies permitted to directly input and access information.

(d) Upon receipt of an expungement order issued by the family court under section 571- , the attorney general shall expunge the arrest record of the minor.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 6. This Act shall take effect on August 1, 2001.

(Approved June 13, 2001.)

Notes

1. Period should be underscored.
2. Prior to amendment “within” appeared here. “Under” should be underscored.
3. Prior to amendment “the” appeared here.
4. Edited pursuant to HRS §23G-16.5.