

ACT 168

H.B. NO. 2513

A Bill for an Act Relating to Expungement.

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

PART I

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

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

PART II

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

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

PART III

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

“§706-622.9 Sentencing for first-time property offenders; expungement.

(1) Notwithstanding section 706-620(3), a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under section 706-606.5, section 706-622.5, or this section [is] shall be eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person’s criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (c) The court has determined that the offense for which the person is being sentenced is related to the person’s substance abuse dependency or addiction;
- (d) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person’s history, including whether substance abuse treatment has previously been afforded to the person, and an appraisal of the person’s current circumstances and attitude; and
- (e) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be sentenced as provided in this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history or relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program, comply with deadlines for entering into the substance abuse treatment program, and reside in a secure drug treatment facility.

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

(4) A person sentenced before June 22, 2006, for any class C felony property offense under chapter 708, and who would have qualified for sentencing pursuant to this section had that person been sentenced after the enactment of this section, and who otherwise meets all the requirements of this section for expungement, may apply to a court for expungement of the record of conviction for the property offense.

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

- (a) The person has complied with the terms of the sentence imposed by the court;
- (b) The court finds that the person would in fact have qualified for expungement pursuant to this section;
- (c) The person has not been convicted of a felony offense in this or another jurisdiction before or after the conviction for which the person is applying for expungement; and
- (d) The court makes the finding that the person is currently nonviolent, based upon the court's review of the person's current criminal history, the factual circumstances of the offense for which the person is seeking expungement, and any other relevant information.

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

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

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

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

PART IV

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

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

(Approved July 2, 2024.)