

## ACT 62

H.B. NO. 1595

A Bill for an Act Relating to Expungement.

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

SECTION 1. The legislature finds that approximately seventy-seven million persons in the United States have a criminal record. In some instances, the person was arrested but ultimately not convicted of a crime. The legislature recognizes that arrest records can adversely affect a person's financial security and limit their ability to obtain housing, employment, or a professional license.

The legislature also finds that in 2019, the legislature passed Act 273, Session Laws of Hawaii 2019, which decriminalized the possession of three grams or less of marijuana. Despite the decriminalization, some persons still have prior arrest records for related charges that affect their employment and housing options. The legislature further recognizes that many states, including Hawai'i, allow arrest records to be expunged under certain circumstances. However, these processes generally require an eligible person to navigate the court system and pay court fees. According to the National Conference of State Legislatures, at least twenty states have developed state-initiated processes to expunge certain criminal records at no cost to the record holder to ease the logistical and financial barriers to receiving an expungement.

The legislature further finds that the Hawai'i criminal justice data center is a division of the department of the attorney general and is responsible for the statewide criminal history record information system and for processing expungement orders pursuant to section 831-3.2, Hawaii Revised Statutes. To expunge records relating to any offense, manual examination of those records is required. As of March 10, 2024, there are over fifty-thousand records with a charge code of section 712-1249, Hawaii Revised Statutes, for promoting a detrimental drug in a third degree, which involves possession of less than one ounce of marijuana or less than one-eighth ounce (or less than fifty tablets or capsules, as applicable) of any Schedule V substance.

Recognizing the limited resources of the Hawai'i criminal justice data center, the purpose of this Act is to establish a pilot project, to be administered by the department of the attorney general, to expunge certain arrest records and other records pertaining to prior arrests made under section 712-1249, Hawaii Revised Statutes, concerning the possession of less than one ounce of marijuana. For purposes of this pilot project, the Hawai'i criminal justice data center will use existing resources, without any additional appropriations, and will report to the legislature on progress and lessons learned, which can better inform future legislation concerning state-initiated expungement.

SECTION 2. (a) The department of the attorney general shall establish and administer a pilot project beginning on the effective date of this Act and ending on October 1, 2025, for a state-initiated project to expunge certain arrest records relating to the offense under section 712-1249, Hawaii Revised Statutes, for possessing marijuana. For purposes of this pilot project, the department of the attorney general shall utilize the existing funding and resources of the Hawai'i criminal justice data center.

(b) Notwithstanding section 831-3.2, Hawaii Revised Statutes, or any other law to the contrary, the department of the attorney general shall issue, without any written application by the holder of an arrest record and on the department's own initiative, an expungement order annulling, cancelling, and rescinding the arrest record where:

(1) The arrest occurred before January 11, 2020;

- (2) The arrest resulted in a single charge of violating section 712-1249, Hawaii Revised Statutes, for possessing marijuana;
- (3) The arrest occurred in a county having a population greater than two hundred thousand and less than five hundred thousand persons;
- (4) The criminal case terminated with a final disposition other than a conviction; and
- (5) An expungement order is not otherwise prohibited from being issued by law, including section 831-3.2(a), Hawaii Revised Statutes.

The department shall not charge the holder of the arrest record any fee for the issuance of an expungement order pursuant to the pilot project established by this section.

(c) Upon the issuance of the expungement order, a person whose arrest record has been expunged shall be treated as not having been arrested in all respects not otherwise provided for in section 831-3.2, Hawaii Revised Statutes.

(d) Upon the issuance of the expungement order, all records pertaining to the arrest that are in the custody or control of any law enforcement agency of the State or any county government, and that are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file.

(e) An arrest record expunged under subsection (c) shall not be divulged except upon inquiry by:

- (1) A court of law or an agency thereof that is preparing a presentence investigation for the court;
- (2) An agency of the federal or state government that is considering the subject person for a position immediately and directly affecting the national or state security; or
- (3) A law enforcement agency acting within the scope of its duties.

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

(f) Any person who is eligible for expungement pursuant to this section may request in writing a copy of the person's criminal history to verify whether the record has been updated, upon payment of a reasonable fee to be set by the department of the attorney general.

(g) Any person for whom an expungement order has been entered pursuant to this section may request in writing and obtain from the department of the attorney general, for a reasonable fee, an expungement 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 the person has no record regarding the specific arrest. The statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(h) Nothing in this section shall be construed to restrict or modify a person's rights to have a record expunged pursuant to section 831-3.2, Hawaii Revised Statutes, or to diminish or abrogate any other rights or remedies available to the person.

(i) The department of the attorney general may adopt interim rules necessary for the purpose of this section, which shall be exempt from chapters 91 and 201M, Hawaii Revised Statutes, to effectuate the purposes of this section; provided that the interim rules shall remain in effect until October 1, 2025.

(j) The department of the attorney general and its employees and agents shall be immune from any civil liability for any act of commission or omission, taken in good faith, arising out of and in the course of participation in, or assistance with the expungement procedures set forth in this section. The

immunity afforded pursuant to this section shall be in addition to and not in limitation of any other immunity provided by law.

(k) For purposes of this section:

“Arrest record” has the same meaning as defined in section 831-3.2(g), Hawaii Revised Statutes.

“Conviction” has the same meaning as defined in section 831-3.2(g), Hawaii Revised Statutes.

SECTION 3. The Hawai‘i criminal justice data center shall submit a report to the legislature regarding the progress of the pilot project, no later than twenty days prior to the convening of the regular sessions of 2025 and 2026, that shall include the following:

- (1) The total number of records identified to date as potentially eligible for expungement;
- (2) The total number of expungement orders granted to date by the department of the attorney general;
- (3) The total time and resources expended by the Hawai‘i criminal justice data center to date on the pilot project; and
- (4) With respect to the report due to the legislature twenty days prior to the convening of the regular session of 2026, any future recommendations, including a statement of required resources and appropriations concerning state-initiated expungements.

SECTION 4. The department of the attorney general may seek assistance from the university of Hawai‘i at Mānoa William S. Richardson school of law or the Hawai‘i Innocence Project’s Beyond Guilt Hawai‘i Clinic to carry out the purpose of this Act.

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

(Approved June 21, 2024.)