WHEREAS, Black's Law Dictionary defines "expungement of record" as a "process by which record of criminal conviction is destroyed or sealed after expiration of time" and elaborates by stating that "some states also provide for expungement of criminal records if arrested person is not convicted or in the event of unlawful arrest"; and

WHEREAS, each state may set its own guidelines regarding which records may be expunged and under which circumstances, including whether arrest record expungements may be granted at all; and

WHEREAS, in general practice, once arrest records have been expunged, an individual may respond to any question or inquiry that he or she has no arrest record with respect to the specific records and incidents that have been expunged; and

WHEREAS, several states allow for the expungement of arrest records with convictions, including Arizona, California, Illinois, and New Jersey; and

WHEREAS, in Hawaii, the expungement process is codified in section 831-3.2, Hawaii Revised Statutes, and allows expungement of arrest records only in cases where there was no conviction; and

WHEREAS, as part of an application for an expungement order, an individual may request the return of fingerprints and photographs; and

WHEREAS, once an expungement order is granted, an individual receives an Expungement Certificate that certifies the specific records of arrest that have been annulled; and
WHEREAS, the Expungement Certificate also contains language that states that if digitized images were taken, those images cannot be returned to the individual since they have been deleted; and

WHEREAS, due to the rapid development and proliferation of digital photographic equipment, it appears unlikely that law enforcement continues to use traditional film formats for procedures associated with arrests; and

WHEREAS, clarifying the language used on Expungement Certificates regarding photographic records would help eliminate any ambiguity with respect to those documents that have not been returned to the individual; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, that this body requests the Attorney General to adopt unambiguous language regarding photographic records on Expungement Certificates; and

BE IT FURTHER RESOLVED that such language should clearly reflect current practices surrounding photographic records, including the almost certain use of digitized images; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Attorney General, Administrator of the Hawaii Criminal Justice Data Center, and the Police Chief of each county.

OFFERED BY:

MAR 05 2010