

---

---

# A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD INFORMATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Hawaii criminal  
2 justice data center is responsible for the collection, storage,  
3 and dissemination of criminal history record information in such  
4 a manner as to balance the right of the public and press to be  
5 informed, the right of privacy of individual citizens, and the  
6 necessity for law enforcement agencies to prevent crimes and  
7 detect criminals in support of the right of the public to be  
8 free from crime and the fear of crime.

9           As it relates to these responsibilities, the purpose of  
10 this Act is to resolve inconsistencies relating to cases in  
11 which the defendant was acquitted or the charges were dismissed  
12 due to a physical or mental disease, disorder, or defect,  
13 pursuant to Hawaii's penal responsibility and fitness to proceed  
14 law, and cases in which the defendant was involuntarily  
15 hospitalized in lieu of prosecution or of sentence.

16           SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:



1           "(a) The attorney general, or the attorney general's duly  
2 authorized representative within the department of the attorney  
3 general, upon written application from a person arrested for, or  
4 charged with but not convicted of a crime, or found eligible for  
5 redress under chapter 661B, shall issue an expungement order  
6 annulling, canceling, and rescinding the record of arrest;  
7 provided that an expungement order shall not be issued:

8           (1) In the case of an arrest for a felony or misdemeanor  
9           where conviction has not been obtained because of bail  
10           forfeiture;

11           (2) For a period of five years after arrest or citation in  
12           the case of a petty misdemeanor or violation where  
13           conviction has not been obtained because of a bail  
14           forfeiture;

15           (3) In the case of an arrest of any person for any offense  
16           where conviction has not been obtained because the  
17           person has rendered prosecution impossible by  
18           absenting oneself from the jurisdiction;

19           (4) In the case of a person [~~acquitted by reason of a~~  
20           ~~mental or physical defect under chapter 704,]~~ who was  
21           involuntarily hospitalized pursuant to section



1           706-607, or who was acquitted or had charges dismissed  
2           pursuant to chapter 704 due to a physical or mental  
3           disease, disorder, or defect; and

- 4           (5) For a period of one year upon discharge of the  
5           defendant and dismissal of the charge against the  
6           defendant in the case of a deferred acceptance of  
7           guilty plea or nolo contendere plea, in accordance  
8           with chapter 853.

9           Any person entitled to an expungement order under this  
10          section may by written application also request return of all  
11          fingerprints or photographs taken in connection with the  
12          person's arrest. The attorney general or the attorney general's  
13          duly authorized representative within the department of the  
14          attorney general, within one hundred twenty days after receipt  
15          of the written application, shall, when requested, deliver, or  
16          cause to be delivered, all fingerprints or photographs of the  
17          person, unless the person has a record of conviction or is a  
18          fugitive from justice, in which case the photographs or  
19          fingerprints may be retained by the agencies holding the  
20          records."



1 SECTION 3. Section 846-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§846-9 Limitations on dissemination. Dissemination of  
4 nonconviction data shall be limited, whether directly or through  
5 any intermediary, only to:

- 6 (1) Criminal justice agencies, for purposes of the  
7 administration of criminal justice and criminal  
8 justice agency employment;
- 9 (2) Individuals and agencies specified in section 846-10;
- 10 (3) Individuals and agencies pursuant to a specific  
11 agreement with a criminal justice agency to provide  
12 services required for the administration of criminal  
13 justice pursuant to that agreement; provided that such  
14 agreement shall specifically authorize access to data,  
15 limit the use of data to purposes for which given, and  
16 insure the security and confidentiality of the data  
17 consistent with the provisions of this chapter;
- 18 (4) Individuals and agencies for the express purpose of  
19 research, evaluative, or statistical activities  
20 pursuant to an agreement with a criminal justice  
21 agency; provided that such agreement shall



1 specifically authorize access to data, limit the use  
2 of data to research, evaluative, or statistical  
3 purposes, and insure the confidentiality and security  
4 of the data consistent with the purposes of this  
5 chapter;

6 (5) Individuals and agencies for any purpose authorized by  
7 statute, ordinance, executive order, or court rule,  
8 decision, or order, as construed by appropriate state  
9 or local officials or agencies; and

10 (6) Agencies of state or federal government which are  
11 authorized by statute or executive order to conduct  
12 investigations determining employment suitability or  
13 eligibility for security clearances allowing access to  
14 classified information.

15 These dissemination limitations do not apply to conviction data.

16 These dissemination limitations also do not apply to data  
17 relating to cases in which the defendant is acquitted[7] or  
18 charges are dismissed[7] by reason of physical or mental  
19 disease, disorder, or defect under chapter 704 [7], or in which  
20 the defendant is involuntarily hospitalized under section  
21 706-607.



1 Criminal history record information disseminated to  
2 noncriminal justice agencies shall be used only for the purposes  
3 for which it was given.

4 No agency or individual shall confirm the existence or  
5 nonexistence of criminal history record information to any  
6 person or agency that would not be eligible to receive the  
7 information itself."

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

10 SECTION 5. This Act shall take effect on July 1, 2018.



**Report Title:**

Criminal History Record Information

**Description:**

Resolves inconsistencies in the processing of expungements and public dissemination of criminal history record information related to cases in which the defendant is acquitted or charges are dismissed by reason of physical or mental disease, disorder, or defect or the defendant is involuntarily hospitalized. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

