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privacy and security of criminal justice information.

CHAPTER 831 UNIFORM ACT ON STATUS OF CONVICTED PERSONS

SECTION

- 831-1 DEFINITION
- 831-2 RIGHTS LOST
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§831-1 Definition. In this chapter, "felony" means an offense that is punishable with imprisonment for a term which is in excess of one year. [L 1969, c 250, pt of §1; HRS §716-1; ren L 1972, c 9, pt of §1; am L 1975, c 14, §1]

§831-2 Rights lost. (a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not:

- (1) Vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the suspension or parole; or
- (2) Become a candidate for or hold public office.

(b) A public office held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this State, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed the defendant shall be restored to any public office forfeited under this chapter from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

(c) Subsections (a) and (b) of this section and any other laws to the contrary notwithstanding, any person convicted of any act, attempt, or conspiracy to overthrow the state or the federal government by force or violence shall not hold any public office or employment. [L 1969, c 250, pt of §1; HRS §716-2; ren L 1972, c 9, pt of §1; am L 1979, c 53, §2; gen ch 1985]

Attorney General Opinions

OHA trustees are holders of "public office". Att. Gen. Op. 84-3.

§831-3 Rights retained by convicted person. Except as otherwise provided by this chapter and chapter 351, part VI, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law. [L 1969, c 250, pt of §1; HRS §716-3; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1986, c 155, §2]

§831-3.1 Prior convictions; criminal records; noncriminal standards.

(a) A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission.

(b) The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:

- (1) Records of arrest not followed by a valid conviction;
- (2) Convictions which have been annulled or expunged;
- (3) Convictions of a penal offense for which no jail sentence may be imposed;
- (4) Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.

Except as provided in paragraphs (1) to (4), the State or any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (i) to the applicant's possible performance in the job applied for, or (ii) to the employee's possible performance in the job which the employee holds, or (iii) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors to determine sufficiency of rehabilitation. A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person.

(c) When considering noncriminal standards such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like, in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the agency shall not take into consideration the conviction of any crime except as provided by subsection (b). Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.

(d) This section shall not apply to:

- (1) Denials by the department of human services of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapter 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33; and
- (4) Denials of employment as a staff member of a correctional facility operated under chapter 353. [L 1974, c 205, §2; am L 1975, c 54, §1; am L 1976, c 113, §2; am L 1979, c 53, §3; am L 1985, c 155, §3 and c 209, §8; gen ch 1985; am L 1987, c 339, §4; am L 1989, c 74, §2 and c 116, §1; am L 1993, c 40, §2]

§831-3.2 Expungement orders. (a) The attorney general, or the attorney general's duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not be issued:

- (1) In the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture;
- (2) For a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture;
- (3) In the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absenting oneself from the jurisdiction;
- (4) In the case of a person acquitted by reason of a mental or physical defect under chapter 704; and
- (5) For a period of one year upon discharge of the defendant and dismissal of the charge against the defendant in the case of a deferred acceptance of a guilty plea or nolo contendere plea, in accordance with chapter 853.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general or the attorney general's duly authorized representative within the department of the attorney general, within 120 days after receipt of the written application, shall, when so requested, deliver, or cause to be delivered, all fingerprints or photographs of the person, unless the person has a record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement certificate, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all arrest records pertaining to the arrest which are in the custody or control of any law enforcement agency of the state or any county government, and which 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.

(d) Records filed under subsection (c) shall not be divulged except upon inquiry by:

- (1) A court of law or an agency thereof which is preparing a presentence investigation for the court;
- (2) An agency of the federal or state government which 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 their duties.

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

(e) The attorney general or the attorney general's duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a 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. Such a

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statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) The meaning of the following terms as used in this section shall be as indicated:

(1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.

(2) "Arrest record" means any existing photographic and fingerprint cards relating to the arrest.

(g) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

(h) Nothing in this section shall affect the compilation of crime statistics or information stored or disseminated as provided in chapter 846. [L 1974, c 92, §2; am L 1975, c 103, §1; am L 1976, c 116, §§1, 2; am L 1980, c 12, §1; am L 1983, c 78, §4; gen ch 1985; am L 1987, c 322, §1; am L 1993, c 7, §§1, 2]

Case Notes

In Federal prosecution, error in admitting evidence of expunged prior arrest for interfering with local police officers did not justify reversal of conviction where there was overwhelming evidence of guilt. 614 F.2d 214.

§831-4 Saving provisions. (a) This chapter does not affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the Hawaii paroling authority to impose conditions of parole.

(b) This chapter does not deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.

(c) This chapter does not affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.

(d) This chapter does not affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.

(e) This chapter does not affect laws governing rights of inheritance of a murderer from the murderer's victim. [L 1969, c 250, pt of §1; HRS §716-4; ren L 1972, c 9, pt of §1; am L 1976, c 92, §8; gen ch 1985]

Cross References

For rights of inheritance of a murderer from the murderer's victim, see §560:2-803.

§831-5 Certificate of discharge. (a) If the sentence was in this State, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon the person's discharge after completion of service of the person's sentence or after service under probation or parole, shall state that the defendant's rights to vote and to hold any future public office, of which the defendant was deprived by this chapter, are thereby restored and that the defendant suffers no other disability by virtue of the defendant's conviction and sentence except as otherwise provided by this chapter. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.

(b) If the sentence was in another state or in a federal court and the convicted person has similarly been discharged by the appropriate authorities, the director of social services of this State, upon application and proof of the discharge in such form as the director of social services may require, shall issue a certificate stating that such rights have been restored to the convicted person under the laws of this State.

(c) If another state having an act similar to this chapter issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which the defendant was deprived in this State under this chapter are restored to the defendant in this State. [L 1969, c 250, pt of §1; HRS §716-5; ren L 1972, c 9, pt of §1; gen ch 1985]

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Hawaii Revised Statutes Annotated

[CHAPTER 846] HAWAII CRIMINAL JUSTICE DATA CENTER

PART I. DATA CENTER

SECTION

[846-1] DEFINITIONS

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HAWAII CRIMINAL JUSTICE DATA CENTER Sec. 846-1

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Note. L. 1983, c 78, §3(1) and (2) amended the title of this chapter and designated sections 846-1 to 846-16 as "Part I. Data Center".

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PART I. DATA CENTER

[§846-1] **Definitions.** In this chapter, unless a different meaning plainly is required:

- (1) "Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agency maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository;
- (2) "Criminal history record information system" or "system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of intrastate, interstate, and national criminal justice data;
- (3) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals;
- (4) "Criminal justice agency" means:
 - (A) Courts; or
 - (B) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice;
- (5) "Administration of criminal justice" means performance of any of the following activities: detection; apprehension; detention; pretrial release; post-trial release; prosecution; adjudication; correctional supervision; or rehabilitation of accused persons or criminal offenders; and includes criminal identification activities and the collection, storage, and dissemination of criminal history record information; but does not include crime prevention activities or criminal defense functions;
- (6) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of the proceedings, or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include but is not limited to acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without trial, or case continued without judgment.

finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, nolo contendere plea, convicted, youthful offender determination or transfer to juvenile jurisdiction, deceased, deferred disposition, dismissed—civil action, found insane or mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, released from correctional supervision, or fugitive from justice;

- (7) "Complete" refers to the fact that criminal history record information should show all dispositions as the case moves through the various segments of the criminal justice system;
- (8) "Accurate" refers to the fact that criminal history record information contains no erroneous information of a material nature; and
- (9) "Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or

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that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals; and

- (10) "Data center" means the state agency responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data and related functions, including but not limited to, functioning as the state repository for criminal history records, providing technical assistance in the development of information systems, and conducting appropriate research and statistical studies. [L 1979, c 129, pt of §2; am L 1983, c 78, §3(3)]

§846-2 Establishment of the data center. There shall be a data center established in the department of the attorney general. The data center shall be directed and managed by a director appointed by the attorney general without regard to chapters 76 and 77. There shall also be a committee, appointed by the attorney general, composed of selected criminal justice user-agency personnel, to act in an advisory capacity to the data center in matters related to interagency coordination and user needs. [L 1979, c 129, pt of §2; am L 1980, c 269, §2; am L 1982, c 57, §1; am L 1983, c 78, §3(4)]

CHAPTER 846 HAWAII CRIMINAL JUSTICE DATA CENTER; CIVIL IDENTIFICATION

PART I. DATA CENTER

SECTION

846-2.5 PURPOSE OF THE CRIMINAL JUSTICE DATA CENTER

846-10.5 FEES

846-10.6 CRIMINAL HISTORY RECORD IMPROVEMENT REVOLVING FUND; ESTABLISHED

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§846-2.5 Purpose of the criminal justice data center. (a) The Hawaii criminal justice data center, hereinafter referred to as the "data center", shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies, including, the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

(b) The attorney general shall select and enforce systems of identification, including fingerprinting, without the necessity of a court order, of all adults arrested for a criminal offense, children who are twelve years of age or older and who are taken into custody for committing an act which, if committed by an adult would be a felony, or for an act involving theft in excess of \$100 or criminal property damage in excess of \$100, and all persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and provide for the collection, recording, and compilation of data and statistics relating to crime; provided that, unless a child's electronic or physical fingerprint record is otherwise authorized to be entered into the system, and notwithstanding any law to the contrary, the attorney general shall purge any child's electronic or physical fingerprint record entered into the identification system pursuant to this subsection, upon court order, when the child attains the age of twenty-five years, when the child is determined not to be responsible for committing the act for which the fingerprints were taken, or when the child is not informally adjusted under section 571-31.4 and a petition is not filed within one year from the date the child is taken into custody. The court shall notify the attorney general when a child is determined not to be responsible for committing the act for which the fingerprints were taken. A child's fingerprint record shall not be transmitted to any system outside the State.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of the systems of identification and statistics in their respective jurisdictions; provided that those expenses in connection with matters exclusively within the control of the State shall be borne by the State; and provided further that the State shall provide for the management and equipment maintenance of the computerized fingerprint identification system.

[§846-3] Reporting to data center. The chiefs of the police of the counties of the State and agencies of state and county governments having power of arrest shall furnish the data center with descriptions of all such persons who are arrested by them for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule or regulation promulgated by the attorney general to be a significant offense necessary to be reported for the proper administration of criminal justice. The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation. [L 1979, c 129, pt of §2]

[§846-4] Query of data center. Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used. Such inquiries shall be made prior to any dissemination except in those cases where the agency determines that time is of the essence and the center is technically incapable of responding within the necessary time period, provided, however, that where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements. [L 1979, c 129, pt of §2]

[§846-5] Reporting of dispositions. It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition. [L 1979, c 129, pt of §2]

[§846-6] Systematic audit. All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

- (1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released;
- (2) Establish a delinquent disposition monitoring system; and
- (3) Verify all record entries for accuracy and completeness. [L 1979, c 129, pt of §2]

[§846-7] **Security.** Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system shall:

- (1) Have power to determine for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;
- (2) Select and supervise all personnel authorized to have direct access to such information;
- (3) Assure that an individual or agency authorized direct access is administratively held responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure, or dissemination;
- (4) Institute procedures to reasonably protect any data center of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;
- (5) Provide that each employee working with or having access to criminal history record information is to be made familiar with the substance and intent of this chapter and of regulations promulgated thereunder; and
- (6) Require that direct access to criminal history record information is to be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Where a noncriminal justice agency operates a system, the participating criminal justice agency shall be responsible for review, approval, and monitoring of procedures developed to assure compliance with this section. [L 1979, c 129, pt of §2]

[§846-8] **Exclusions.** This chapter shall not apply to criminal history record information contained in:

- (1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
- (2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis;
- (3) Court records of public judicial proceedings;
- (4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings;
- (5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license;
- (6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State.

Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the offense for which an individual is currently within the criminal justice system, including his

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place of incarceration; and, nothing in this chapter shall prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship. [L 1979, c 129, pt of §2]

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

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) Individuals and agencies specified in section 846-10;
- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement, provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data.

Criminal history record information disseminated to non-criminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself. [L 1979, c 129, pt of §2]

[§846-10] Dissemination. Criminal history record information may be disseminated to:

- (1) The governor in individual cases or situations wherein he elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with his constitutional duty to insure that the laws be faithfully executed;
- (2) The attorney general in connection with his statutory authority and duties in the administration and enforcement of the criminal laws and

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for the purpose of administering and insuring compliance with the provisions of this chapter;

- (3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation. [L 1979, c 129, pt of §2]

§846-10.5 Fees. (a) Except for services provided to criminal justice agencies and state or county agencies, the Hawaii criminal justice data center and state and county criminal justice agencies shall assess the following fees for services provided or to be provided, which shall be deposited into the criminal history record improvement revolving fund:

- (1) For each Hawaii criminal history record name check, conducted by the data center, and other state and county agencies, \$10;
- (2) For each Hawaii criminal history record name check, via a public access terminal, for which a printout is requested, \$5 per printout;
- (3) For each fingerprint-based search of the Hawaii automated fingerprint identification system or manual fingerprint files, \$15;
- (4) For processing of each application for the expungement of arrest records, \$15;
- (5) For certification of documents, \$5 per document;
- (6) For each duplicate expungement certificate requested, \$10; and
- (7) For each complete set of fingerprints taken, \$10.

(b) Criminal history record checks mandated for child care facilities shall be exempt from the requirement to pay fees.

(c) Non-profit charitable organizations that are tax-exempt under the Internal Revenue Code (IRC) section 501(c)(3) will be exempt from fees for criminal history record checks conducted on adult volunteers having direct contact with minors.

(d) Any other law to the contrary notwithstanding, the data center may adopt rules pursuant to chapter 91 to establish other exemptions from the requirement to pay fees. [L 1987, c 146, §1; am L Sp 1995, c 7, §3]

[§846-10.6] Criminal history record improvement revolving fund; established. There is established a criminal history record improvement revolving fund. All proceeds accumulated by the Hawaii criminal justice data center or any state or county criminal justice agency through the assessment of fees for services as provided in section 846-10.5 related to criminal history record information from the state system shall be deposited into this revolving fund. Moneys in the revolving fund shall be expended by the Hawaii criminal justice data center and used to improve the criminal history record information system established under this chapter. [L Sp 1995, c 7, §2]

[§846-11] Office of correctional information and statistics. The data center shall coordinate its activities with the records system of the intake service centers of the office of correctional information and statistics. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts. [L 1979, c 129, pt of §2]

[§846-12] Juvenile records. Dissemination and disposition of records concerning proceedings relating to the adjudication of a juvenile as a delinquent or in need of supervision (or the equivalent) in family court to non-criminal justice agencies is prohibited, unless a statute, court order, rule, or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section 846-9. Juvenile records disseminated to non-criminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further. [L 1979, c 129, pt of §2]

[§846-13] Annual audits. The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate the annual audits. Audit of the data center shall be performed by another state agency. [L 1979, c 129, pt of §2]

[§846-14] Access and review. Any individual who asserts that he has reason to believe that criminal history record information relating to him is maintained by any information system in this State shall be entitled to review such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates; provisions for supplying to an individual whose record has been corrected, upon his request, the names of all non-criminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information. [L 1979, c 129, pt of §2]

[§846-15] Rules and regulations. The attorney general shall adopt rules and regulations, as may be necessary, which will insure compliance with the provisions of this chapter by the most efficient and effective means possible. [L 1979, c 129, pt of §2]

[§846-16] Violations. Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section 846-9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor. [L 1979, c 129, pt of §2]

**CHAPTER 853
CRIMINAL PROCEDURE: DEFERRED
ACCEPTANCE OF GUILTY PLEA,
NOLO CONTENDERE PLEA**

SECTION

- 853-1 DEFERRED ACCEPTANCE OF GUILTY PLEA, OR NOLO CONTENDERE PLEA; DISCHARGE AND DISMISSAL, EXPUNGEMENT OF RECORDS
853-2 PLEA OF GUILTY OR NOLO CONTENDERE; PROCEDURE
853-3 VIOLATION OF TERMS AND CONDITIONS DURING DEFERMENT; RESULT
853-4 CHAPTER NOT APPLICABLE; WHEN

Note. Title change, see L 1983, c 290, §1.

§853-1 Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records. (a) Upon proper motion as provided by this chapter:

- (1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor;
- (2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and
- (3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law,

the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred.

(c) Upon his completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against him.

(d) Discharge of the defendant and dismissal of the charge against him under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement not less than one year following discharge, pursuant to section 831-3.2. [L 1976, c 154, pt of §2; am L 1979, c 147, §1 and c 155, §1; am L 1980, c 232, §42; am L 1983, c 290, §2(1), (2)]

Retroactive relief. L 1979, c 155, §3, provides that "all misdemeanor records preserved at any police department pursuant to section 853-1(e) [as it existed prior to amendment by L 1979, c 155, §1]...shall be transmitted to the office of the attorney general and shall be expunged pursuant to the provisions of section 831-3.2..."

§853-2 Plea of guilty or nolo contendere; procedure. Upon motion made before sentence by the defendant, the prosecutor, or on its own motion, the court will either proceed in accordance with section 853-1, or deny the motion and accept the defendant's plea of guilty or nolo contendere, or allow the defendant to withdraw his plea of guilty or nolo contendere only for good cause. [L 1976, c 154, pt of §2; am L 1983, c 290, §3]

§853-3 Violation of terms and conditions during deferment; result. Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea or deferred acceptance of nolo contendere plea, the court may enter an adjudication of guilt and proceed as otherwise provided. [L 1976, c 154, pt of §2; am L 1983, c 290, §4]

§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;

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- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering.

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The court may by rule adopt other criteria in this area. [L 1976, c 154, pt of §2; am L 1980, c 292, §2]

Chapter 712

§712-1255 Conditional discharge. (1) Whenever any person who has not previously been convicted of any offense under this part of chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under sections 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this part or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted. [L 1972, c 9, pt of §1]

§712-1256 Expunging of court records. (1) Upon the dismissal of such person and discharge of the proceeding against him under section 712-1255, this person, if he was not over twenty years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose. [L 1972, c 9, pt of §1]

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Chapter 92

Sec. 92-50 PUBLIC PROCEEDINGS AND RECORDS

§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1975, c 166, pt of §2]

§92-51 Public records; available for inspection. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person. [L 1975, c 166, pt of §2; am L 1976, c 212, §4]

§92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

**[CHAPTER 92E]
FAIR INFORMATION PRACTICE
(CONFIDENTIALITY OF PERSONAL RECORD)**

SECTION

- [92E-1] DEFINITIONS
- [92E-2] INDIVIDUAL'S ACCESS TO OWN PERSONAL RECORD
- [92E-3] EXEMPTIONS AND LIMITATIONS ON INDIVIDUAL ACCESS
- [92E-4] LIMITATION ON PUBLIC ACCESS TO PERSONAL RECORD
- [92E-5] LIMITATIONS ON DISCLOSURE OF PERSONAL RECORD TO OTHER AGENCIES
- [92E-6] ACCESS TO PERSONAL RECORD; INITIAL PROCEDURE
- [92E-7] COPIES
- [92E-8] RIGHT TO CORRECT PERSONAL RECORD; INITIAL PROCEDURE
- [92E-9] ACCESS AND CORRECTION; REVIEW PROCEDURES
- [92E-10] RULES AND REGULATIONS
- [92E-11] CIVIL ACTIONS AND REMEDIES
- [92E-12] VIOLATIONS; DISCIPLINARY ACTION AGAINST EMPLOYEES
- [92E-13] ACCESS TO PERSONAL RECORDS BY ORDER IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS; ACCESS AS AUTHORIZED OR REQUIRED BY OTHER LAW

[§92E-1] Definitions. As used in this chapter:

- (1) "Agency" means every office, officer, employee, department, division, bureau, authority, board, commission, or other entity of the executive branch of the State or of each county, but excludes:
 - (A) The legislature and the council of each county, including their respective committees, offices, bureaus, officers, and employees; and
 - (B) The judiciary, including the courts, and its offices, bureaus, officers, and employees.
- (2) "Individual" means a natural person.
- (3) "Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. "Personal record" includes a "public record," as defined under section 92-50. [L 1980, c 226, pt of §2]

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[\$92E-2] Individual's access to own personal record. Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1980, c 226, pt of §2]

Legislative purpose, see L 1980, c 226, §1.

[\$92E-3] Exemptions and limitations on individual access. An agency is not required by this [chapter] to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the enforcement of criminal laws or any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
 - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1; or
 - (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or
 - (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1980, c 226, pt of §2]

[\$92E-4] Limitation on public access to personal record. No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

- (1) To a duly authorized agent of the individual to whom it pertains;
- (2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;

- (3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;
- (4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual. [L 1980, c 226, pt of §2]

[§92E-5] Limitations on disclosure of personal record to other agencies. No agency may disclose or authorize disclosure of personal record to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;
- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal monies. [L 1980, c 226, pt of §2]

[§92E-6] Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92E-3. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1980, c 226, pt of §2]

[§92E-7] Copies. The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form and duplication and shall not include any costs of searching for the record. [L 1980, c 226, pt of §2]

[§92E-8] Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record, an agency shall acknowledge the request in writing, and promptly:

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- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1980, c 226, pt of §2]

[§92E-9] Access and correction; review procedures. (a) Not later than thirty business days after receipt of request for review of an agency refusal to allow access to, or correction or amendment of, a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow access to, or correction or amendment of, a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for his disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1980, c 226, pt of §2]

[§92E-10] Rules and regulations. Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this chapter.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county. [L 1980, c 226, pt of §2]

[§92E-11] Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this chapter, and after appropriate administrative remedy under sections 92E-6, 92E-8, and 92E-9 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency acted in a manner which was intentional or wilful, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$100; and
- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than

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two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance. [L 1980, c 226, pt of §2]

[§92E-12] Violations; disciplinary action against employees. A knowing or intentional violation of any provision of this chapter, or of any rule adopted to implement or administer this chapter, by any employee or officer of an agency shall be cause for disciplinary action, including suspension or discharge, by the head of the agency. Any person may file a complaint, with the head of the applicable agency, alleging such a violation. [L 1980, c 226, pt of §2]

[§92E-13] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this chapter, including section 92E-3, shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1980, c 226, pt of §2]

Severability clause, see L 1980, c 226, §3.

CHAPTER 463 PRIVATE INVESTIGATORS AND GUARDS

SECTION

- 463-1 DEFINITIONS
- 463-5 PRIVATE DETECTIVES AND DETECTIVE AGENCIES; LICENSE REQUIRED
- 463-6 PRIVATE DETECTIVES AND DETECTIVE AGENCIES; QUALIFICATIONS FOR LICENSE
- 463-7 GUARD AND GUARD AGENCIES; LICENSE REQUIRED
- 463-8 GUARDS AND GUARD AGENCIES; QUALIFICATIONS FOR LICENSE
- 463-10 LICENSES AND RENEWAL OF LICENSES; ESTABLISHMENT OF FEES BY RULE
- 463-12 BOND

Cross References

Sunset evaluations modified, see §2611-4.

§463-1 Definitions. As used in this chapter:

“Board” means the board of private detectives and guards described in section 463-2.

“Detective”, “private detective”, or “investigator” means a licensed person qualified to obtain information and evidence not readily or publicly accessible.

“Detective agency” or “private detective agency” means a licensed firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association engaged in the private detective business.

“Guard” means a licensed uniformed or nonuniformed person responsible for the safekeeping of a client’s properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping.

“Guard agency” means a licensed firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association engaged in the guard business.

“Principal detective” means a licensed detective designated as the detective agency’s primary licensee who is fully responsible for the direct management and control of the agency.

“Principal guard” means a licensed guard designated as the guard agency’s primary licensee who is fully responsible for the direct management and control of the agency. [L 1961, c 77, pt of §1; Supp. §165A-1; HRS §463-1; am L 1983, c 40, §1; am L 1994, c 122, §1]

§463-5 Private detectives and detective agencies; license required. (a) No individual shall engage in the business of private detective, represent oneself to be, hold oneself out as, list oneself, or advertise as a private detective or as furnishing detective or investigating services without first obtaining a license as a private detective from the board and paying the application and license fees.

(b) No firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association shall engage in the business of private detective, represent itself to be, hold itself out as, list itself, or advertise as a private detective agency or bureau or as furnishing detective or investigating services without first obtaining a license as a private detective agency from the board and paying the application and license fees. A detective agency shall have a principal detective who shall be a resident of the State. [L 1961, c 77, pt of §1; Supp. §165A-5; HRS §463-5; am L 1983, c 40, §2; am L 1984, c 7, §68; am L 1987, c 57, §2; am L 1994, c 122, §2]

§463-6 Private detectives and detective agencies; qualifications for license. (a) The board may grant a private detective license to any suitable individual, or a detective agency license to any suitable firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal detective of a firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association, shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time investigational work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession; and
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order.

(b) A detective agency may employ as many agents, operatives, and assistants in an investigative capacity and as necessary for the conduct of business; provided that the principal detective shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the detective agency’s business. The principal detective shall be responsible for the direct management and control of those employees. These employees shall not be required to have private detective licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;

- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, may conduct a criminal history records check of all new employees directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic and that the employee is employed in an investigative capacity. [L 1961, c 77, pt of §1; am L 1965, c 35, §1; Supp, §165A-6; HRS §463-6; am L 1974, c 21, §2 and c 25, §2(23); am L 1983, c 40, §3; am L 1987, c 57, §3; am L 1994, c 122, §3]

Cross References

Hawaii criminal justice data center, see chapter 846.

§463-7 Guard and guard agencies; license required. (a) No individual shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent oneself to be, or hold oneself out as such without first obtaining a license as guard from the board and paying the application and license fees.

(b) No firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent itself to be, hold itself out as, list itself, or advertise as a guard agency without first obtaining a license as a guard agency from the board and paying the application and license fees. A guard agency shall have a principal guard who shall be a resident of the State. [L 1961, c 77, pt of §1; Supp, §165A-7; HRS §463-7; am L 1983, c 40, §4; am L 1984, c 7, §69; am L 1994, c 122, §4]

§463-8 Guards and guard agencies; qualifications for license. (a) The board may grant a guard license to any suitable individual, or a guard agency license to any suitable firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal guard of a firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association, shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time guard work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; and
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order.

(b) A guard agency may employ as many agents, operatives, and assistants in a guard capacity and as necessary for the conduct of business; provided that the principal guard shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the guard agency's business. The principal

guard shall be responsible for the direct management and control of those employees. These employees shall not be required to have guard licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, may conduct a criminal history records check of all new employees directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic and that the employee is employed in a guard capacity. [L 1961, c 77, pt of §1; am L 1965, c 35, §2; Supp. §165A-8; HRS §463-8; am L 1974, c 21, §3 and c 205, §2(24); am L 1983, c 40, §5; am L 1987, c 57, §4; am L 1994, c 122, §5]

§463-10 Licenses and renewal of licenses; establishment of fees by rule.

The license shall state the name and address of the principal office or place of business of the licensee, the name under which the licensed business is to be conducted, and the name of the principal detective or principal guard, if the licensee is a detective agency or guard agency.

The holder of a license issued by the board who continues in active practice shall biennially renew the license and pay the renewal fee not later than June 30 of each even-numbered year.

The holder of an expired license may have the license restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee. [L 1961, c 77, pt of §1 and c 142, §11; Supp. §165A-10; HRS §463-10; am L 1975, c 118, §27; am L 1984, c 7, §70; am L 1992, c 202, §150; am L 1994, c 122, §6]

§463-12 Bond. Each licensee shall give to the board a bond in the sum of

not less than \$5,000 executed by the applicant as principal and by a surety company authorized to do business in the State as surety. The bond shall be in such form as the board may prescribe, conditioned upon the honest conduct of the business of the licensee, and the right of any person injured by the wilful, malicious, or wrongful act of the licensee to bring in the person's own name an action on the bond. [L 1961, c 77, pt of §1; Supp. §165A-12; HRS §463-12; gen ch 1985; am L 1994, c 122, §7]