

# Restoration of Rights Project

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Hawaii

50-STATE COMPARISONS

## Hawaii

## Restoration of Rights & Record Relief

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## I. Loss & restoration of civil/firearms rights

### A. Vote

Uniform Act on Status of Convicted Persons (UASCP): The right of people with felony convictions to vote is suspended while actually incarcerated. “[I]f the defendant is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the probation or parole.” Haw. Rev. Stat. § **831-2**(a)(1). The Hawaii Paroling Authority is charged with notifying individuals on parole of their eligibility to vote and providing them with information on how to register and vote. Haw. Rev. Stat. § **353-62**(10).

### B. Office

The right to seek and hold public office is lost upon sentencing for a felony and restored upon final discharge of sentence. § **831-2**(a)(2). The order or certificate of discharge shall state that the right to hold future public office is restored. § **831-5**(a).

### C. Jury

The right to serve on a jury is lost upon conviction of a felony in a state or federal court until the person has been finally discharged or pardoned. Haw. Rev. Stat. § **612-4**(b)(2). “Finally discharged” means the person has received or is eligible to receive a certificate of discharge under § **831-5**. § **612-4**(c). Other provisions of the UASCP govern the effect of prior conviction and expungement. §§ 831-3.1, 3.2 (*see infra*).

### D. Firearms

**Restrictions:** No one may own or possess a firearm if they are prohibited from possessing firearms under federal law. Haw. Rev. Stat. § **134-7**(a). They may also not possess a firearm if they are “being prosecuted of” or have been convicted of a felony, “a crime of violence, a criminal offense relating to firearms, or an illegal sale or distribution of any drug in a court in this State or elsewhere.” § **134-7**(b). It seems that a misdemeanor crime of domestic violence is covered under this provision. Also barred is anyone “under age 25 [who] has been adjudicated by the family court of committing a felony, a crime of violence (including domestic violence), a firearm offense, or an illegal drug sale.” § **134-7**(d). A person may not be granted a license to carry if prohibited under these sections. Haw. Rev. Stat. § **134-9**(a)(2).

**Restoration:** Anyone prohibited from possessing a firearm as the result of a conviction for a crime that is not a felony is relieved of this disability “if twenty years have elapsed from the date of the conviction.” § 134-7(i). Otherwise, a pardon is the exclusive relief mechanism, and thus unavailable to those with federal and out-of-state convictions.

## II. Pardon policy & practice

### A. Authority

The power to grant pardons of state convictions is vested in the Governor. Haw. Const., art. V, § 5. The Governor may seek the recommendation of the director of corrections and rehabilitation and the Hawaii State Paroling Authority, but the governor’s pardon power is independent. *See Haw. Const., art. V, § 5; Haw. Rev. Stat. § 353-72* (Director of Corrections and Rehabilitation and Paroling Authority “shall consider every application for pardon which may be referred to them by the governor”). While the Hawaii Constitution specifically permits the legislature to “authorize the governor … to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State,” Haw. Const., art. V, § 5, no such statute has been enacted.

### B. Eligibility

There are no restrictions for state offenders. Federal and out-of-state offenders are ineligible. *See Haw. Const., art. V, § 5; U.S. Const., art. II, §2.*

### C. Effect

A pardon will state that the person has been rehabilitated, and a pardon relieves legal disabilities and prohibitions.<sup>1</sup> A pardon does not expunge records, and a pardoned offense may be used in a subsequent criminal proceeding. Instead, if a pardon is granted, the criminal history record will show both the conviction and the pardon.

### D. Process

No statutory process is specified for considering pardon applications, but the Governor, as a matter of policy, always asks the Paroling Authority (HPA) and Attorney General for advice and recommendation. *See Haw. Rev. Stat. § 353-72:*

*“The director of corrections and rehabilitation and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor, as soon as may be after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon.”*

The [Pardon Application](#) (revised July of 2024), is posted on the Paroling Authority [website](#). The application form, in addition to information on the convictions and the individual's personal history, requires three notarized character affidavits.

According to the [Parole Handbook](#) and the Pardons Administrator of the Hawaii Paroling Authority, pardon applicants undergo a formal investigation process conducted by a parole officer within sixty days of the assignment of the investigation. This may include a face-to-face interview by a parole officer with the petitioner (if practicable, by phone if not). The administrative staff develops recommendations to the Parole Board, which are considered in monthly administrative sessions.

The Director of Corrections and Rehabilitation reviews recommendations, and endorses or recommends disapproval, and then sends them to the Attorney General's office where a second investigation and confidential summary is completed.

## **E. Frequency of grants**

During the 2013 through 2023 fiscal years, the Paroling Authority conducted 703 pardon investigations and recommended 293 cases favorably. See Hawaii Paroling Authority [Annual Reports](#). The Paroling Authority reviews applications on a regular basis, sending its recommendations through the Attorney General to the Governor.

While information on Hawaii's most recent governors could not be found, historical news coverage shows Governor Abercrombie granted 83 pardons during his tenure from 2011 to 2014, 50 of which were during his final year in office. See Nick Grube, *A Forgiving Abercrombie Pardoned Dozens on His Way Out the Door*, (Dec. 16, 2014). Governor Lingle granted 132 pardons in her eight years in office, 55 of which were in her last year (2010). See Derrick DePledge, *Lingle's 55 pardons are most in 8 years*, Star Advertiser, Dec. 4, 2010. The two governors immediately preceding Governor Lingle had similar records, granting 204 (Cayetano) and 115 (Waiheee) pardons respectively in their eight years in office.

## **F. Contact**

Hawaii Paroling Authority  
1177 Alakea Street, Ground Floor  
Honolulu, Hawaii 96813  
808-587-1300

## **III. Expungement, sealing & other record relief**

## **A. Minor drug convictions, including for marijuana possession**

Expungement is authorized for first or second drug possession convictions. Haw. Rev. Stat. § **706-622.5**(4). In 2019 convictions for possession of three grams or less of marijuana (now decriminalized) were added to eligibility. *Id.* at (5). HB1383 established a marijuana evaluation task force to make recommendations on changing marijuana use penalties and outcomes in the State.

The court may grant an order for expungement for first-time drug offenders (§ **706-622.5** and § **706-622.8** for offenses prior to 2004); operating a vehicle after consuming alcohol under the age of twenty-one (§ **291E-64**(e)), or first-time property offenders (§ **706-622.9**). A copy of the court order should then be sent to the Attorney General's Office, using the Expungement Application.

**Automatic expungement pilot program:** In 2024, the legislature rejected a bill that would have directed the state to automatically expunge tens of thousands of arrest and conviction records for low-level marijuana possession. It replaced it with a pilot program, to be administered by the Attorney General, for a state-initiated expungement process of arrest records concerning minor (1 oz.) marijuana offenses under § 712-1249, in Hawaii County. See **HB1595**. It requires the Hawaii Criminal Justice Data Center to submit reports to the Legislature prior to the convening of the legislative sessions of 2025 and 2026. In 2025, **HB132** increased the amount of marijuana eligible for automatic expungement to 3 oz.

**Clean Slate Task Force:** Also in 2024, **SB2706** established a clean slate expungement task to provide recommendations for a state-initiated record clearing system that “expands access to employment, education, and other necessities required for successful reintegration as a successful member of society,” that “promotes equity and fairness by removing barriers within the criminal legal system that disproportionately impact marginalized communities,” that enhances public safety, and that “streamlines the procedures involved in the record clearance process to reduce the time and resources required by the various state entities responsible for the implementation of record clearance.” The Task Force must report to the legislature prior to the legislative sessions in 2025 and 2026, and issue a final report prior to the legislative session in 2027.

## **B. Deferred adjudication leading to expungement**

Procedures for deferred acceptance of guilty plea (DAGP) or deferred acceptance of no contest (DANC) is available for persons with no prior felony convictions charged with certain offenses that are otherwise eligible for probation. *See* Haw. Rev. Stat. §§ **853-1**, **853-4**. Enumerated serious offenses are ineligible. § **853-4**.

Deferred treatment is available when “[i]t appears to the court that the defendant is not likely again to engage in a criminal course of conduct,” and “the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law.” §§ 853-1(a)(2), (3). In such cases “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” and place the defendant on probation for a term not exceeding the maximum potential sentence, but in the event of a petty misdemeanor no more than a year. §§ 853-1(a), (b). If the defendant successfully completes probation, the court discharges him and dismisses the charges without an adjudication of guilt. “Discharge of the defendant and dismissal of the charge [following successful completion of the deferral period] . . . is not a conviction.” § 853-1(d).

One year after the discharge and dismissal, the defendant may apply to the Attorney General for expungement of all records held by law enforcement. Haw. Rev. Stat. § 853-1(e); *see also* Haw. Rev. Stat. § 831-3.2(a)(5). Records expunged may be sealed by the court upon the defendant’s request: “Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary’s publicly accessible electronic databases.” § 831-3.2(f). Effective July 1, 2025, the court must seal records that have been expunged, without petition. See SB410 (2023)

The DAGP procedure was enacted

*“because [the legislature] determined that certain offenders should be provided the opportunity to be conviction free consistent with the government’s penal goals. The legislature explained that ‘in certain criminal cases, particularly those involving first time, accidental, or situational offenders, it is in the best interest of the [prosecution] and the defendant that the defendant be given the opportunity to keep his [or her] record free of a criminal conviction, if he [or she] can comply with certain terms and conditions during a period designated by court order.’”*

*State v. Shannon*, 185 P.3d 200, 205 (Haw. 2008)(quoting *State v. Putnam*, 3 P.3d 1239, 1244-45 (Haw. 2000), quoting 1976 Haw. Sess. L. Act 154, § 2 at 279); *see also id.* at 221 (Nakayama, dissenting), quoting Sen. Stand. Comm. Rep. No. 616.76, in 1976 Senate Journal, at 1152 (internal quotations omitted):

*“[For certain offenders], the humiliation and inconvenience of arrest and prosecution satisfy the need for punishment; and a trial and conviction would serve no purpose other than to impair the offenders’ educational,*

*employment, and professional opportunities and ability to function as a responsible and productive member of the community. Additionally, the [DAG plea] procedure . . . has the . . . benefit of saving time and money for the criminal justice system without adversely affecting the public interest. Also, [i]t will further relieve the congestion in the courts and enable the criminal justice system to direct its limited resources where they can be most beneficial to the community.”*

**First-time drug possession:** Deferred adjudication is also authorized for first-time drug offenders under Haw. Rev. Stat. § 712-1255. Discharge and dismissal upon completion of probation 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.” § 712-1255(3). A defendant may apply to the court for expungement of the record if the crime was committed under the age of 20. § 712-1256.<sup>2</sup>

**Misdemeanor domestic abuse:** Deferred acceptance of guilty plea is authorized for misdemeanor domestic abuse, per a 2020 bill ([SB 2638](#)). Haw. Rev. Stat. § 709-906.

### C. Vacatur for victims of human trafficking

Convictions for prostitution and eligible related offenses may be vacated on petition after three years without an additional conviction following the original prostitution-related conviction. § [712-1209.6\(a\)](#). A 2019 law expanded earlier authority tying eligibility to being a victim of human trafficking, and imposing burdensome procedural requirements. The court shall hold a hearing on a motion, and if the defendant was not convicted within the three year period, shall vacate the conviction. § [712-1209.6\(b\)](#).

### D. Attorney General expungement of non-conviction records

Upon an affected individual’s submission of an [Expungement Application](#) to the Hawaii Criminal Justice Data Center and a \$35 fee, the Attorney General “shall issue an expungement order annulling, canceling, and rescinding the record of arrest” not leading to conviction, except in cases where the arrested person absconded. Haw. Rev. Stat. § [831-3.2\(a\)\(1\), \(3\)](#). Expungement is available in deferred adjudication cases after a one-year waiting period. § [831-3.2\(a\)\(5\)](#). The Attorney General’s website states the process takes 120 days to complete.

Expungement of court records is also available upon request, currently through submission of a letter where the expunged case was filed. “Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to

the applicable arrest or case from the judiciary's publicly accessible electronic databases.” § 831-3.2(f). Effective July 1, 2025, without a person submitting a request, “the court shall seal or remove from the judiciary’s publicly accessible electronic databases all judiciary files and other information.....for any person for whom an expungement order listing the court case number has been entered and transmitted to the court.” § 831-3.2(f)(eff. July 1, 2025).

## **E. Effect of expungement**

Persons whose records have been expunged shall be treated “as not having been arrested.” Haw. Rev. Stat. § 831-3.2(b). Records shall not be divulged except upon inquiry by a court or agency thereof (including for preparation of presentence report), a government agency considering the subject person for a position immediately and directly affecting the national or state security, or a law enforcement agency acting within the scope of its duties. § 831-3.2(d). “Response to any other inquiry shall not be different from responses made about persons who have no arrest records.” *Id.*

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.” § 831-3.2(e). 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 statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.” *Id.*

## **F. Juvenile records**

Confidentiality of records of juvenile adjudications is governed by Haw. Rev. Stat. § 571-84(e). Juvenile records are considered confidential, rendering them *per se* sealed. *Id.* The records are only open to inspection by persons with official duties that fall under the chapter, or as otherwise required by the court. *Id.* Expungement of juvenile arrest records is available only if a case is not referred for prosecution, or the person was adjudicated “not responsible” by the court. Haw. Rev. Stat. §§ 571-88(a), (e).

Expungement “annuls” the record, and the person may state that they have no record of that arrest. § 571-88(c). Pursuant to informal court policy, a juvenile’s attorney may motion for a dismissal in the interest of justice following disposition, which, if granted, would destroy court records. “Expunge” under this Section means a process defined by agency policy in which records are segregated and kept confidential, or destroyed. § 571-88(e).

## **G. Contact**

## **IV. Criminal record in employment & licensing**

### **A. Fair employment practices, including “ban-the-box”**

Hawaii includes discrimination based on conviction record in its more general fair employment practices law. Haw. Rev. Stat. §§ 378-2 to 378-6. Under § 378-2.5(b), as amended in 1998, it is an unlawful employment practice to inquire into arrest and conviction records before the employee receives a conditional offer of employment. An employer may withdraw a conditional offer only if a conviction of a felony within the previous 7 years or a misdemeanor within the previous 5 years (exclusive of any period of incarceration, which can be disputed with documentary evidence if the date is claimed to differ from the record) “bears a rational relationship to the duties and responsibilities of the position.” § 378-2.5(b), (c). (In 2020, the look-back provision was reduced from 10 years for both felonies and misdemeanors, again excluding periods of incarceration. See SB 2193.) The law includes a long list of exceptions for various public and private employment where an employer is expressly permitted to ask about a conviction record, such as health, education, law enforcement and security services, public employment, transportation, public libraries, insurance and banks, coop or condominium housing, etc. Haw. Rev. Stat. § 378-2.5(d).

The Hawaii Supreme Court held in August 2006 that this law also prohibits termination of existing employment because of a previous conviction, absent a showing that the conviction bears a rational relationship to the employment. *Wright v. Home Depot*, 142 P. 3d 265, 275 (Haw. 2006).<sup>3</sup>

The law is enforced by the Hawaii Civil Rights Commission. The 1998 amendments were evidently precipitated when the HCRC promulgated regulations that addressed what constitutes a “bona fide occupational qualification” and what is an “inquiry.” See Sheri-Ann S.L. Lau, *Recent Development: Employment Discrimination Because of One’s Arrest and Court Record in Hawaii*, 22 U. Haw. L. Rev. 709, 714-15 (2000). “Significantly, an application form cannot ask the prospective employee whether he or she has an arrest record, court record, or conviction record unless ‘the inquiry is pursuant

to a statutory exemption and seeks information about a conviction for a specific offense within the exemption.” *Id.* The HCRC makes it clear that the employer has the burden of proving a BFOQ based on the employer’s business requirements and the totality of the circumstances. *See id.* at 715-16 (footnote omitted) (“it appears that the legislature’s main emphasis is to provide employment opportunities for individuals with conviction records and reduce the likelihood that they will return to public assistance or a life of crime. The Legislature’s secondary concern is protecting employers from litigation when trying to provide a safe environment for customers and employees.”). As to arrests alone, it is an unlawful discriminatory practice to refuse to hire, to fire or to otherwise discriminate against an individual based on their arrest and court record. Haw. Rev. Stat. § 378-2(a)(1).

## **B. Occupational licensing – Uniform Act on Status of Convicted Persons**

The Uniform Act on the Status of Convicted Persons, adopted by the Hawaii legislature, provides that a person may not be disqualified from public office or government employment, or be disqualified from licensure, solely because of a prior conviction, except that a crime committed within the past 10 years (excluding any period of incarceration) may be considered “if it bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business.” Haw. Rev. Stat. § 831-3.1(a). A crime committed more than 10 years ago may only be considered if it has not been expunged and “directly relates” to the possible performance in the occupation sought and after a determination supported by investigation that the person has not been sufficiently rehabilitated. *Id.* § 831-3.1(c). In addition, a person convicted of a felony may be denied a liquor license. § 831-3.1(a)(1). The statute does not apply to employment in regulated health care facilities, a youth correctional facility, detention or shelter facility, or correctional facility, or to government positions with contact with children or dependent adults where the applicant poses a risk to their health, safety or well-being, or positions with contact with persons committed to a correctional facility for certain crimes and where the applicant poses a risk to the inmates, staff or public. § 831-3.1(f).

Refusal to hire or denial of license may occur only when the agency determines after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, “that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.” Haw. Rev. Stat. § 831-3.1(c). A person who is denied a position in the civil service on the basis of a criminal conviction “may appeal the adverse decision to the civil service commission or merit appeals board, as appropriate, within twenty days after the notice of action has been sent to the person.” § 831-3.1(e).

1. In a press release accompanying 11 grants in 2010 grants, Governor Lingle stated: "The individuals broke the law, but they have served their sentences, kept their records clean and have proven that they are now leading law-abiding lives in the community." Star-Advertiser staff, *11 given pardons this year*, Star Advertiser, Jul. 3, 2010. ↪
2. A 2006 bill extending this expungement authority to all deferred adjudication situations was vetoed by the Governor based on objections to the amount and kinds of violations that could be expunged, referring specifically to trespass, disorderly conduct and loitering for prostitution. Permitting expungement would make records of those crimes unavailable to criminal justice agencies and officials who are not entitled to "law enforcement" access. ↪
3. *Wright* is discussed in Christine Neylon O'Brien and Jonathan J. Darrow, *Adverse Employment Consequences Triggered by Criminal Convictions: Recent Cases Interpret State Statutes Prohibiting Discrimination*, Wake Forest L. Rev. 991, 996-1002 (2007). ↪

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