

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2244

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2244, entitled "A Bill for an Act Relating to Expungements."

This bill permits the expungement of convictions for violations upon written application to the Attorney General. This bill will require the deletion of digitized arrest records rather than the return of hard copy materials, if applicable. This bill would also require the return of fingerprints and photographs, or the deletion of digitized images to a person entitled to an expungement, except when the person is a fugitive from justice.

This bill is objectionable because it will allow for the expungement of convictions of violations, including simple trespass, disorderly conduct, and loitering for prostitution. If the expungement of violations is permitted, charges such as these would be unavailable to criminal justice agencies, such as the state and county prosecuting agencies, as they are not "law enforcement agencies" that are authorized to have access to these records if acting in the scope of their duties. This information would also be unavailable to employers or agencies authorized by the Legislature to conduct suitability determinations on prospective employees who have direct contact with Hawaii's designated vulnerable population, namely children, the elderly, and the developmentally challenged.

This bill will also lead to court challenges as there are no guidelines or standards that can be used to determine when

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the Department of the Attorney General should deny or process an application to expunge the record of a conviction for a violation. As a result, any denial of an application will be open to a challenge that the decision was arbitrarily made. Therefore, the Department will be unable to deny any application for expungement of a conviction for a violation, even in cases where an individual continues to be convicted of violations such as simple trespass, disorderly conduct, and loitering for prostitution. An individual could be convicted for committing a violation every single day and still be entitled to file for an expungement of the conviction for the violation and have it granted each time.

If this bill becomes law, the Department of the Attorney General anticipates that there would be an additional 3,000 - 100,000 offenders that would become eligible for an expungement. The Hawaii Criminal Justice Data Center would require additional positions to process these requests. The police departments and Sheriff's Office would also require additional personnel to expunge the requested charges from their files. However, this bill does not provide any additional funding or resources to the affected agencies to handle the additional workload.

This bill will also mandate the return of all fingerprint cards and photographs of a person entitled to an expungement order unless the applicant is a fugitive from justice. This will erode the accountability and integrity of our fingerprint records in the State Automated Fingerprint Identification System. This is especially true in the case of an arrest with two or more charges. If one of the charges is expunged, the fingerprints and photographs would have to be

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returned to the eligible applicant. Law enforcement agencies would then have no fingerprints or photographs associated with the charges remaining from that arrest. This could lead to a problem in the future, as law enforcement agencies would be unable to correctly identify the convicted individual.

For the foregoing reasons, I am returning Senate Bill No. 2244 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii