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## **OLR Bill Analysis**

**sHB 6918 (as amended by House "A")\***

### ***AN ACT CONCERNING ERASURE OF CRIMINAL HISTORY RECORDS.***

#### **SUMMARY**

Existing law has a process to erase records of most misdemeanor convictions and certain felony convictions after a specified period following the person's most recent conviction. (The process is not yet fully operational.)

This bill makes various changes to this law, such as:

1. specifying that for purposes of erasure eligibility for a particular offense, its classification or maximum sentence is determined based on the law in effect when the offense was committed (§ 1);
2. specifying that motor vehicle violations are generally covered by the law in the same way as misdemeanors or felonies; and
3. prohibiting record erasure under these provisions while someone has any pending criminal charges and, in most cases, while the person is on parole, transitional supervision, or probation.

The bill makes other changes affecting criminal record erasure under these procedures and in some other circumstances (e.g., following a dismissal, not guilty finding, or pardon). For example, it:

1. makes it an unfair and deceptive trade practice for data reporting companies and others to fail to remove erased records from their disclosures under specified circumstances;
2. establishes certain liability protections for actions taken based on erased records, if the actions were taken in good faith reliance on the erased information; and

3. starting in 2024, allows people who believe that their records should have been automatically erased by law to seek a determination on the matter from the Department of Emergency Services and Public Protection (DESPP) following a hearing.

It also makes technical and conforming changes.

\*House Amendment "A" principally (1) adds provisions making driving under the influence (DUI) ineligible for erasure in certain circumstances; (2) expands the scope of certain provisions on cases with multiple charges; (3) extends certain provisions on updating records to mass requests under the Freedom of Information Act (FOIA); (4) makes violations of specific provisions an unfair and deceptive trade practice, rather than just subject to a damages action under that law; and (5) removes provisions on claims for compensation against the state for failure to erase records, and instead provides a process for people to request a determination that their records should be erased.

EFFECTIVE DATE: July 1, 2023, except upon passage for provisions (1) specifying that the bill is the controlling law for purposes of determining erasure eligibility, (2) requiring the DESPP to post a list of eligible crimes, (3) addressing potential liability if any party takes actions based on erased records, and (4) providing a process to dispute the failure to erase records.

### **CRIMINAL RECORD ERASURE AFTER SPECIFIED PERIOD POST-CONVICTION**

Under this law, eligible convictions are generally subject to erasure seven years (for misdemeanors) or 10 years (for felonies) after the person's most recent conviction. Depending on the offense date, erasure occurs automatically or upon the person's petition (see BACKGROUND).

The bill makes various changes to this process, as described below.

#### ***Motor Vehicle Violations (§ 1)***

The bill specifies that motor vehicle violations with maximum prison terms of up to five years are generally covered by the law's erasure

provisions, in a comparable way to felonies and misdemeanors under the law. (Some motor vehicle violations include criminal penalties, but these violations are not always classified as felonies or misdemeanors.)

Under the bill, motor vehicle violations are subject to erasure after a period based on their maximum prison terms, as follows:

1. violations with up to one-year maximum prison terms are generally eligible for erasure seven years from the date the court entered the person's most recent conviction (i.e., the same as eligible misdemeanors); and
2. violations with over one-year and up to five-year maximum terms are subject to erasure 10 years from the date the court entered the person's most recent conviction (i.e., the same as eligible felonies).

(See below for circumstances in which driving under the influence is not eligible for erasure.)

By law, unchanged by the bill, these record erasure provisions do not require the Department of Motor Vehicles to erase criminal history record information from driving records.

Existing law has a separate process for the erasure of misdemeanor convictions for crimes committed between January 1, 2000, and July 1, 2012, by people under age 18 at the time of the offense (CGS § 54-142a(f)). The law, unchanged by the bill, excludes motor vehicle violations (and other Title 14 offenses) from these procedures.

### ***Unclassified Felonies (§ 1)***

Under current law, unclassified felonies with up to five-year prison terms are generally subject to the law's erasure provisions. The bill clarifies that the five-year limit is based on the maximum prison term of the crime, rather than the term imposed for a particular person.

### ***Calculation of Eligibility Determination (§ 1)***

In addition to the eligibility waiting period, convictions are not

eligible for erasure under current law until the defendant has finished serving the sentence for any convictions (not just those subject to erasure). The bill generally retains and expands this requirement, prohibiting record erasure until the defendant meets the following conditions:

1. has completed serving any period of (a) incarceration; (b) standard, special, medical, or compassionate parole; or (c) transitional supervision associated with any sentence for the offense subject to erasure, and for any other in-state convictions since January 1, 2000;
2. has completed serving any period of probation for any in-state convictions since January 1, 2000; and
3. does not have any pending state criminal changes.

***Convictions That Are Ineligible for Erasure***

***Classifications of Certain Currently Ineligible Crimes.*** Current law has a specific list of 20 class D felonies and three class A misdemeanors that are ineligible for record erasure. The bill makes convictions for these 23 crimes ineligible for erasure in all cases, not just when they are classified as class D felonies or class A misdemeanors, respectively.

In most respects, this change is technical, because these crimes are only punishable as class D felonies or class A misdemeanors, or in certain cases are higher-level felonies that are categorically ineligible for erasure. But in a few cases, these crimes were previously classified differently, and in a way that makes some older convictions that may be currently eligible for erasure ineligible under the bill. This includes the following crimes:

1. enticing a minor (before July 1, 2004, a first offense was a class A misdemeanor); and
2. obscenity as to minors (before October 1, 1985, this crime was a class A misdemeanor).

**Additions to List of Ineligible Crimes.** The bill makes five crimes that are currently eligible for erasure for certain older convictions instead ineligible in all cases. Although these crimes are currently ineligible for erasure (because they are class C or B felonies), they were previously classified in a way that makes some older convictions eligible for erasure under current law.

**Table: Additions to List of Ineligible Crimes**

<b>Brief Description (Citation)</b>	<b>Classification</b>
Selling or transferring a handgun in violation of required procedures, without a trigger lock (except at wholesale), or to someone prohibited by law from possessing it, or buying or obtaining a handgun without valid credentials (CGS § 29-33)	Currently: a class C felony (or in some cases, a class B felony), with a mandatory minimum Before October 1, 2013: a class D felony in most cases
Possessing child pornography 1st degree (CGS § 53a-196d)	Currently: a class B felony, with a mandatory minimum Before October 1, 2004: a class D felony (there were not separate degrees of the crime at the time)
Stealing a firearm (CGS § 53a-212)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony
Criminally possessing a firearm, ammunition, or an electronic defense weapon (CGS § 53a-217)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony, with a mandatory minimum
Criminally possessing a handgun (CGS § 53a-217c)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony

**DUI.** The bill makes DUI convictions ineligible for erasure if the conviction occurred within 10 years before any additional DUI arrest.

**Family Violence Crimes.** Under current law, all family violence crimes are ineligible for erasure under these provisions. The bill limits this ineligibility to convictions on or after January 1, 2000. This makes family violence crimes committed before then eligible for erasure, unless they would otherwise be ineligible (for example, class A, B, or C felonies).

***Continued Obligations Despite Erasure (§ 1)***

The bill specifies that these record erasure provisions do not end a defendant's obligation to register on the:

1. deadly weapon offender registry when applicable; or
2. sex offender registry, under provisions requiring registration for a (a) criminal offense against a victim who is a minor or (b) felony committed for a sexual purpose.

Crimes in the former category of sex offenses would rarely be eligible for erasure. (In certain cases, older convictions would be.) Certain crimes in the latter category may be eligible, depending on the classification. (This category does not list specific crimes, but gives the court discretion to impose registration for any felony the court finds was committed for a sexual purpose meeting certain criteria.)

By law, unchanged by the bill, sexually violent offenses and nonviolent sex offenses (which also require sex offender registration) are ineligible for erasure.

Additionally, the bill specifies that these record erasure provisions do not end a defendant's obligation to (1) comply with a standing criminal protective order or (2) pay any unremitted fine that the court imposed in its sentence.

***Records Access for Legal Enforcement (§ 1)***

The bill gives law enforcement, the court, and the state's attorney access to any record required to substantiate a defendant's conviction for the following purposes:

1. to verify a defendant's obligation to register as a deadly weapon offender or sex offender under specified provisions, or to comply with a standing criminal protective order; and
2. to prosecute someone for failing to register as required or comply with the protective order.

This applies despite provisions in existing law and the bill that limit

the disclosure of erased records.

***Controlling Law (§ 5)***

Existing law requires DESPP, in consultation with the judicial branch and the Criminal Justice Information System Governing Board, to develop and implement automated processes for criminal record erasure. The bill specifies the controlling law if (1) these automated processes have not marked a police, court, or prosecutor record as erased or (2) the person has not filed a petition seeking the record's erasure. In these situations, as of July 1, 2023, the controlling law is the relevant law as amended by the bill, rather than the law in effect on January 1, 2023. This applies to determining (1) whether a record is eligible for erasure and (2) the eligibility of defendants who must file a petition to erase their records.

***DESPP Posting of Eligible Offenses (§ 6(b))***

Current law requires DESPP, within available appropriations, to post information on its website or otherwise disseminate information about criminal records that are subject to erasure generally.

The bill instead requires the DESPP commissioner, by January 1, 2024, to post information on a DESPP-operated website about criminal records that are subject to erasure, including a list of statutes that are subject to erasure under the provisions described above. The commissioner must annually review the list and update it as necessary.

**CRIMINAL RECORD ERASURE GENERALLY**

***Scope of Court Records Subject to Erasure (§§ 2 & 3)***

The bill specifies that audio or video recordings of court proceedings are not defined as "court records" under the record erasure laws, and so are not subject to erasure.

It also specifies that the law does not require the erasure of the Superior Court's published memoranda of decisions or any Appellate or Supreme Court records related to cases they considered.

***Cases Containing Multiple Counts or Defendants (§ 2)***

By law, if a case contains multiple charges, certain records for any charges cannot be erased while the case is still pending. After the case is over, if only some records are entitled to erasure, electronic records released to the public must be erased to the extent they reference those charges. Current law applies these provisions to police, court, and prosecutor records referencing more than one count. The bill expands this application to any criminal history record information referencing more than one count. By law, “criminal history record information” generally includes court records and information compiled by criminal justice agencies for specified purposes. Each police department, court, and prosecutor’s office is a “criminal justice agency,” but the term also specifically includes the Department of Correction, Office of Policy and Management, Board of Pardons and Paroles, Chief Medical Examiner, and Office of the Victim Advocate, as well as any other governmental agency created by statute that is authorized by law and principally engages in criminal justice administration activities (CGS § 54-142g).

For these electronic records, the bill excludes from this erasure requirement any portion of a police record that is a narrative description, including this sort of description in an investigative report.

The bill also applies these same provisions to police records referencing more than one defendant. So, it prohibits these records from being erased while the case is still pending. For cases that are completed, it prohibits these records from being erased until records for all relevant cases for all defendants are entitled to erasure, except for certain electronic records released to the public as described above.

#### ***Data Companies and Mass FOIA Requests (§ 4)***

By law, the judicial branch and other criminal justice agencies must make information on erased records available to people or companies that buy public criminal records, to allow them to identify and permanently delete these records. These provisions specifically apply to consumer reporting agencies, background screening providers, and similar data-based services or companies (“data company”). The bill also requires the judicial branch and other criminal justice agencies to make this information available to anyone who files mass requests



under the Freedom of Information Act (FOIA) for information on public criminal records. For this purpose, a “mass request” is one concerning at least 50 criminal matters of public record.

Under existing law, before disclosing the records, the company must (1) purchase from the branch or agency any updated public criminal records or information available to comply with the law and (2) within 30 days after receiving notice that a record was erased, update its records to reflect that. Current law prohibits further disclosure of the records. The bill allows further disclosure (1) to the subject of the records as required under the federal Fair Credit Reporting Act or (2) as otherwise required by law.

The bill extends the above requirements to anyone who makes a mass request under FOIA, unless they are only obtaining information that does not personally identify the subjects of the criminal records and are not using the information for commercial purposes. Under the bill, if a data company discloses an erased record after 30 days from receiving notice that it was erased as described above, the attorney general may send notice ordering them to remove the record from any such disclosure, no later than five business days following the order’s receipt.

The bill deems any violation of these provisions as a violation of the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND).

***Liability for Acting Based on Erased Records (§ 6(d) & (f))***

Starting on January 1, 2023, existing law prohibits discrimination in various contexts based on someone’s erased criminal history record information, such as in employment, public accommodations, the sale or rental of housing, the granting of credit, and state services and benefits.

The bill establishes certain liability protections for the state or any state agency, any municipality, or anyone else who took an action based on criminal history record information required to be erased or deemed erased by operation of law, despite the law’s anti-discrimination provisions.

Under the bill, there is no liability for taking these actions before January 1, 2024, if:

1. the action is taken in good faith reliance on the criminal history record information and
2. that information has not yet been marked as erased by the required automated system, or, in the case of a municipality or other person, the erasure marking has not been communicated to them.

Starting in 2024, this same liability protection for good faith actions based on information not marked or communicated as erased applies only during the immediate 30-day window after the records should have been marked as erased.

***Disputing Failure to Erase Records (§ 6(e) & (g))***

The bill protects the state and state agencies from claims for failure to erase records as required by current law until January 1, 2024. After that date, the bill provides a process for someone to challenge the non-erasure of their records under the law’s provisions on erasure following a specified period post-conviction.

Specifically, the bill allows someone who believes that their records should have been automatically erased under these provisions to submit to DESPP a copy of their criminal history record information search, showing that the records were not marked erased. DESPP sets the manner for people to submit this information.

After a contested hearing, DESPP must determine whether the records should be deemed erased. The department’s determination is a final decision for purposes of the Uniform Administrative Procedure Act (UAPA). By law, anyone aggrieved by an agency’s final decision under the UAPA may appeal to Superior Court (CGS § 4-183).

**BACKGROUND**

***Automatic or Petition Process for Criminal Record Erasure***

PA 21-32, as amended by PA 21-33 and PA 22-26, established the

process described above to erase records of most misdemeanor convictions and certain felony convictions after a specified period following the person's most recent conviction. The erasure generally applies to (1) related police, court, and prosecutor records (including those from any prosecuting grand jury) and (2) records held by the Board of Pardons and Paroles regarding court obligations arising from the conviction. Subject to various exclusions as described above, the law applies to misdemeanors; class D and E felonies; and unclassified felonies with up to five-year maximum prison terms.

Generally, the law provides for (1) automatic erasure for eligible offenses that occurred on or after January 1, 2000, or (2) erasure upon the person's filing of a petition for offenses occurring before then.

***Connecticut Unfair Trade Practices Act (CUTPA)***

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 31 Nay 5 (03/28/2023)